

JA

CHAPTER 741

LAWS OF 20 06

SENATE BILL 8349-A

ASSEMBLY BILL _____

STATE OF NEW YORK

8349--A

IN SENATE

June 16, 2006

Introduced by Sens. BONACIC, LARKIN, LIBOUS, MEIER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the transportation corporation law, in relation to prohibiting transportation corporations that are gas corporations and gas electric corporations from exercising the right of eminent domain

A 11977-A -- Lupardo

DATE RECEIVED BY GOVERNOR:

SEP 22 2006

ACTION MUST BE TAKEN BY:

OCT 04 2006

DATE GOVERNOR'S ACTION TAKEN:

OCT 03 2006

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SENATE VOTE ___ Y ___ N

HOME RULE MESSAGE ___ Y ___ N

DATE _____

ASSEMBLY VOTE ___ Y ___ N

DATE _____

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DAVID J. VALESKY
SENATOR, 49TH DISTRICT

ALBANY OFFICE
707 LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
518-455-2838
FAX 518-426-6885

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RANKING MINORITY MEMBER:
AGRICULTURE
RANKING MINORITY MEMBER:
ENVIRONMENTAL CONSERVATION
COMMITTEES:
ENERGY & TELECOMMUNICATIONS
HIGHER EDUCATION
LOCAL GOVERNMENT
TOURISM, RECREATION
& SPORTS DEVELOPMENT
TRANSPORTATION

September 22, 2006

Richard Platkin, Counsel to the Governor
Executive Chamber, Room 225
State Capital
Albany, NY 12224

Dear Mr. Platkin,

It has come to my attention that Senate bill S349 has finally been sent to the Governor's office for further action. I am, again, writing to urge that the Governor approve this bill thus limiting the eminent domain powers of private electric and gas corporations.

The taking of private property for public benefit is a power that should be used only in the most extreme circumstances. This legislation would restrict eminent domain so that it is only used for real public purposes and public benefit and not for the profit of private companies that are seeking themselves to benefit from an existing public need.

As you may know, this bill has the broad goal of reigning in eminent domain powers for private companies and the specific goal of preventing the NYRI proposed project from moving forward – a project that would severely impact the lives of many Upstate New Yorkers and the livelihood in many upstate communities.

These upstate communities have spoken with one voice, opposing NYRI and saying this project is not for the public benefit and not in the public interest. I respectfully ask that the Governor sign Senate bill 8349 into law.

Sincerely,

A handwritten signature in black ink that reads "David J. Valesky".

David J. Valesky
State Senator

DJV/cmr

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8349A

SPONSOR: BONACIC

TITLE OF BILL: An act to amend the transportation corporation law, in relation to prohibiting transportation corporations that are gas corporations and gas electric corporations from exercising the right of eminent domain

PURPOSE:

To limit efforts to use eminent domain to public purposes.

SUMMARY OF PROVISIONS:

Provides that certain Transportation Corporations do not have the power of eminent domain.

JUSTIFICATION:

The power of taking private property for public benefit is a power which should be used in only the most extreme circumstances. Currently, there are organizations which are filing as "Transportation Corporations" for the purpose of utilizing eminent domain. The Legislature should ensure that eminent domain is truly only used for the most public of purposes and not for the profit of private developers.

LEGISLATIVE HISTORY:

This is a new bill.

FISCAL IMPLICATIONS:

None.

LOCAL FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.

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B-203

BUDGET REPORT ON BILLS

Session Year 2006

SENATE:
No. 8349-A

NO RECOMMENDATION
BONACIC

ASSEMBLY:
No.

Title: AN ACT to amend the transportation corporation law, in relation to prohibiting transportation corporations that are gas corporations and gas electric corporations from exercising the right of eminent domain

The above bill has been referred to the Division of the Budget for comment. After careful review, we find that the bill has no appreciable effect on State finances or programs, and/or this office does not have the technical expertise to make a recommendation on the bill.

We therefore make no recommendation.



STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

GEORGE E. PATAKI
GOVERNOR

CHRISTOPHER L. JACOBS
SECRETARY OF STATE

MEMORANDUM

July 17, 2006

TO: Honorable Richard M. Platkin, Esq.
Counsel to the Governor

FROM: Robert P. Leslie, Esq.
General Counsel

SUBJECT: S.8349-A (Sen. Bonacic)
Recommendation: Disapproval

This bill amends Transportation Corporations Law (TCL) §11 to enact a new subdivision 7. The amendment prohibits certain merchant transmission companies from exercising eminent domain power as electric corporations. Companies would be so prohibited if their transmission lines both commence and end in New York, if the company testifies that the construction of such lines will increase electric rates anywhere in the state, and if the company was denied designation for a national interest electric transmission corridor by the Federal government¹.

The bill is intended to prohibit companies that transmit electric power only, from employing the eminent domain power they would otherwise have as an electric corporation under the TCL. Such companies would thereafter be required to acquire property by ordinary purchase.

There are a number of technical problems with the bill. First, it deals with “merchant transmission companies”, but does not define that term. While the terminology is apparently common in the power generation industry, it seems the legislation should itself set forth a definition. Second, the use of the phrases “commences and ends” and “designation as a national interest electric transmission corridor” are not grammatical when applied to the antecedent term “merchant transmission company”.

More importantly, it is apparent that the bill is aimed at stopping a particular project, the New York Regional Interconnect (NYRI)². While the Department of State believes the use of eminent domain power by private utilities deserves study, the issue should be approached with an eye toward

¹In a Federal Register Notice of Inquiry dated February 2, 2006, the U.S. Department of Energy requested public input on geographic areas or transmission corridors for which there is a particularly acute need for early designation as a national interest corridor. Under certain circumstances, such designation can justify Federal approval for a project notwithstanding the absence of state approval.

²On May 31, 2006, NYRI, Inc. submitted an Article VII Application to the New York Public Service Commission, seeking regulatory approval for construction of a 190-mile high voltage direct current transmission line from Oneida County to Orange County.

making changes that are generally necessary. Drafted as narrowly as it is, instead this bill in effect singles out a particular company without substantial thought having been given to the overall issue. The NYRI project should proceed or fall on its merits within the Article VII process, during which all relevant issues will be thoroughly reviewed. But we believe it is inappropriate to fashion this change to eminent domain power into a weapon against this one project. Leaving the merits of NYRI aside, there may be potential power projects involving renewable energy sources, or having a minimal or even positive impact on the environment, for which use of the statutory eminent domain power would be appropriate. The Department, as administrator of New York's Quality Communities Program, believes that the employment of eminent domain in such projects may well result in positive outcomes for the Program.

Based on the foregoing comment, the Department of State cannot support approval of the bill.

RPL/HJW/mel



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
OFFICE OF COUNSEL
W.A. HARRIMAN CAMPUS
ALBANY, NY 12227

July 11, 2006

The Honorable Richard Platkin
Counsel to the Governor
State Capitol
Albany, NY 12224

Re: Senate Bill No. 8349-A
(Our File No. L-18,147)

Dear Mr. Platkin:

Your office has requested the views of the Department of Taxation and Finance on the above-referenced bill which is presently before the Governor for executive action. This bill would amend section 11 of the Transportation Corporations Law by adding a new subdivision 7 to provide that subdivisions 3 and 3-a of that section, providing for the exercise of the power of eminent domain by gas, electric, and gas and electric transportation corporations, shall not apply to any merchant transmission company which: (a) commences and ends in the State of New York; (b) through its employees, agents, representatives, or assigns, has represented in testimony that the construction of such power transmission lines will increase electric rates in any part of the state; and (c) which applied for and did not receive an early designation as a national interest electric transmission corridor under an act of the Congress commonly known as the Energy Policy Act of 2005. Since the subject matter of this bill is not within the province of the Department of Taxation and Finance, the Department makes no recommendation with respect to it.

Thank you for the opportunity to comment on this legislation.

Sincerely,

/s/

CHRISTOPHER C. O'BRIEN
Deputy Commissioner and Counsel

electronic copy sent to:
(Legislative.Secretary@chamber.state.ny.us)

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STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN
Chairman
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MAUREEN F. HARRIS
ROBERT E. CURRY, JR.
CHERYL A. BULEY



DAWN JABLONSKI RYMAN
General Counsel

JACLYN A. BRILLING
Secretary

August 11, 2006

TO: Richard Platkin
Counsel to the Governor

FROM: Dawn Jablonski Ryman
General Counsel

SUBJECT: S.8349-A

Recommendation: Disapproval

This bill would add a new Transportation Corporations Law (TCL) §11(7) to prohibit certain transportation corporations from exercising the power of eminent domain to acquire the property necessary to allow an electric corporation to provide electric service, including construction of any transmission and distribution facilities. Specifically, the bill would apply to any merchant transmission company which: "commences and ends in the state of New York;"¹ stated in testimony that construction of a power transmission line will increase electric rates in any part of the state; and applied for and did not receive an early designation as a National Interest Electric Corridor (National Corridor) under the Energy Policy Act of 2005.² The bill would take effect immediately.

