



Cuomo administration backed away from pipeline nuclear safety study after lobbying blitz

Spectra Energy hired Cuomo insider just one week after governor announced plans for study

Summary of findings

Spectra Energy's Algonquin pipeline runs in very close proximity to the aging Indian Point nuclear power plant, and public safety experts and activists have sounded the alarm about the risks posed by the pipeline and its expansion as part of the Algonquin Incremental Market (AIM) project.

New York State Governor Andrew Cuomo responded in February 2016 by ordering an "immediate independent safety analysis of the natural gas pipeline project" and called on the Federal Energy Regulatory Commission (FERC) to halt construction of the pipeline while New York State completed the study. He specifically cited risks posed by the pipeline's proximity to Indian Point nuclear power plant.

Though a study is currently under way, the Cuomo administration has backed away from this original plan in the months since:

- Rather than begin immediately, the state did not issue a work order for the study until July 2016, nearly five months after Cuomo ordered it. The first phase of the study is due in October, not long before the pipeline is scheduled to be operational.
- Risks related to the nuclear power plant no longer appear to be a focus of the study, even though it was the original reason for it. In fact, the words "nuclear" and "Indian Point" do not even appear in the scope of work.
- The independence and qualifications of the large engineering firm selected to conduct the study are unclear. The firm, HDR, often works for the oil and gas industry, and the HDR contact on the work order is a wastewater specialist.

It remains to be seen whether the study will approach the question of nuclear risks with the rigor that Cuomo initially called for. Given the above lapses, it seems unlikely.

Did Spectra Energy influence the Cuomo administration's handling of the study? There are clear signs that it tried to: just one week after the state informed FERC of the study, Spectra Energy ramped up its lobbying game in New York State, hiring a former Cuomo administration official to lobby the executive branch on issues related to the pipeline.

The lobbyist, Mark Grossman, had worked in the administrations of both Mario Cuomo and Andrew Cuomo. The pipeline company, Spectra Energy, was his first New York State lobbying client since leaving the Cuomo administration, and since at least 2005. His retainer for the part-time gig is \$10,000 per month.

Grossman seems to have at least some access to Cuomo's inner circle: he administers a closed Facebook group for former Mario Cuomo appointees. Members include Andrew Cuomo, Cuomo's brother, and his niece, as well as current and former top aides, including Joe Percoco, who was charged in the recent corruption case.

Additionally, the principal of one of Spectra Energy's top lobbying firms donated \$30,000 to the Cuomo campaign as pressure mounted for the pipeline study, and in the months following Cuomo's order. The lobbyist, Al D'Amato of Park Strategies, had never contributed directly to the Cuomo campaign before. Spectra Energy is his firm's highest-paying client, at \$25,000 per month.

It is unclear if Spectra Energy and its lobbying team prevailed on the Cuomo administration to change its plans for the study, or if this was a case of poor bureaucratic follow-through. But in light of recent corruption charges and with questions swirling about the pay-for-play culture in the executive branch, the Cuomo administration needs to be fully transparent about its relationship with Spectra Energy and explain what, exactly, happened to its plans for a study of the pipeline focused on Indian Point and nuclear risks.

About the Public Accountability Initiative

*The Public Accountability Initiative (PAI) is a non-profit, non-partisan research and educational organization focused on corporate and government accountability. In addition to publishing watchdog research reports like this one, PAI maintains LittleSis.org, an involuntary facebook of powerful people and tool for power research that was used to compile data for this report. This report was authored by Kevin Connor, PAI's director. Learn more about PAI at <http://public-accountability.org>
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I. Cuomo orders immediate, independent study focused on nuclear risks

Cuomo ordered a study of the Algonquin pipeline and its proximity to the Indian Point nuclear power plant after several months of mounting public pressure to do so.

Pipeline and nuclear experts have raised serious questions about the potentially catastrophic consequences of a pipeline rupture close to the nuclear power plant.¹ As part of the Algonquin Incremental Market project (AIM), the pipeline is being expanded from 26 inches in diameter to 42 inches in diameter. It runs within just 105 feet of critical infrastructure at Indian Point, which is aging and frequently experiences problems.²

Activists delivered a petition with 30,000 signatures to Cuomo's office in October 2015, calling on him to put a stop to construction of the pipeline and commission a study of the risks it posed.³

On February 27, 2016, activist groups held a vigil outside the governor's home in Mount Kisco, NY. The next day, the *New York Times* broke the news that Cuomo was going to order the study and call on FERC to stop the pipeline.⁴

On Monday, the state plans to notify the Federal Energy Regulatory Commission that it will take a hard look at the project in light of a series of problems at the nuclear plant since last May. In addition, the state will ask federal regulators to suspend their approval of the project -- effectively halting construction -- until the study is completed.

