

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

NIAGARA MOHAWK POWER CORPORATION,  
d/b/a NATIONAL GRID,

Plaintiff,

v.

Case No.: 5:09-CV-0471  
(NAM) (GJD)

HUDSON RIVER-BLACK RIVER REGULATING  
DISTRICT and NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION,

Defendants.

---

**DECLARATION OF RICHARD E. SMITH**

Richard E. Smith, under penalty of perjury and pursuant to 28 U.S.C. § 1746,  
declares the following to be true and correct:

1. I am a founder and Co-Chairman of the Sacandaga Protection Committee, which is now known as the Sacandaga Protection Corporation (“SPC”). I am a director of the Sacandaga Protection Corporation. I make this declaration on the basis of personal knowledge in support of SPC’s motion to intervene in the above-captioned case.

2. The State of New York owns the land surrounding Great Sacandaga Lake up to a certain water level. In many cases, state-owned land directly abuts privately-owned waterfront homes. In some cases, state-owned land runs directly up to the backdoor of these homes.

3. The Hudson River-Black River Regulating District (“the District”) operates a permit system by which certain parties are allowed to use and occupy the state-owned land surrounding the lake, primarily for recreational purposes. The District charges permit fees.

4. In October 2007, the District proposed new rules that would have fundamentally altered the permit system. The proposed rules would have altered permit fees, the application procedure, and the rights conferred by the permits.

5. SPC was formed in May 2009 to respond to actions taken by the District and the New York State Department of Environmental Conservation (“DEC”) regarding proposed permit system rule changes. SPC was incorporated in New York as a not-for-profit corporation in August 2009.

6. SPC engages in public advocacy in the pursuit of four goals: (a) to protect the rights of all lake users; (b) to retain the permit system that has operated since 1931 and to work toward a permanent solution that protects Great Sacandaga Lake’s ecology while allowing the lake community to prosper; (c) to determine the legal rights of the lake community; and (d) to foster communication internally among lake users and externally between lake users and regulatory bodies. SPC maintains a website at <http://www.lovetheSacandaga.com>.

7. SPC constituents include a wide range of property owners (both “front lot” and “back lot”), local businesses, and recreational users of Great Sacandaga Lake. Many constituents are permit holders.

8. The District’s current permit system provides the public with recreational access to Great Sacandaga Lake. It allows both the general public and property owners to occupy and use the state land that surrounds the lake. In certain areas, permit holders are granted exclusive access rights to permitted areas. These exclusive access rights are reflected in the high

property values of lakefront properties (which ultimately benefits SPC's other constituents through a stable tax base and robust local economy). Permit holders have improved their access areas by installing, at their own expense and pursuant to permits, docks, rip-rap for erosion control, picnic areas, swimming platforms, stairways, and other structures. In many cases, permit holders also maintain the permit areas by mowing the lawns, ensuring cleanliness, and clearing debris.

9. SPC and its constituents would suffer actual injuries if Plaintiff Niagara Mohawk Power Corp. d/b/a National Grid ("National Grid") succeeds in this case. If the District's current permit system were revoked, the access of Great Sacandaga Lake users would be in question for the first time in more than 70 years. In addition, property owners would see their property values decrease precipitously without access rights. Businesses that depend on the lake would be negatively affected. Taxpayers in surrounding areas would also be injured as they would bear a disproportionate share of property taxes due to changing property values.

10. Because the validity of the District's permit system is in dispute in this lawsuit and one of SPC's goals is to retain the permit system in place since 1931, the issues involved in this case are germane to SPC's purpose. Indeed, preservation of the existing permit system is the founding principle of SPC.

11. This case does not involve issues that are unique to any single SPC constituent and the participation of individual constituents would not be required. Rather, it would be prohibitively costly for individual SPC constituents to participate in this litigation. By banding together, SPC's constituents have pooled resources to fund this litigation and other advocacy and outreach efforts.

12. Because of its broad constituency and the popularity of its cause, SPC has raised sufficient funds to adequately pursue its constituents' interests in this case.

Approximately 515 people attended an August 24, 2009 town hall meeting in Northville, New York. Numerous local governments and government officials have also voiced their public support of SPC and its goals. An article discussing the meeting and SPC's support is attached as **Exhibit A**.

13. SPC constituents have a property interest in maintaining the current permit system. Some permit holders even trace their lake access rights to deeded reservations that arose from transfers of private property to the State of New York when the lake was created in the 1920s.

14. To the extent the District is likely interested in protecting *some version* of the permit system, SPC shares with it common defenses of law and fact.

15. However, the District's recent actions illustrate that no other party represents SPC constituents' interests in this case. The District has recently considered new rules that would fundamentally alter the challenged permit system.<sup>1</sup> SPC is opposed to these changes.

16. The District's larger interest is not to preserve property values and preserve access to the lake but to "regulate the flows of the Hudson River and Black River for the purposes of flood protection and flow augmentation." This mission is based on "maintaining a solid financial status for Regulating District operations." A copy of the District's mission statement is attached as **Exhibit B**.

---

<sup>1</sup> The proposed rules were allowed to expire, upon information and belief, after the Governor's office intervened.

17. SPC constituents' interest in maintaining the current permit system is squarely opposed to National Grid's attempt to invalidate it.

18. Upon information and belief, the District lacks the financial ability to properly litigate this matter. An article detailing the District's financial constraints is attached as **Exhibit C**.

19. SPC and, upon information and belief, its constituents were unaware of this case until August 2009. SPC constituents were not served with notice of the case, and I am aware of no local media coverage.

WHEREFORE, I respectfully request that this Court grant Sacandaga Protection Corporation's motion to intervene in the above-captioned case.

Dated: Northville, New York  
October 1, 2009

\_\_\_\_\_  
s/ Richard E. Smith  
Richard E. Smith