Any company that proposes to construct a major electric transmission facility is required to obtain a certificate of environmental compatibility and public need from the Public Service Commission (Public Service Law (PSL) Article VII, §121). Article VII establishes a comprehensive review process in a single proceeding open to participation by citizens, municipalities, and other public agencies. The Commission is required to determine the need for the proposed facility and the nature of the probable environmental impact, and that it represents a minimum adverse environmental impact (PSL §126). Eminent domain may be used to acquire property rights necessary for the construction and safe operation of a transmission line if negotiations are unsuccessful in obtaining the necessary property rights.

On May 31, 2006, New York Regional Interconnect, Inc. filed, pursuant to Article VII, an application for a Public Service Commission certificate to construct a major electric transmission line

¹ This bill provision appears to contain a grammatical error and, possibly, should read: proposed to construct a power transmission line that commences and ends in New York.

² Federal law authorizes the Secretary of Energy to designate any geographic area experiencing electric transmission capacity constraints or congestion that adversely affects consumers as a National Corridor.

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located wholly within the State.³ It also applied for early identification of the location of a proposed transmission line as a National Corridor, in response to a Department of Energy Notice of Inquiry, dated February 2, 2006. The Department of Energy declined all requests for early designation of National Corridors, preferring to wait until after completion of the Transmission Congestion Study (completed August 8, 2006). Thus, New York Regional Interconnect, Inc. is the only applicant for an Article VII certificate that can satisfy these conditions as early designation as a National Corridor is no longer possible. Thus, the bill's effect is to prohibit New York Regional Interconnect, Inc. from using eminent domain to acquire property necessary for its proposed transmission facility, should the Commission issue a certificate.

Article VII establishes a process for balancing various state and local interests, including provision of adequate facilities to satisfy the demand for energy and avoidance of environmental and local impacts resulting from construction of a major transmission facility. This process allows the state to assure the availability of supplies of gas and electricity necessary for public health, safety and welfare. The use of eminent domain for the public purpose of providing energy supply ensures the state's ability to provide safe, adequate and reliable electricity to its citizens. The Article VII process establishes the means for determining the need for facilities to accomplish this purpose, and it should move forward before the state prejudices the need for the facility and establishes a barrier to its construction, to make possible a determination regarding state need for the facility.

A federal permit to construct a transmission facility may be authorized in a National Corridor if a State conditions its approval of a facility in such a manner that it fails to significantly reduce transmission congestion in interstate commerce or is not economically feasible (16 U.S.C.A. §824p). Should this bill be enacted and a National Corridor designated for the location proposed by the corporation, elimination of state review of the facility could result and federal review ensue if the prohibition of the exercise of eminent domain is construed as triggering the aforementioned conditions of §824p, either because transmission congestion cannot be reduced as the line can't be built or because the line is uneconomic due to increased costs for negotiated agreements for acquisition of property rights. Further, if the proposed facility undergoes federal review, the corporation could then exercise its right of eminent domain under federal law (16 U.S.C.A §824p(e) and (f)). Ultimately, state review of the transmission line is preferable as it would provide better opportunities for state involvement in determinations relating to the construction or denial of a permit for the proposed New York Regional Interconnect, Inc. transmission line. As noted, the bill would prohibit one specific merchant transmission corporation from using the power of eminent domain to supply electric service to the public.⁴ Any other transportation corporation, including other merchant transmission corporations and regulated electric corporations, would continue to have the authority to use the power of eminent domain. We note that denying one specific corporation the exercise of a right may violate the equal protection clause of the U.S. Constitution and/or constitute a constitutionally prohibited bill of attainder (Consolidated Edison Company of New York, Inc. v. Pataki et al., 117 F. Supp. 2d 257 (N.D.N.Y 2000); aff'd 292 F.3d 338 (2002)).

The Memorandum in Support states that the bill is necessary "to ensure that eminent domain is truly only used for the most public of purposes and not for the profit of private developers." In contrast to traditional transmission projects built by utilities and approved by regulators on a cost

³ The Commission has not yet initiated its review of the New York Regional Interconnect, Inc. application which was deemed incomplete. Before a hearing is scheduled, the applicant is required to file and serve the supplemental information required in Commission rules.

⁴ Contrary to the bill's provisions, the New York State Senate Introducer's Memorandum in Support of the Bill (Memorandum in Support) describes the title of the bill as applying to all transportation corporations that are gas or gas and electric corporations.

recovery and rate-of-return basis, a merchant transportation corporation builds new transmission lines and charges a fee for transmitting power across the lines. Contrary to the statement in the Memorandum in Support, merchant transmission companies do use eminent domain for a public purpose and can play an important role in improving transmission infrastructure and providing the facilities necessary to support markets for electricity, as demonstrated by the Cross Sound Cable and Neptune merchant transmission projects, both of which will assist in providing energy to Long Island and contributing to local reliability. Further, the state's process for certification of proposed transmission facilities assures that the line is used for the public purpose of assuring adequate and reliable supplies of electricity.

In sum, this bill may prevent state review of the proposed transmission line and limit the State's involvement in determinations on the line. It is premature because it would impact a proposed transmission project before the Article VII review process is complete, and before the Commission has determined that a proposed line or an alternative route is needed to provide reliable electric service in the State. Further, the bill appears to single out a specific merchant transportation corporation or class of transportation corporations for discriminatory treatment and may violate the equal protection clause of the U.S. Constitution and/or constitute a constitutionally prohibited bill of attainder. Accordingly, the Department of Public Service strongly recommends disapproval of this legislation.

July 13, 2006

The Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.8349-a
Recommendation: Oppose

Dear Mr. Platkin:

At your request, Empire State Development (“ESD”) has reviewed the bill referenced above. The bill eliminates the right of eminent domain for transmission companies proposing construction and operation of transmission lines in the state. The Governor’s policy for deregulated energy markets is designed to attract private investment in the electric marketplace, including the construction and operation of transmission lines that are economical and serve to relieve congestion in the transmission system and help reduce electric prices.

Article VII of the New York State Public Service Law sets forth a review process for consideration of an application to construct and operate a major gas or electric transmission facility. The Article VII application process establishes a single forum for reviewing the need for, and environmental impact of, major electric and gas facilities. If the proposed project is approved under the Article VII process, the PSC issues a Certificate of Environmental Compatibility and Public Need.

The New York Independent System Operator (NYISO) operates the bulk power transmission system in New York State. The NYISO requires a proposed developer to submit project plans for transmission line facilities to determine potential impacts on the operation and reliability of the transmission system. The NYISO coordinates with the PSC and other stakeholders in a formal Comprehensive Reliability Planning Process to ensure that additions to the transmission system meet safety and reliability standards. In addition, the U.S. Department of Energy (DOE) is reviewing comments from interested parties in response to its notice in the Federal Register issued on February 3, 2006, on the agency’s plans for an electricity transmission congestion study and the criteria to be used in the study for possible designation of National Interest Electric Transmission Corridors (NIETCs) as required by the Energy Policy Act of 2005. On March 6, 2006, the PSC filed comments with the DOE in response to the notice and recommended that “The DOE should evaluate its designation of NIETCs for reliability purposes recognizing the existing regional planning processes approved by FERC.” (NYSDEC Comments to DOE, March 6, 2006, p.3)

In the state’s deregulated electric marketplace, proposed transmission projects are sponsored by private companies and investor owned utilities (regulated by the PSC) and are subject to comprehensive review and certification requirements prior to construction.

This bill would virtually eliminate the ability of the transmission company to implement a project, and contravenes the policy of stimulating private investment and market-based solutions in the construction, operation and maintenance of transmission capacity in the state.

Discussion with the PSC staff indicates the bill targets New York Regional Interconnect, Inc.'s proposed transmission line project from Marcy (Oneida County) to New Windsor (Orange County) and the agency will likely oppose the legislation.

For the aforementioned reasons, ESD opposes this bill.

Sincerely,

Thomas P. Regan
Assistant Counsel



LEGISLATIVE MEMO

152 Washington Ave. • Albany, NY 12210-2289 • 518-465-7511 • fax 518-465-4389 • www.bcnys.org

OPPOSE

BILL: S.8349 (Bonacic)/
A.11977 (Rules/Lupardo)

SUBJECT: Prohibits use of eminent domain for the building of transmission facilities

STATUS: In Senate Rules Committee
In Assembly Judiciary Committee

DATE: June 20, 2006

Staff Contact: Anne Van Buren

This bill would prohibit the use of eminent domain by electric and gas corporations for the building of electric transmission, distribution and service lines. The Business Council Inc. strongly opposes this legislation, as it would make it dramatically more difficult to build critically needed energy infrastructure in New York State.

Irrespective of your views on any particular project, there is still widespread support for the use of eminent domain for public benefit projects, utility rights of way, and so called "common carrier" projects. And, unlike the "Kelo" controversy, where property could be taken for private economic development activities, utility projects, like common carrier projects, have long been considered to be public benefits.

While the bill only addresses transmission facilities, it would significantly affect the ability to develop new generation capacity as well, by making it more difficult to build additional transmission lines necessary to move the power to the grid. This legislation would virtually preclude the building of natural gas delivery systems as well.