"I am directing my administration **to commence an immediate independent safety analysis** of the natural gas pipeline project," Gov. Andrew M. Cuomo, a Democrat, said. "The safety of New Yorkers is the first responsibility of state government when making any decision." [emphasis added]

On February 29, the Cuomo administration sent a letter to FERC stating that Cuomo had ordered several key agencies to immediately investigate.⁵

New York Governor Andrew M. Cuomo has directed the Department of Homeland Security and Emergency Services (DHSES), the New York State

¹ <https://www.theguardian.com/environment/2016/apr/04/spectra-gas-pipeline-nuclear-plant-meltdown-new-york>

² <http://www.twcnews.com/nys/hudson-valley/politics/2015/08/21/does-a-natural-gas-pipeline-run-too-close-to-indian-point-nuclear-facility.html>

³ <http://www.lohud.com/story/tech/science/environment/2015/10/13/pipeline-foes-urge-albany-halt-algonquin-project/73864914/>

⁴ http://www.nytimes.com/2016/02/29/nyregion/plan-to-expand-a-pipeline-at-indian-point-raises-concern.html?_r=0

⁵ https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/FERC_AIM_LetterFinal.pdf

Department of Environmental Conservation (NYSDEC), the New York State Department of Health (NYSDOH) and New York State Department of Public Service (DPS) **to immediately commence an independent safety risk analysis** of Spectra Energy’s Algonquin Incremental Market (AIM) project, **specifically near Entergy’s Indian Point Nuclear Facility** (known as Indian Point Energy Center or IPEC). [emphasis added]

The letter detailed several recent incidents at Indian Point, but also elaborated on the need for a study of the pipeline’s proximity to Indian Point:

The AIM Project’s path will require horizontal directional drilling under the Hudson River and adjacent to Indian Point. While the applicant has committed to build the pipeline to a more stringent standard on the Indian Point grounds, including laying two concrete liners above the pipeline to prevent excavation damage, burying the pipeline deeper than required, and using a stronger grade of steel than is required even in high consequence areas, it is imperative to determine if this is enough in light of the recent significant tritium leak and other operational difficulties at the nuclear facility. **An independent safety risk analysis will address the adequacy of those mitigation efforts.** We will share the results with you immediately upon receiving them. [emphasis added]

The letter asked FERC to halt the pipeline while the study was completed. On March 25, 2016, FERC denied this request. Several weeks later, a group of New York State legislators again wrote FERC, demanding that the agency stop pipeline construction while the study was completed, and other legislators have echoed this call.⁶

II. Cuomo administration backs away from original plan

Cuomo’s comments to the *New York Times* and the state’s letter to FERC were quite clear: the study would begin immediately, it would be done by an independent firm, and it would focus on safety risks related to Indian Point.

But documents obtained from New York State by one of the groups fighting the pipeline, Stop the Algonquin Pipeline Expansion (SAPE), suggest that the Cuomo administration has backed away from its original plan:

Delays. Though Cuomo called for an “immediate” study, it took nearly five months for the state to issue a work order for the analysis (it was issued on July 13, 2016). It is unclear what caused the delays. Rather than conduct a formal RFP, the state issued the

⁶ <http://wamc.org/post/nys-lawmakers-ferc-halt-aim-pipeline-until-study-completed>

work order under an existing contract for engineering services with HDR, Inc.⁷

The delays are significant because the pipeline is supposed to be operational on November 1, 2016. The first phase of the risk analysis is due 90 days after the work order was issued, on October 11, 2016, and this is only the first phase – the work order also refers to a second phase.

No focus on Indian Point or nuclear risks. Though the pipeline’s proximity to Indian Point was the original impetus for the study, the work order has no focus on the Indian Point site or nuclear-related risks.⁸ Neither “Indian Point” nor the word “nuclear” appear in the work order, which instead calls for the first phase of a broad risk assessment.

One of the nine directives in the work order asks the contractor to “Define Potential Natural and Man-Made Hazards,” but leaves out any mention of Indian Point or nuclear risks in the list of examples of man-made hazards that it offers (“Terrorism, traffic accident, utility strike during routine excavation activities, etc.”)

The work order asks HDR to define hazards and critical infrastructure along the entire route of the pipeline, rather than focus on the site where the pipeline passes within close proximity to Indian Point.

The full scope of services is below.

Scope of Services:

Provide Risk Assessment services (risks of AIM Pipeline on NY Security Sectors). Phase I tasks shall include:

1. Research, define and understand the AIM Project within the limits of the New York State borders. This will include but may not be limited to researching / defining / understanding the:
 - a. Pipeline Route.
 - b. Locations of the above ground installations (i.e. compressor stations, metering stations, release valves, etc.).
 - c. Civil design of the pipeline and above ground installations (i.e. burial depth, sloping, limits of disturbance, etc.).
 - d. Mechanical design of the pipeline and above ground installations (i.e. pipe diameter, pipe thickness, coating, AC / CP protection system, SCADA system, etc.).
 - e. Details on the pipeline Spectra is replacing (i.e. site, pressure, location, operational status, etc.).
 - f. Review risk and/or constructability studies completed by others (i.e. Spectra, PHMSA, State of New York, etc.).
 - g. Research relevant available documentation on AIM project and related studies.
2. Define Potential Natural and Man-Made Hazards
 - a. Create a list of each for review and comment by OGS/DHSES. Example of potential hazards could be:
 - i. Natural: seismicity, flooding, tropical storms / hurricanes, etc.
 - ii. Man-Made: Terrorism, traffic accident, utility strike during routine excavation activities, etc.
3. Define Critical Infrastructure
 - a. Create a list of the critical infrastructure sectors and specific critical infrastructure installations within each identified sector for review and comment by OGS/DHSES.
4. Risk Assessment Report Outline
 - a. Produce a draft chapter outline of our proposed report for review/comment by OGS/DHSES and rework/correction by HDR. Define and document the intended process for prioritizing risks and identifying mitigation strategies.
5. Assess and report on the applicability of the USDOL 29 CFR 1910.119 Appendix C. Compliance Guidelines and Recommendations for Process Safety Management. Develop a plan whereby the final Risk Analysis in Phase II will substantially reflect and/or incorporate the relevant aspects of this standard (i.e the referenced Process Hazard Analysis (PHA) and a complementary methodology.)

⁷ <http://www2.osc.state.ny.us/transparency/contracts/contracttransactions.cfm?Contract=OGS01-DOSA619-1140247>

⁸ The work order is available here: <https://sape2016.files.wordpress.com/2013/10/071316-cuomo-work-order-to-contract-hdr-for-risk-assessment.pdf>

Additional Scope of Services, cont.:

6. Conduct two-day Workshop at DHSES offices with the HDR and OGS/DHSES teams to present/review Phase I deliverable and finalize the scope of work (content, format, schedule) for concluding Phase II: Risk Assessment Analysis and Reporting. Workshop may include limited field visit of the pipeline route if required.
7. Provide separate supporting documentation to DHSES (State Counter Terrorism) for insertion into their required (NYS Exec Law Art. 26 §716) 5-year report (by others) on Protection of Critical Infrastructure. The 5-year report will "review the security measures being taken regarding critical infrastructure related to commercial aviation fuel, petroleum or natural gas transmission facilities and pipelines, assess the effectiveness thereof, and include recommendations to the legislature, the public service commission, or the operator of a commercial aviation fuel, petroleum or natural gas transmission facility or pipeline, or any appropriate state or federal regulating entity or agency if the commissioner of the division of homeland security and emergency services determines that additional measures are required to be implemented, considering among other factors, the unique characteristics of each commercial aviation fuel, petroleum or natural gas transmission facility or pipeline."
8. Phase I deliverable shall include a Professional Consultation Report which addresses the items listed above. Report methodologies and applicable codes, standards, protocols and resources shall be thoroughly referenced) as well as ESRI GIS .shp files of collected data.
9. At minimum, provide weekly project status report (Fridays) via email utilizing the two-page template provided by the OGS D&C PM.