The energy systems we rely on that sustains our economy could not have been built without the **use** of eminent domain. Under the Eminent Domain Procedure Law, landowners are given notice and the right to oppose their land's condemnation. Landowners are compensated for the fair market value of their property, and all determinations can be challenged in court. This specific, limited use of authority has served the public very well since the inception of public utilities, and to take away this ability will jeopardize the reliability of the gas and electric system in this state.

For the abovementioned reasons, The Business Council **strongly opposes S.8349/A.11977.**

June 19, 2006

S.8349 (Bonacic)

AN ACT to amend the transportation corporation law, in relation to prohibiting gas corporations and gas electric corporations from exercising the right of eminent domain

The Energy Association of New York State, whose members are the State's major gas and electric corporations, **employing over 28,000 New Yorkers, serving over 7 million New York customers, annually paying over \$2.5 billion in state and local taxes and contributing over \$12.5 million last year to community and charitable purposes, OPPOSES this bill in the strongest possible terms.**

This proposed legislation would, in a single breathtaking stroke, sweep away more than 150 years of sound public policy; make New York the only state in the nation that does not vest some form of significant eminent domain responsibility in its public utilities, make New York the only state in the nation that does not grant its public utilities the right to use public rights of way for energy facilities, and would effectively make it impossible to build or operate electric and natural gas delivery systems in New York.

The bill would repeal paragraphs 3-a and 3-b of section 11 of the Transportation Corporations Law which, respectively, authorize public gas and electric utilities to exercise eminent domain pursuant to the provisions of the Eminent Domain Procedures Law, and to acquire the use of portions of public places and rights of way (primarily streets and highways) upon a certification of public need by the Public Service Commission and after a petition, hearing and judgment by a court, in order to construct and operate the state's energy delivery infrastructure.

The vesting of public utilities with the right of eminent domain and the ability to acquire the use of public and private rights of way for declared and certified public purposes is a practice as old as the concept of public utilities itself. It is inherent and fundamental to the existence of these vital parts of the public infrastructure and has

uniformly been used by the states and upheld by the courts since the inception of these systems. It is a specific, limited exercise of authority the importance and history of which far transcends any particular issue or project.

Today's energy delivery systems, which sustain society as we have come to know it, could not have been built without these grants of legislative authority. It takes no imagination to foresee that without the continued use of these carefully constrained public powers to serve essential public purposes, the maintenance and development of tomorrow's energy infrastructure in New York will not take place at all, or will only take place with such difficulty, and at such extraordinary expense, the constant use of reliable, affordable energy that we now take for granted will have become a thing of the past.

For the foregoing reasons and many others, the Energy Association respectfully and most strongly requests that this bill not receive favorable consideration.

the energy association of n.y.state



SUITE 601, 111 WASHINGTON AVE., ALBANY NY 12210
TEL: 518-449-3440 FAX: 518-449-3446

Patrick J. Curran
Executive Director

By E-mail and mail

Mr. Richard Platkin, Esq.
Counsel to the Governor
Executive Chamber
The State Capitol
Albany, N.Y. 12224:

September 22, 2006

RE: S. 8349-A / A. 11977-A; AN ACT to amend the transportation law, in relation to prohibiting gas corporations and electric corporations from exercising the right of eminent domain.

Dear Mr. Platkin,

The Energy Association of New York State, whose members are the State's major gas and electric corporations, **employing over 28,000 New Yorkers, serving over 7 million New York customers, annually paying over \$2.5 billion in state and local taxes and contributing over \$12.5 million last year to community and charitable purposes**, respectfully requests that this bill not receive favorable consideration by the Governor.

Generally, as is the case here, the Energy Association does not take a position on any particular project or proposal in which its members do not have a direct interest. The Association is also cognizant of the Sponsors' recognition of the profound problems presented by the original draft of this bill. However, as amended this legislation still presents particular, significant concerns.

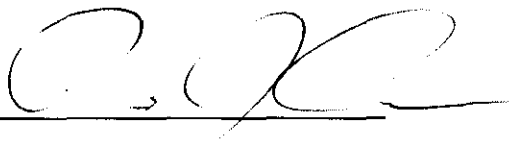
First, it is not at all clear that this language would be applicable only to a specific project.

Second, the precedent established by this legislation would be extremely detrimental all types of potential future development in New York State. Selective legislation to bar specific projects cannot be allowed to override carefully developed

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generic processes designed to objectively evaluate the various public interests affected by any major proposal.

For the foregoing reasons and many others, the Energy Association respectfully requests that this bill not receive favorable consideration and strongly urges that it not be approved by the Governor.

A handwritten signature in black ink, appearing to read 'P. Curran', is written over a horizontal line.

Patrick J. Curran

C: James Natoli (Executive Chamber)
Glenn Bruening (Executive Chamber)



New York State Conference of Mayors and Municipal Officials

119 Washington Avenue, Albany, New York 12210 (518) 463-1185
Toll free number for NYCOM members 1-800-446-9266
Fax # (518) 463-1190

September 28, 2006

Hon. Richard Platkin
Counsel to the Governor
State Capitol - Room 225
Albany, NY 12224

Re: S. 8349-A
Veto recommended

Dear Mr. Platkin:

This bill would amend the Transportation Corporation Law to prohibit certain transportation corporations from acquiring any land to build a high voltage direct current transmission line within New York State in the manner prescribed by the eminent domain procedure law.

Under current law, gas corporations and gas electric corporations are authorized to use condemnation, or eminent domain to acquire real property as may be necessary for its corporate purposes. However, such proceedings can begin only after the corporation applies for and receives a certificate from the Public Service Commission pursuant to Public Service Law, Article 7, certifying that the right sought to be acquired is necessary and in the public interest. The Certificate of Environmental Compatibility and Public Need is conclusive evidence under the law as to the matters lawfully certified therein.

The Legislature enacted Public Service Law, Article 7 to ensure that the NYS Public Service Commission (PSC) would apply a comprehensive, balanced and transparent process that considers state and local public health, safety and welfare, as well as environmental impacts and system reliability, to every application for the right to use eminent domain for transmission facilities in NYS. This legislation would circumvent that process by carving out a limited exception to that law and thereby undermine the expertise of the PSC to make determinations in the public interest.

By all accounts, this bill applies to only one particular transportation corporation. NYCOM takes no position as to the purposes of such corporation or to any proposed plans to build a high voltage direct current transmission line in the state. However, we have concerns with legislation which would set a precedent for project-by-project legislative intervention and circumvention of a comprehensive review process.

For the reasons outlined above, NYCOM recommends that the Governor disapprove this bill.

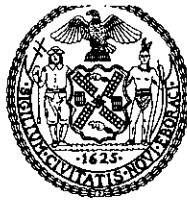
Sincerely,

A handwritten signature in black ink, appearing to read 'Peter A. Baynes'.

Peter A. Baynes
Executive Director

PAB/njs

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THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

July 3, 2006

S.8349-A – by Senator Bonacic

AN ACT to amend the transportation corporation law, in relation to prohibiting transportation corporations that are gas corporations and gas electric corporations from exercising the right of eminent domain

DISAPPROVAL RECOMMENDED

Hon. George E. Pataki
Governor of the State of New York
Executive Chamber
Albany, New York 12224

Dear Governor Pataki:

The above-referenced bill is now before you for executive action.

This bill would amend the transportation corporation law to prohibit New York Regional Interconnection (NYRI) from acquiring any land to build a 200 mile 1200 megawatt high voltage direct current transmission line from Oneida County to Orange County in the manner prescribed by the eminent domain procedure law.

This bill if signed into law, would signal to capital market participants who otherwise would invest in energy infrastructure, that local opposition will be used to stop a potentially beneficial project even before it has an opportunity to be considered on its merits.

Under current law, eminent domain authority cannot be used unless and until a Certificate of Environmental Compatibility and Public Need is issued under Article VII of the Public Service Law. This bill in effect displaces the role of the Public Service Commission (“PSC”), and sends a message that the Legislature will preclude projects from being judged on their merits by the agency that is established to make that determination, namely the PSC. Moreover, the PSC has the administrative expertise and experience that allows it to carefully balance the need for a particular project and its environmental consequences.

By inserting language that targets a particular transmission project (New York Regional Interconnection) that only recently initiated its Article VII application, this bill seeks to foreclose a reasoned examination of the project’s expected benefits as well as any environmental concerns it may raise. The sponsors of the project argue that there are economic, reliability and environmental benefits for the State of New York if such project is approved and built. These claims, as well as those of project opponents, should be examined in a full evidentiary hearing in front of an impartial arbiter.

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Hon. George E. Pataki
July 3, 2006
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S.8349-A

If preemptive legislation is used to block energy infrastructure projects before they are even considered by the PSC, developers will be far more reluctant to propose projects, even those that are vitally needed to support the economy of the State, and to ensure system reliability.

The bill is also of dubious constitutionality, as its highly specific text and its explicit legislative history clearly suggest that it was written solely to deny eminent domain authority to the NYRI project, and to thus subject it to punitive strictures that apply to no other companies. As such, it may arguably be violative of the U.S. Constitution as a bill of attainder. See Consolidated Edison v. George Pataki et al., 292F. 3rd 338(2d Circuit, 2002)

Accordingly, it is urged that this bill be disapproved.

Very truly yours,

MICHAEL R. BLOOMBERG, Mayor

By: Anthony P. Piscitelli
Legislative Representative

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5 8349

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

July 5, 2006

S.8349-A – by Senator Bonacic

AN ACT to amend the transportation corporation law, in relation to prohibiting transportation corporations that are gas corporations and gas electric corporations from exercising the right of eminent domain

DISAPPROVAL RECOMMENDED

Hon. George E. Pataki
Governor of the State of New York
Executive Chamber
Albany, New York 12224

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This bill if signed into law, would signal to capital market participants who otherwise would invest in energy infrastructure, that local opposition will be used to stop a potentially beneficial project even before it has an opportunity to be considered on its merits.

Under current law, eminent domain authority cannot be used unless and until a Certificate of Environmental Compatibility and Public Need is issued under Article VII of the Public Service Law. This bill in effect displaces the role of the Public Service Commission (“PSC”), and sends a message that the Legislature will preclude projects from being judged on their merits by the agency that is established to make that determination, namely the PSC. Moreover, the PSC has the administrative expertise and experience that allows it to carefully balance the need for a particular project and its environmental consequences.

By inserting language that targets a particular transmission project (New York Regional Interconnection) that only recently initiated its Article VII application, this bill seeks to foreclose a reasoned examination of the project’s expected benefits as well as any environmental concerns it may raise. The sponsors of the project argue that there are economic, reliability and environmental benefits for the State of New York if such project is approved and built. These claims, as well as those of project opponents, should be examined in a full evidentiary hearing in front of an impartial arbiter.

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Hon. George E. Pataki
July 5, 2006
Page two

S.8349-A

If preemptive legislation is used to block energy infrastructure projects before they are even considered by the PSC, developers will be far more reluctant to propose projects, even those that are vitally needed to support the economy of the State, and to ensure system reliability.

The bill is also of dubious constitutionality, as its highly specific text and its explicit legislative history clearly suggest that it was written solely to deny eminent domain authority to the NYRI project, and to thus subject it to punitive strictures that apply to no other companies. As such, it may arguably be violative of the U.S. Constitution as a bill of attainder. See Consolidated Edison v. George Pataki et al., 292F. 3rd 338 (2d Circuit, 2002)

Accordingly, it is urged that this bill be disapproved.

Very truly yours,

MICHAEL R. BLOOMBERG, Mayor

By: Anthony P. Piscitelli
Legislative Representative

000023



333 Earle Ovington Boulevard
Suite 403
Uniondale, NY 11553
(516) 222-7700 Fax (516) 222-9137
<http://www.lipower.org>

July 12, 2006

TO: Richard Platkin
Counsel to the Governor

FROM: Stanley B. Klimberg
General Counsel

SUBJECT: Assembly Bill #S8349

The Long Island Power Authority has no comment on the above-referenced bill.

000024

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September 28, 2006

Mr. Richard Platkin
 Counsel to the Governor
 State Capitol
 Albany, New York 12224

VIA FAX: 518-474-8099

RE: A.11977-A (Rules, Lupardo)/S.8349-A (Bonacic)

Dear Mr. Platkin:

The New York Building Congress, a broad based organization comprised of 400 businesses and organizations and representing more than 250,000 professionals and skilled trades people, strongly opposes A.11977-A and urges the Governor to disapprove this shortsighted and detrimental legislation.

Specifically, A.11977-A would amend the Transportation Corporations Law to prohibit certain electric and/or gas transportation corporations from exercising the right of eminent domain when siting and constructing needed electric infrastructure within New York State.

The ability to attract critically needed investment in New York's energy infrastructure greatly depends upon a consistent and certain approval process. Despite some current reluctance of the financial community to provide access to capital for projects, it is widely agreed that New York needs to add new electric transmission and generation capacity in the near future.

This need was clearly articulated in the New York Independent System Operator's (NYISO) recently issued *Reliability Needs Assessment* (RNA), a study that identifies potential problems, and combined with the NYISO's Comprehensive Reliability Plan, recommends solutions to meet New York's future electric power needs and maintain the integrity of the State's bulk power grid. The RNA identified, among other things, significant transmission shortfalls and inadequacies starting in 2008 due to increased power demand and the scheduled retirement of several generating units.

Moreover, New York once again recorded a new record demand for electricity usage this past August eclipsing its previous record that was set just a few weeks earlier in July of this year. During these periods of record electricity demand, the NYISO, among other things, called on companies to curtail power usage in an effort to avert power reserve shortages.

(W000)45.11

44 WEST 28TH STREET 12TH FLOOR, NEW YORK, NY 10001, TEL 212.481.9230, FAX 212.447.6037, BUILDINGCONGRESS.COM



NEW YORK BUILDING CONGRESS

At a time when technological and other advancements require ever greater levels of reliability and power quality, New York must have an efficient and effective process in place that ensures the timely construction of electric and gas transmission facilities. Too often, these types of projects can take years to receive the necessary approvals, unnecessarily delaying beneficial enhancements and adding unnecessary costs to the State's electric transmission system. By essentially eliminating the ability to use eminent domain in the construction of needed electric and gas transmission infrastructure, A.11977-A ignores the reality of operating and maintaining a robust statewide bulk power grid, and jeopardizes not only the long-term reliability of the State's grid but New York's economy as well. Such short-sighted measures are clearly not in the best interests of ensuring a reliable electric and gas system for New York's businesses and working families.

New York needs to enact a streamlined development process for the timely siting of new, environmentally superior generating and transmission facilities to help ensure the continued reliability of the electric system as well as help to moderate energy prices. A.11977-A moves away from this goal by ignoring the significant checks and balances in place under the State's current provisions for the use of eminent domain and jeopardizes the future reliability of New York's electric system.

For the foregoing reasons, the New York Building Congress strongly opposes this legislation and respectfully requests that it not be signed into law.

Sincerely,



Richard T. Anderson
President

(WD00145.1)

000026



MEMORANDUM



**NEW YORK
BUILDING
CONGRESS**

TO: Steve Morgan
FAX NUMBER: 518-427-0452
FROM: Richard Anderson
DATE: 9/28/06
NUMBER OF PAGES INCLUDING COVER: 3

COMMENTS:

000027



NEW YORK
BUILDING
CONGRESS

September 28, 2006

Mr. Richard Platkin
Counsel to the Governor
State Capitol
Albany, New York 12224

VIA FAX: 518-474-8099

RE: A.11977-A (Rules, Lupardo)/S.8349-A (Bonacic)

Dear Mr. Platkin:

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{WD003145.1}

000028

At a time when technological and other advancements require ever greater levels of reliability and power quality, New York must have an efficient and effective process in place that ensures the timely construction of electric and gas transmission facilities. Too often, these types of projects can take years to receive the necessary approvals, unnecessarily delaying beneficial enhancements and adding unnecessary costs to the State's electric transmission system. By essentially eliminating the ability to use eminent domain in the construction of needed electric and gas transmission infrastructure, A.11977-A ignores the reality of operating and maintaining a robust statewide bulk power grid, and jeopardizes not only the long-term reliability of the State's grid but New York's economy as well. Such short-sighted measures are clearly not in the best interests of ensuring a reliable electric and gas system for New York's businesses and working families.

New York needs to enact a streamlined development process for the timely siting of new, environmentally superior generating and transmission facilities to help ensure the continued reliability of the electric system as well as help to moderate energy prices. A.11977-A moves away from this goal by ignoring the significant checks and balances in place under the State's current provisions for the use of eminent domain and jeopardizes the future reliability of New York's electric system.

For the foregoing reasons, the New York Building Congress strongly opposes this legislation and respectfully requests that it not be signed into law.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Anderson", is written over a large, circular scribble or stamp.

Richard T. Anderson
President



October 2, 2006

MEMO IN OPPOSITION

S.8349-A (Bonacic) / A.11977-A (Libous)

**An Act to amend the transportation law, in relation to
prohibiting gas corporations and electric corporations
from exercising the right of eminent domain**

National Fuel does not generally take a position on any particular project or proposal in which the Company does not have a direct interest. National Fuel is also cognizant of the Sponsors' recognition of the profound problems presented by the original draft of this bill. However, as amended this legislation still presents particular, significant concerns.

First, it is not at all clear that this language would be applicable only to a specific project.

Second, the precedent established by this legislation would be extremely detrimental to all types of potential future development in New York State. Selective legislation to bar specific projects cannot be allowed to override carefully developed generic processes designed to objectively evaluate the various public interests affected by any major proposal.

For these reasons we urge you to oppose favorable consideration and strongly urge that it not be approved by the Governor. Thank you for your consideration. For more information, please contact Pattie Paul at 716-857-7780.

cc: Richard Platkin, Esq. ✓
James Natoli
Glenn Bruening

000030

C 741

Governor George E. Pataki
Executive Chamber
State Capitol
Albany, NY 12224
Via Fax: 518-474-1513

Re: PLEASE SIGN SENATE BILL 8349!