Based on Henningson, Durham & Richardson Consultant Fee Estimate Worksheet dated 7/5/2016.

Questions about contractor's qualifications and independence. Since there was no dedicated RFP process, it is not clear why the state decided to select HDR as the consultant on the study, but there are significant questions about its qualifications for the job and its independence from the oil and gas industry.

The only HDR employee identified on the work order, Gary Grey, is a wastewater specialist and does not appear to have expertise related to pipeline and nuclear risks.⁹ It is unclear who else from HDR is handling the project.

HDR often services oil and gas industry clients. Marketing materials on its website suggest that it works to help these clients navigate regulatory barriers. Sample passages from its website:

- "We know that strong partnerships within the right development plan are the keys to making real progress in an industry faced with increased government oversight..."¹⁰
- "We've built a reputation for navigating high priority projects across the entire oil and gas supply chain."
- On a project for FERC on a Florida Gas Transmission pipeline: "A smooth regulatory process kept progress on track for hundreds of miles of pipeline."¹¹

The message that the firm was oriented towards helping industry overcome regulation came through even clearer prior to an overhaul of the company's website in 2013:

Today's oil and gas players are challenged by increasing government oversight and regulation, harsh physical and political climates, uncertain commodity prices, and, in the emerging shale plays, the race to develop. They also face

⁹ <https://www.linkedin.com/in/gary-grey-8699a719>

¹⁰ <http://www.hdrinc.com/markets/oil-gas>

¹¹ <http://www.hdrinc.com/portfolio/third-party-eis-for-natural-gas-pipeline-expansion>

unprecedented opportunity with the emergence of unconventional oil and gas resources, dynamic, shifting markets and global opportunities.

We are positioned to help our oil and gas clients overcome these challenges and exploit the opportunities.¹² [emphasis added]

The company faced controversy in 2012 related to its environmental impact study, for the state of Nebraska, of the Keystone XL pipeline. The NRDC's OnEarth blog revealed that HDR had previously worked for TransCanada, the company behind the pipeline, on two occasions.¹³ (In this case, HDR does not appear to have business relationships with Spectra Energy or Entergy.) The NRDC article also pointed out the above passage as evidence of HDR's strong pro-industry orientation.

HDR's nuclear portfolio appears relatively limited, though it does advertise economic feasibility services for nuclear power plants and highlights past work for a Florida Power & Light nuclear power plant on its website.¹⁴

III. Spectra Energy ramps up lobbying game

Spectra Energy immediately ramped up its lobbying game in New York State after the state's plans for a study became public. Most significantly, the company added a former Cuomo administration official to its New York State lobbying team just one week after the governor's announcement.

An engagement letter filed with New York State shows that the lobbyist, Mark Grossman, was initially retained by Spectra Energy on March 7, 2016.¹⁵ The *New York Times* article in which Cuomo first announced his study of the pipeline was published on February 28, 2016.

Grossman receives a retainer of \$10,000 per month and has collected at least \$60,000 since beginning work for Spectra in March 2016. It is the first state level lobbying gig he has registered for since at least 2006.¹⁶

Shortly after leaving the Cuomo administration, Grossman began advocating for the Port Ambrose LNG terminal, but he never registered as a lobbyist.¹⁷ Cuomo rejected

¹² <https://web.archive.org/web/20120104213626/http://www.hdrinc.com/markets/energy/oil-and-gas>

¹³ <http://archive.earth.org/article/keystone-conflict-nebraska-firm-reviewing-tar-sands-project-has-ties-to-pipeline-builder>

¹⁴ <http://www.hdrinc.com/portfolio/turkey-point-water-source-evaluations-for-nuclear-cooling-and-process-water>

¹⁵

https://onlineapps.jcope.ny.gov/LobbyWatch/Administration/UploadDocuments/Temp/L3777_GROSSMAN%20SPECTRA.pdf

¹⁶ The first year for which JCOPE electronic records are available.

that project in December 2015. According to his resume, he also worked as a public relations consultant and lobbyist from 1995-2006.¹⁸ One of his clients during this period was the Islander East pipeline, a Spectra Energy project that did not gain approval.¹⁹

Since picking up the Spectra gig, Grossman's firm has also been retained by TASER to lobby on the local level, according to state filings.²⁰ An individual by the same name also appears on lobbying filings for SolarCity.²¹

Grossman served in the administrations of both Andrew Cuomo and Mario Cuomo. He was the Long Island representative at the New York State Department of Labor from 2008-2013. This tenure included several years in Andrew Cuomo's administration and a role as the deputy executive director of Cuomo's Long Island Regional Economic Development Council. In 2013, in the wake of Hurricane Sandy, Grossman joined the governor's Office of Storm Recovery as its Long Island field representative, a role in which he served until 2014.