09/27/2006

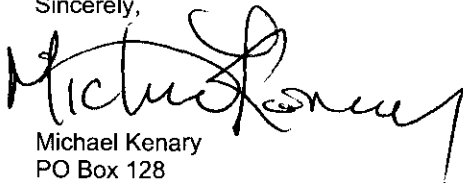
Dear Governor Pataki:

I am writing to urge you to promptly sign Senate bill 8349 into law. This bill is designed to close a loophole in the Transportation Corporations Act that allows the abuse of eminent domain. The bill was passed by large majorities in both houses and deserves your immediate attention.

I'm sure that you are aware that there is overwhelming support by New Yorkers all across the state (as well as citizens across the country) for reform of the laws that regulate the use of eminent domain. The power to take private property for public benefit is a power that should be used in only the most extreme circumstances, and never for private corporations that lack transparency.

Currently, organizations are filing as "Transportation Corporations" for the purpose of circumventing other state laws restricting the use of eminent domain. The Legislature has acted to ensure that eminent domain is truly only used for the most public of purposes and not for the profit of private developers. This bill is a first step in controlling improper uses of eminent domain in New York State.

Sincerely,



Michael Kenary
PO Box 128
ROCK TAVERN, NY 12575

000031

Consumer Power Advocates

Columbia University
Continuum Health Partners
Fordham University
Luthin Associates
Memorial Sloan Kettering Cancer Center

Mount Sinai Medical Center
New York University
New York Presbyterian Hospital
NYU Downtown Hospital
NYU Medical Center

September 26, 2006

S.8349-A Senator Bonacic
A.11977-A by Assembly Rules

AN ACT

to amend the transportation corporation law,
in relation to prohibiting transportation
corporations that are gas corporation and gas
and electric corporation from exercising the
right of eminent domain.

DISAPPROVAL RECOMMENDED

Hon. George E. Pataki
Governor of the State of New York
Capitol Building - Executive Chamber
Albany, New York 12224

Dear Governor Pataki:

The above-referenced bill is now before you for executive action.

Consumer Power Advocates urges that this bill be vetoed as being contrary to the environmental, economic and public safety interests of New York State.

This bill if signed into law would signal to capital market participants, who otherwise would invest in energy infrastructure, that local opposition can and will be used to stop this specific project even before it has an opportunity to be considered on its merits.

At present, eminent domain authority cannot be used unless and until a Certificate of Environmental Compatibility and Public Need is issued under Article VII of the Public Service Law. This bill sends a message that the Legislature will preclude projects from being judged on their merits by the Public Service Commission. The PSC has the administrative expertise and experience that allows it to carefully balance the need for a particular project, the public safety, and its environmental consequences. The agency should be allowed to do its job.

15 Walling Place, Avon, NJ 07717
Tel 732-774-0005 Fax 732-774-0049

000032

Consumer Power Advocates**Recommendation to New York State Governor to Veto Senate and Assembly Bills S.8349-A, A.11977-A**

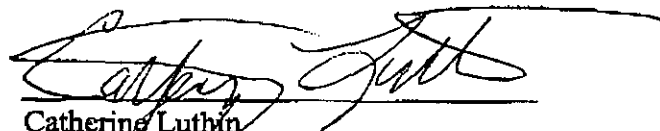
The sponsors of the project argue that there are economic, reliability and environmental benefits for the State of New York if such project is approved and built. These claims, as well as those of project opponents, should be examined in a full evidentiary hearing in front of an impartial arbiter. By inserting language that targets a particular transmission project (New York Regional Interconnection) that only recently initiated its Article VII application, this bill seeks to eliminate examination of the project's full benefits.

The present regulatory environment in New York has not fostered significant transmission or generation of projects which are a critical need for New York citizens. If preemptive legislation is used to block energy infrastructure projects, that are so desperately needed, before they are even considered by the PSC; developers will be far more reluctant to propose these projects.

The bill is also of dubious constitutionality, as its highly specific text and its explicit legislative history clearly suggest that it was written solely to deny eminent domain authority to the NYRI project, and to thus subject it to punitive strictures that apply to no other companies. As such, it may arguably be violative of the U.S. Constitution as a bill of attainder. See Consolidated Edison v. George Pataki et al., 292F. 3rd 338 (2d Circuit, 2002)

It is urged that this bill be disapproved.

Sincerely,



Catherine Luthin
Executive Director
Consumer Power Advocates



New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

The Honorable Richard Platkin
Counsel to the Governor
State Capitol Building, Second Floor
Albany, New York 12224-0341
RE: S.8349

Dear Mr. Platkin:

The farm family members of New York Farm Bureau respectfully urge the favorable consideration of S.8349. If enacted, this legislation would help ensure that farms are treated fairly in certain negotiations regarding construction of transmission power-lines.

In order for farms to be successful, they must be able to utilize viable farmland. Unfortunately, this land is often viewed as being ideal for usage by power transmission companies because it is easily accessible and often can be obtained at a lower cost in eminent domain procedures. Such a taking action can cripple a farm business. The proposed legislation would remove the ability for specific line construction projects to utilize eminent domain. In doing so, transmission companies would be forced to fully negotiate with the land-owner. These negotiations would address all issues, including correct remuneration and appropriate line siting, so that adverse impacts to the farm are minimized.

This legislation is primarily focused on addressing a specific proposed power project. The project, which New York Farm Bureau opposes, would cause harm to the upstate economy by damaging our natural resources and the businesses that depend on them, while at the same time raising electric rates for rural New York customers. The purpose of the project, to increase electric capacity in New York City, could easily be met through the construction of generation capacity within the city. We recognize that eminent domain, overall, is necessary for certain public projects that benefit the general public, including those impacted by the process. This legislation doesn't alter that authority rather, it is the first step in protecting citizens against abuse of eminent domain authority, simply for the financial benefit or convenience of others.

Protecting our natural resources and the sustainability of rural New York farms and businesses are all reasons why this bill is appropriate public policy. It is for those reasons that we respectfully request the Governor's support for this legislation.

Thank you for your consideration of these comments. Please contact me directly if you have any questions.

Sincerely,
John R. Tauzel, Associate Director of Public Policy

000034



New York Regional Interconnect Inc.
100 State Street, Suite 1033 (518) 935-2578
Albany, New York 12207 www.nyri.us

September 25, 2006

S.8349-A by Senator Bonacic

A.11977-A by Assembly Rules

AN ACT to amend the transportation corporation law, in relation to prohibiting transportation corporations that are gas corporations and gas and electric corporations from exercising the right of eminent domain

DISAPPROVAL RECOMMENDED

PLEASE VETO

Hon. George E. Pataki
Governor of the State of New York
Executive Chamber
Albany, New York 12224

Dear Governor Pataki:

The above-referenced bill will shortly be before you for executive action. New York Regional Interconnect Inc. ("NYRI") respectfully urges that it be vetoed as being contrary to the public safety and economic development interests of the State of New York by virtue of the fact that it would discourage pending and future investment in critical infrastructure. This Bill also should be vetoed because it is contrary to the energy and environmental policies of this State. In addition, if the intent of the Bill is to negatively impact the NYRI Project, it not only is unconstitutional and illegal but it also will not achieve that purpose and it should be vetoed for that reason as well.

NYRI is a New York corporation organized under the New York Transportation Corporation Law. Three years ago, NYRI, along with all significant experts in the field, recognized that the electric system in New York must be significantly upgraded for reliability, economic and environmental reasons. The recent blackouts in New York City as well as the Transmission Congestion Study issued by the U.S. Department of Energy on August 8, 2006

000035

confirm that new investment in electricity infrastructure is desperately and immediately needed in New York State. NYRI has proposed a major new electric transmission reinforcement (“the Project”) that will improve electric system reliability, reduce emissions from older power plants, reduce dependence on oil fired generation, facilitate development of renewable resources and clean coal technology, and save consumers \$11.7 billion (Net) over 20 years. The cost of developing and permitting this project will come entirely from private capital, not ratepayers or taxpayers, and therefore the Project is squarely consistent with the energy policies that have put New York in the forefront of progressive energy policy nationally.

NYRI has filed an application seeking to construct this transmission reinforcement under Article VII of the Public Service Law and intends to continue to seek approval under that process. If, and only if, the Public Service Commission, after holding public and evidentiary hearings and allowing all interested parties an opportunity to be heard, agrees that there is a “public need” for the NYRI Project and that the Project represents the minimum adverse environmental impact, would NYRI be allowed to use eminent domain, if necessary, to obtain property rights for the Project. It should be noted that NYRI’s goal is to not use eminent domain—NYRI has publicly committed to pay landowners at or above fair market value for property rights. However, the power to use eminent domain often is necessary for major infrastructure improvement projects like NYRI.

This Bill would amend the Transportation Corporation Law to prohibit certain “merchant transmission companies” that meet specific requirements from acquiring real estate and rights of way for corporate purposes in the manner described in the Eminent Domain Procedure Law. The Bill upsets the long standing statutory scheme and takes away the potential use of eminent domain even if “public need” has been determined.

There is a myriad of reasons why this Bill should be vetoed.

The Bill Would Create Regulatory Uncertainty and Discourage Investment in Critical Infrastructure

New York has well established rules for electric transmission siting under Article VII of the Public Service Law. Since 1909, under the Transportation Corporations Law, the State has authorized “electric corporations” serving the public to use eminent domain to acquire lands and rights of way for, among other things, transmission facilities. These laws, and regulations promulgated thereunder, helped to establish a level of regulatory certainty such that investors knew the standards that would be applied to determine if a proposed project

would be permitted, allowing investors to determine whether to make the considerable investment necessary to conceive, develop and propose a project of this magnitude.

This proposed legislation destroys that regulatory certainty and signals to investors and financial markets that expending funds on development activities in New York entails too much risk. It tells the financial world that even where the rules of the project development road are set forth and long-established, local controversy may cause the legislature to change those rules mid-stream. Approval of this Bill would indicate that existing laws and procedures for siting projects cannot be relied upon and result in the drying up of development capital for infrastructure projects. The implications of this Bill would almost certainly not be limited to investment in electric transmission facilities. The negative implications in the investment community would be equally applicable to other electric facilities such as generation facilities, and most likely be felt with respect to any type of critical infrastructure or economic development project that could potentially face local controversy or NIMBY-ism.

The Bill is in Direct Conflict with the Energy Policies of the State of New York

If signed into law, this Bill would directly contravene the policies of this administration regarding the restructuring of the energy industry from regulated, vertically-integrated monopolies to competitive markets. Among the goals of this restructuring effort has been to encourage investment in energy infrastructure by new market entrants in order to enhance competition and to reduce the burden on utility ratepayers that results from project development risk. This Bill signals to potential investors and financial markets that New York will not even consider, let alone approve, privately financed energy infrastructure and that local opposition will be used to stop a potentially beneficial project even before it has an opportunity to be considered on its merits.

A growing economy requires reliable, reasonably priced energy for businesses and consumers. All reasonable current projections are that demand for energy in New York will continue to grow over the next 10 years and beyond. The U.S. Department of Energy, the New York Independent System Operator and the Department of Public Service all have stated that new transmission projects should be considered as part of the resource mix needed to meet that demand and to maintain system reliability. This administration has consistently included in its energy policy the goal of encouraging investment in energy infrastructure in order to advance reliability and reduce energy prices. This Bill would signal a reversal of that policy.

The Bill is Inconsistent with Environmental Policies of the State of New York

New York has been a national leader in initiatives to reduce emissions from electric generation facilities including the Regional Greenhouse Gas Initiative. The NYRI Project would allow cleaner, newer, more efficient combined cycle plants to operate more often, thereby displacing production from older, less efficient oil-fired steam plants. NYRI's studies show that adding this transmission facility to New York's energy resources would reduce New York State SOx emissions by 12,175 tons in its first year of operation and it would reduce NOx emissions by 1,1819 tons during the ozone period of May through October. Eliminating the potential use of eminent domain for transmission projects that help to implement, and fit squarely within, New York's policies regarding power plant emissions reductions will severely damage New York's credibility as a leader in this area.

Moreover, the State has been a national leader in encouraging renewable resources and clean coal technologies. Attempts to defeat transmission projects in particular will discourage the availability of the means to move the electricity product of these projects from their source (primarily upstate New York) to places where it can most economically be sold (primarily Southeast New York).

The Bill Would Reduce New York's Credibility in the Region and Elsewhere

New York State and New York City depend upon energy imports from other regions, such as PJM (Pennsylvania, New Jersey and Maryland), Canada and New England to meet their electricity requirements. Efforts to increase that import capability have met with parochially-driven opposition. New Jersey officials have objected to sending more power into New York City, in part because doing so would increase the cost of power in New Jersey. The Connecticut Attorney General opposed a line from Connecticut to Long Island based on price considerations in Connecticut. Similarly, a recent proposal to merge the New York Independent System Operator and ISO-New England was defeated in part because New England state government officials argued that the proposal would decrease power costs in New York but would increase power costs in New England.

Approval of this Bill will give other States additional ammunition to oppose new transmission lines that increase the ability to import power into New York. These regions will argue that New York will not allow new power lines to even be considered, let alone built, within New York and therefore new transmission facilities that serve New York should not be built in their States. These States also will argue that New York has ample capacity within the State to serve its needs but since New York will not allow that power to be delivered to the

areas that need it, facilities should not be built in their States to supply those needs. In addition, New York's credibility will be eroded among Federal as well as State regulators in much the same way as Connecticut's credibility was negatively impacted as a result of its actions with respect to the Cross Sound Cable.

Eminent Domain Associated with Energy Infrastructure Should be Distinguished from Other Less Critical Uses

The use of eminent domain for public utility purposes has long been accepted in this State and in the United States. Public utilities, including wholesale electric transmission facilities under FERC jurisdiction, are common carriers that satisfy public use requirements. Accordingly, the use of eminent domain that is affected by the Bill is completely unrelated to the use of eminent domain for economic development purposes that was at issue in Kelo v. City of New London, 126 S.Ct. 24 (2005).

The Bill Will Not Accomplish Any Particular Purpose

Assuming, arguendo, that the Bill is intended to negatively impact the NYRI Project, it will not accomplish any such purpose. The Bill would simply allow NYRI to seek siting approval from the Federal Energy Regulatory Commission ("FERC") under section 1221 (b) of the 2005 Energy Policy Act.

The Bill is Illegal and Unconstitutional

Assuming, arguendo, that the Bill is intended to apply to NYRI, it is a bill of attainder under Article I, § 10, Clause 3 of the United States Constitution. See Consolidated Edison Company of New York v Pataki. Accordingly, the Bill is unconstitutional.

Assuming, arguendo, that the Bill is intended to apply to NYRI, it violates the due process clauses of the U.S. and State Constitutions in that it is not rationally related to a legitimate public purpose. Indeed, by including as a requirement for taking away eminent domain authority the provision that a company applied for and did not receive early designation as a National Interest Electric Transmission Corridor, the Bill purports to punish companies for pursuing actions that are authorized by and specifically encouraged under federal law and regulation (section 1221 of the 2005 Energy Policy Act.)

Conclusion

NYRI urges a veto of this Bill. The Bill attempts to circumvent Article VII of the Public Service Law and the Public Service Commission's legislatively delegated responsibility to determine whether a proposed electric transmission facility is in the public interest. It would send a devastating signal to the investment community with respect to investment in critical infrastructure and frustrate the State's vital policy of ensuring a safe, reliable, environmentally compatible and reasonably priced source of energy to fuel its growing economy. And, assuming, arguendo, that the Bill is intended to negatively impact the NYRI Project, it not only is unconstitutional but, also, will not accomplish that purpose.

Richard Muddiman

Richard Muddiman / LHS

President
New York Regional Interconnet, Inc.

RECEIVED
 EXECUTIVE CHAMBER
 STATE OF NEW YORK
 k9nic1@frontiernet.net

2006 JUN 28 AM 10:47
 From: <k9nic1@frontiernet.net>
 To: <k9nic1@frontiernet.net>
 Sent: Tuesday, June 27, 2006 10:29 AM
 Subject: Eminent Domain Letter to Governor Pataki

To Governor George Pataki,

Governor I urge you to approve Senate Bill S8349 and Assembly Bill A11977.

A private for profit transportation company must not be allowed to have the power to take private property from private landholders for their private use and financial gain. Furthermore the government must not be allowed to take private property from private landholders and turn that property over to another private interest for their private use and financial gain. There are many legislators in New York and across the United States that feel the same.

President Bush signed a new law H. R. 4128 Private Property Rights Protection Act 2005, on November 30, 2005. This Bill was sponsored by Rep. Sensenbrenner of Wisconsin and had 97 co-sponsors. It will require local governments to operate under more stringent restrictions when using eminent domain to take private property for economic development. The new legislation also calls for a study on the nationwide use of eminent domain to be conducted by the Government Accountability Office in consultation with the National Academy of Public Administration, as well as organizations like the Conference that represents state and local governments, and property rights organizations.

The Senate adopted a temporary fix since the restriction was included in an appropriations measure that will remain in effect only through fiscal year 2006. It restricts local use of federal funds in connection with projects that use eminent domain to take private for economic development that primarily benefits private entities.

The House adopted a permanent, much more restrictive measure that goes beyond restricting local use of federal funds. It prohibits local governments from using eminent domain to take private property for economic development if they receive any federal economic development assistance.

There are many other Bills Pending in regards to New York State Eminent Domain Legislation. I believe at the present time there are 29 Bills pending in the New York State Assembly and Senate. The pending legislation Bill Numbers are: A00372, A02226, A02523, A02536, A02761, A07909, A08865, A09015, A09043, A09050, A09051, A09060, A09079, A09144, A09152, A09171, A09173, A09473, A09484, S01335, S01367, S01474, S03846, S05936, S05938, S05946, S05949, S05961, S06216

While all these pending Bills may not directly pertain to the takings of private property from private landholders and turning that property over to another private interest for their private use and financial gain, it definitely shows there is much concern regarding the current Eminent Domain laws. So much so that many counties, towns and villages in New York have passed similar Eminent Domain laws. Below are a few examples.