Grossman served in Mario Cuomo's administration from 1989-1995 as his Long Island regional director. According to Grossman's curriculum vitae, this role meant that he "Interfaced daily with the Executive Chamber on policy and program issues."²²

Though it is difficult to determine Grossman's level of access to the Cuomo administration, there are some signs on social media that he maintains strong relationships with top officials. He is currently the sole administrator of the "I Worked for Mario Cuomo" Facebook group, a closed group restricted to people who worked as appointees under Mario Cuomo.²³

The group's 124 members include Andrew Cuomo and many current and former aides to the current governor. Other Cuomo family members also belong to the group, including Andrew's brother, Chris Cuomo, and one of his nieces.

The group also includes top current and former aides to the governor. Among them: Joe Percoco, the Cuomo lieutenant who was charged in the recent corruption case.

The group has existed for at least six years, and appears to be active. One member was added as recently as 3 months ago. In January 2015, after Mario Cuomo's death,

¹⁷ <https://web.archive.org/web/20150407013222/http://markgrossmanpr.com/port-ambrose/>

¹⁸ <http://markgrossman.net/wp-content/uploads/2014/02/Mark-Grossman-Exec-Resume-02-04-14.pdf>

¹⁹ <http://markgrossman.net/wp-content/uploads/2014/01/Whos-Who-in-PR-LIBN-3-28-2003.pdf>

²⁰

https://onlineapps.jcope.ny.gov/LobbyWatch/Administration/UploadDocuments/Temp/L3777_GROSSMAN%20TASER.pdf

²¹ See JCOPE lobbying filings for SolarCity for May-June 2016 and July-August 2016. Accessed at:

https://onlineapps.jcope.ny.gov/Lobbywatch/Menu_reports_public.aspx

²² <http://markgrossman.net/wp-content/uploads/2014/02/Mark-Grossman-Exec-Resume-02-04-14.pdf>

²³ <https://www.facebook.com/groups/mariocuomo/>

Grossman told the *Wall Street Journal* that members of the group had been posting photos and memories of the governor. Grossman also told the paper that Mario Cuomo “made us feel truly like part of a family.”²⁴

Lobbyist contributions to Cuomo

Additionally, the managing director of one of Spectra Energy’s top outside lobbying firms made major contributions to Cuomo as pressure mounted for the study, and in the months following Cuomo’s announcement of the study.

The lobbyist, former Senator Al D’Amato, had never contributed directly to Andrew Cuomo before but gave a series of contributions totaling \$30,000 from December 2015 to July 2016: \$10,000 in December 2015, as public calls for Cuomo to intervene increased; \$15,000 in April 2016, a month after the study was announced; and another \$5,000 contribution in July 2016.²⁵

D’Amato’s firm, Park Strategies, has lobbied for Spectra Energy since 2014. Spectra is the firm’s highest-paying client, at \$25,000 per month.²⁶

IV. Questions for the Cuomo administration

Have members of the Cuomo administration been in contact with representatives of Spectra Energy about the study, including lobbyists such as Mark Grossman – in meetings or via phone, work email, personal email, social media, chat, or text message? Will the Cuomo administration release these communications in the interest of transparency?

Who developed the work order and scope of services? Why is there no focus on the Indian Point site or nuclear-related risks, the original impetus for the study?

Why did the state wait nearly five months after the governor’s announcement to issue a work order for the study?

What process did the state use to select HDR to conduct the safety study? Who from HDR is handling the project, and what are their qualifications?

²⁴ <http://www.wsj.com/articles/biden-christie-to-attend-mario-cuomo-wake-1420478396>

²⁵ Records from New York State Board of Elections, obtained at:
<http://www.elections.ny.gov/ContributionSearchOptions.html>

²⁶ https://onlineapps.jcope.ny.gov/LobbyWatch/Administration/UploadDocuments/Temp/L476_Park%20Strategies.Spectra.ext.pdf