The legislatures of Greene County and Delaware County have adopted resolutions stating that the counties will voluntarily refrain from using their eminent domain powers.

The Onondaga County legislature has adopted a resolution requesting that the County Industrial

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6/27/2006

Development Agency suspend its use of eminent domain.

The Oneida County Board of Legislators considered a local law to limit the use of the County's eminent domain power.

The Westchester County Board of Legislators is considering a local law that would permit the use of eminent domain powers only to facilitate public uses. The legislation would prohibit County government from using its eminent domain powers to condemn private property for private use.

The County of Lewis has enacted a local law.

The Town Board of Bethlehem has adopted a resolution not to exercise its eminent domain authority.

The Town Boards of Saratoga and Greece have adopted resolutions.

The Town Board of Schroon has adopted a resolution supporting the enactment of federal and state legislation limiting governmental use of eminent domain.

The Village of Lima has enacted a local law.

Eminent domain legislation in response to the United States Supreme Court decision in *Kelo vs. New London* June 23, 2005 is being considered throughout the United States. Various versions of eminent domain reform are or have been considered in 45 states. Proposals range from broad, constitutional prohibitions to procedural changes in the use of eminent domain.

Most proposed legislation followed a similar line of reasoning; the government should not be allowed to take property from private landholders even if the end result would be to generate additional revenues and that property should never be turned over to another private interest regardless of the eventual public good.

New York State is lagging far behind many other states on this issue. This is evident by the following legislative examples:

So far in 2006, Alaska, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, Nebraska, New Hampshire, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, West Virginia and Wisconsin have enacted legislation revising their eminent domain statutes.

Louisiana and South Carolina have enacted legislation that has passed both Chambers.

California, Massachusetts, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma and Oregon have Introduced legislation with Action Pending.

I am sure it will not boad well for your legacy as the Governor of New York or for your future political aspirations if you do nothing to prevent New York Regional Interconnect Inc. (NYRI) and other companies like them from having the power / threat of Eminent Domain which over time will affect tens of thousands or more of people. NYRI's project alone will affect thousands directly and indirectly.

It will be devastating when the homes, businesses, farms and properties that lie within NYRI's proposed corridor are taken away from hard working, tax paying citizens through **eminent domain** by this

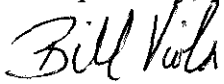
6/27/2006

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privately owned company, whose investors wish to remain anonymous.

You must not allow this to happen.

Respectfully,



Bill Viola

Sources:

New York State Bar Association

Special Task Force on Eminent Domain

Report dated March 2006 there are 17 Bills Pending concerning New York State Eminent Domain Legislation.

http://www.nysba.org/Content/ContentGroups/Reports3/Task_Force_on_Eminent_Domain/EDTaskForc

National Conference of State Legislatures

State and Federal Issues

<http://www.ncsl.org/programs/natres/emindomainleg06.htm>

American Planning Association

Legislation & Policy

Eminent Domain 2006 State Legislation

<http://www.planning.org/legislation/eminentdomain/edlegislation.htm>

New York Zoning and Municipal Law Blog

Published by New York Municipal Law Lawyers

Silverberg Zalantis LLP

http://blog.szlawfirm.net/2006/01/what_will_the_eminent_domain_1.html

The United States Conference of Mayors

Washington Outlook

http://www.usmayors.org/uscm/us_mayor_newspaper/documents/12_12_05/eminent_domain.asp

The White House

Statement of Administration Policy Document

November 3, 2005

<http://www.whitehouse.gov/omb/legislative/sap/109-1/hr4128sap-h.pdf>

No virus found in this incoming message.

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Version: 7.1.394 / Virus Database: 268.9.5/376 - Release Date: 6/26/2006

6/27/2006

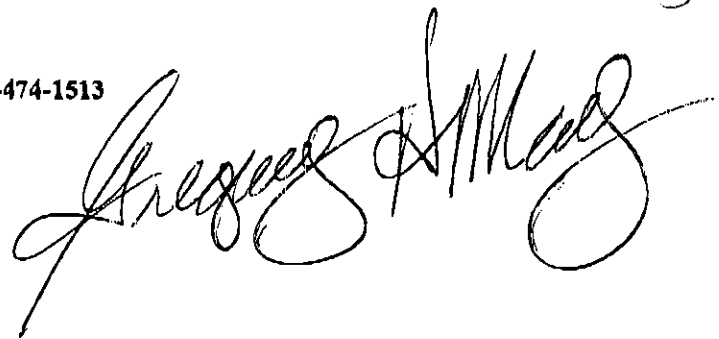
000043

**SAMPLE OF
CORRESPONDENCE
ONLY**

3

To: Gov. George Pataki via Fax: 518-474-1513

From: Gregory H. May
1156 Earlville Road
Earlville, NY 13332
315-691-2422



Date: 6.28.06

Re: STOP NYRI

I am a registered voter and in light of the overwhelming public and legislative support for Bill S.8349A, sponsored by State Senator John Bonacic (R/I/C - Mt. Hope) I request that you sign this bill into law.

The New York State Senate and Assembly heard the voice of NYS citizens. Bill S.8349A passed 45-15 in the Senate, and Companion Bill 11977-A passed 99 to 12 in the Assembly. The bills disallow transportation companies (NYRI is registered as a transportation company) from using eminent domain in New York State.

Bill S.8349A (the bills were combined) will be or has been placed on your desk this week. I am writing to ask that you immediately sign Bill S.8349A, sponsored by State Senator John Bonacic, into law.


As you are aware, many counties have pledged funds to stop this company from moving forward on this project. I request your support in the efforts to block NYRI (and other firms like them) from damaging Upstate NY.

All the reports done by your administration and other energy experts clearly state that downstate power needs are better and more efficiently served by upgrading the power grid and production in place downstate currently rather than building new towers through residential areas in Upstate.

This effort on the part of NYRI is purely motivated by profit at the expense of my home and neighborhood. I am counting on your strong and clear support in stopping this action.

I do not want this to become an Upstate/Downstate issue. It clearly is an issue about NYRI making a quick profit at the expense of homeowners (and registered voters) in Upstate NY. I strongly oppose this action and look for you to support all efforts to block this attempt. I trust that my position has been clearly and professionally stated.

Thank you.



Governor Pataki
Fax 518-474-1513

Re: Bill S.8349A

Dear Governor,

I am a registered voter and homeowner in Livingston Manor, Sullivan County, NY, and wanted to let you know that, in light of the overwhelming public and legislative support for Bill S.8349A, sponsored by State Senator John Bonacic (R/I/C - Mt. Hope), I fully expect you to sign it into law.

Please allow the people of New York their voice to stop the NYRI.

Please sign the Bill into law as soon as possible.

Regards,



Robert L. Cordell
874 Shandee Road
Livingston Manor, NY 12758

000046



STEVE & KATHY J. DODD

296 New Vernon Rd
Middletown, NY 10940
Phone (845)386-2217
Fax (845)386-4810
luvmylab96@yahoo.com

June 28, 2006

Governor George Pataki
State Capital
Albany, NY 12224

Dear Governor Pataki,

I write you today with urgency to please sign Bill # S.8349A sponsored by NY Senator Bonacic (along with Assembly companion bill 11977-A).

Bill # S.8349a will protect the citizens of New York State from independent, for-profit companies trying to exercise rights of eminent domain by using a legal loophole that allows them to register as a "transportation company". New York state law should not allow private corporations to be permitted to take landowner property for their own profit, cheating your hard working citizens out of what rightfully belongs to them. I implore you to see the importance of this bill, as it was favored by a three-to-one margin in the Senate.

Thank you in advance for supporting the citizens of New York State, as they are the ones that support you.

Cordially,


Steve & Kathy Dodd

6/25/06

**Governor George E. Pataki
State Capitol
Albany, NY 12224
518-474-8390
June 24, 2006**

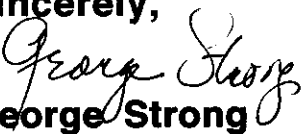
Dear Governor Pataki:

As a citizen of New York State and your constituent, I write to ask that you please sign into law Bill S 8349A. Bill S 8349A passed the State Senate with a 45-15 vote Friday, June 23, 2006. It passed the Assembly (Bill A11977) by a vote of 99-12.

I ask that you please join the three-fourths majority of State Senators, nearly ninety percent of our State Assemblymen and women, and the vast majority of their constituents in support of this bill. Bill S 8349A, sponsored by State Senators James L. Seward, William Larkin, John Bonacic, Thomas Libous and Raymond Meier, would prohibit transportation corporations that are gas and electric corporations from exercising the right of eminent domain for private development.

Thank you again for your support.

Sincerely,


George Strong

**202 Brockway Rd.
Frankfort, N.Y. 13340
gstrong1@adelphia.net**

000048

Governor George Pataki
State Capital
Albany, New York 12224

June 27, 2006

Dear Governor Pataki,

I write to you today with urgency to sign Bill S.8349A, the so-called 'Bonacic Bill', also voted in favor of by my Senators Dave Valesky and Jim Seward. Bill S.8349A will protect the citizens of New York State from independent for-profit companies that try to exercise rights of eminent domain. As you can see, this Bill was favored by a three-to-one margin in the Senate, so I am hoping you will see the importance of it. Thanking you in advance for supporting the citizens of New York State as they are the ones that have supported you.

Sincerely,



Kurt Reymers, Ph.D.
7448 Willey Road
Earlville, New York 13332

000049

June 26, 2006

Dear Governor Pataki,

I write you today with urgency to signed Bill # S8349A that was sponsored by Senator Bonacic and voted in favor of by our Senator Mr. Raymond Meier. Bill S8349A will protect the citizens of New York State from Independent for profit companies that try to exercise **Eminent Domain**. As you can very well see this Bill was favored by a three to one margin in the Senate so I am hoping you will see the importance of it. Thanking you in advance for supporting the citizens of New York State as they are the ones that have supported you.

Sincerely,

Mr. & Mrs. John M. Simpson

Please do not let us down.

June 27, 2006

GOVERNOR GEORGE PATAKI
STATE CAPITAL
ALBANY NY 12224

Re: Bill # S8349A

Dear Governor Pataki:

I write to you today, with urgency, requesting that you sign Bill # S8349A, sponsored by Senator Bonacic and voted in favor of by Senator Raymond Meier. Bill S8349A will protect the citizens of New York State from independent for profit companies that try to exercise Eminent Domain. As you can very well see, this Bill was favored by a three to one margin in the Senate so I hope that you will see the importance of this bill.

I thank you in advance for supporting the citizens of New York State, as we have supported you.

Sincerely,

Judith Avey

*259 Co Rt 25
New Berlin ny 13411*

000051

June 27, 2006

GOVERNOR GEORGE PATAKI
STATE CAPITAL
ALBANY NY 12224

Re: Bill # S8349A

Dear Governor Pataki:

I write to you today, with urgency, requesting that you sign Bill # S8349A, sponsored by Senator Bonacic and voted in favor of by Senator Raymond Meier. Bill S8349A will protect the citizens of New York State from independent for profit companies that try to exercise Eminent Domain. As you can very well see, this Bill was favored by a three to one margin in the Senate so I hope that you will see the importance of this bill.

I thank you in advance for supporting the citizens of New York State, as we have supported you.

Sincerely,

Carol A. Syster
420 Wahlberg Rd.
Norwich Ny 13815

000052

June 27, 2006
S 8349 2

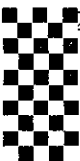
Dear Governor Pataki

I am in support of Bill S.8349A, sponsored by State Senator John Bonacic (R/LC - Mt. Hope), I fully expect you to sign it into law. Thank you .

Sincerely

Sherri Smith
Sherri Smith
21 State St.

Otisville ,N.Y. 10963



FAX

From: **Elizabeth Davidson, Architect**

75 Faulkner Road
Hale Eddy, N.Y. 13783
Phone (607) 467-4626
Fax (607) 467-6156

.....
Date : June 27, 2006

Page 1 of 1

To: Governor George Pataki
Albany, New York

Attn: Governor Pataki

Fax No: 518-474-1513

Re: Bill S.8349A

Comments:

Dear Governor Pataki:

As a registered voter from Hale Eddy, Town of Sanford, Broome County, New York, and in light of the overwhelming public and legislative support for Bill S.8349A, sponsored by State Senator Bonacic, I fully expect you to sign the bill into law.

Thank you in advance.

Sincerely,

Elizabeth Davidson



Upstate NY Citizens Alliance
Where People & Community Make the Difference

Dear Governor Pataki,

Please sign bill S.8349A into law as soon as possible to help prevent the devastation of numerous Upstate New York communities by the proposed New York Regional Interconnect, Inc. (NYRI) power transmission line.

S.8349A (sponsored by Sen. John Bonacic) will prevent a private corporation with shadowy foreign ownership from taking the land and homes of thousands of property owners, including families, farmers and local businesses in order to construct an ill-conceived 200-mile long, 400,000-volt direct current power line. If allowed to use eminent domain, NYRI will dispossess many people of land that has been in their families for generations, and impose its unwelcome presence on thousands of others.

You have an admirable record of fighting for New York's environment and preserving New York farmland. Add to that record by signing S.8249A so Upstate's rural environment is not forever scarred by NYRI. Do not give NYRI the powerful means with which to undermine our already fragile economy, raise our taxes, devalue our property, divide or destroy family farms, threaten the health of our children and increase what we pay for electricity.

NYRI is bad for all of New York. Do something that is good for the entire Empire State by signing S.8349A.

Thank you.

Sign: *Michael Petella*

Address:
*9631 Summit Rd
Cassville N.Y. 13318*

000055



July 5, 2006

Dear Governor Pataki,

Please sign bill S.8349A into law as soon as possible to help prevent the devastation of numerous Upstate New York communities by the proposed New York Regional Interconnect, Inc. (NYRI) power transmission line.

S.8349A (sponsored by Sen. John Bonacic) will prevent a private corporation with shadowy foreign ownership from taking the land and homes of thousands of property owners, including families, farmers and local businesses in order to construct an ill-conceived 200-mile long, 400,000-volt direct current power line. If allowed to use eminent domain, NYRI will dispossess many people of land that has been in their families for generations, and impose its unwelcome presence on thousands of others.

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NYRI is bad for all of New York. Do something that is good for the entire Empire State by signing S.8349A.

Thank you.

Signed: *Lisa Brouillette*

From: *Lisa Brouillette
5477 Brouillette Rd.
Oriskany Falls, NY 13425*

Fax: 518-474-1513
Call: 518-474-8390
Email: <http://www.state.ny.us/governor/contact/index.html>

The following correspondence is a sample taken from a voluminous amount of correspondence expressing similar sentiments which was discarded without microfilming or scanning.



Dear Governor Pataki,

Please sign bill S.8349A into law as soon as possible to help prevent the devastation of numerous Upstate New York communities by the proposed New York Regional Interconnect, Inc. (NYRI) power transmission line.

S.8349A (sponsored by Sen. John Bonacic) will prevent a private corporation with shadowy foreign ownership from taking the land and homes of thousands of property owners, including families, farmers and local businesses in order to construct an ill-conceived 200-mile long, 400,000-volt direct current power line. If allowed to use eminent domain, NYRI will dispossess many people of land that has been in their families for generations, and impose its unwelcome presence on thousands of others.

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NYRI is bad for all of New York. Do something that is good for the entire Empire State by signing S.8349A.

Thank you.

Signed:

From:

Virginia Hawkeas
Peter Riker
Benjamin Riker

Phone: 518-474-8390

Fax: 518-474-1513

Small Mail: Gov. George Pataki, The Capitol, Albany, NY 12224

email visit: <http://www.ny.gov/governor/contact/index.html>

000058

TO; GOVENOR GEORGE E. PATAKI
STATE CAPITOL
ALBANY, NEW YORK 12224

DEAR SIR:

WE, THE UNDERSIGNED CITIZENS OF ORANGE COUNTY URGE YOU TO PLEASE
PASS INTO LAW BILL NO. S.8349A AND THE COMPANION BILL 11977-A. WE
BELIEVE WHOLE HEARTEDLY THAT ORGANIZATIONS SUCH AS NYRI SHOULD NOT
HAVE THE RIGHT TO DECLARE EMINANT DOMAIN.

PLEASE DO NOT DISAPPOINT YOUR CONSTITUENTS. WE DO NOT WANT OURSELVES,
FRIENDS, FAMILY AND NEIGHBORS TO SUFFER A MONETARY LOSS DUE TO THESE POWER
LINES.

MORE IMPORTANTLY, WE DO NOT WANT TO JEPORDIZE THE HEALTH OF OURSELVES
OR THE UNBORN. ACCORDING TO MANY HEALTH ORGANIZATIONS STUDIES ARE STILL
ONGOING TO SEE WHAT THE EFFECTS OF THESE TRANSMISSION LINES ARE NOW AND
WILL BE IN THE FUTURE.

NAME

ADDRESS

CATHERINE M. HAWTHORNE

21 JAY RD. CAMPBELL HALL N.Y. 10916

000059

STATE OF NEW YORK

8349--A

IN SENATE

June 16, 2006

Introduced by Sens. BONACIC, LARKIN, LIBOUS, MEIER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the transportation corporation law, in relation to prohibiting transportation corporations that are gas corporations and gas electric corporations from exercising the right of eminent domain

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 11 of the transportation corporations law is
- 2 amended by adding a new subdivision 7 to read as follows:
- 3 7. Subdivisions three and three-a of this section shall not apply to
- 4 any merchant transmission company which:
- 5 (a) commences and ends in the state of New York;
- 6 (b) through its employees, agents, representatives, or assigns, has
- 7 represented in testimony that the construction of such power trans-
- 8 mission lines will increase electric rates in any part of the state; and
- 9 (c) which applied for and did not receive an early designation as a
- 10 national interest electric transmission corridor under an act of
- 11 Congress commonly known as the Energy Policy Act of 2005.
- 12 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD17526-02-6