

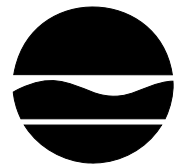
New York State Department of Environmental Conservation

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Joe Martens
Commissioner

VIA EMAIL

August 8, 2012

Hon. Eleanor Stein
Department of Public Service
Three Empire State Plaza, Agency Building 3
Albany, NY 12233-1350

Re: Case 12-T-0248 – Application of New York State Electric & Gas Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of the "Columbia County Transmission Project," Approximately 11.1 Miles of 115 Kilovolt Transmission Lines and related facilities in the Towns of Chatham, Ghent, and Stockport, in Columbia County (Application or Project).

Dear Judge Stein:

The Department of Environmental Conservation (Department or NYSDEC) submits the following response to the Notice Inviting Comments on the New York State Electric & Gas Corporation (NYSEG or Applicant) Motion for Waiver of Application Requirements issued June 19, 2012 (Notice and Motion respectively). In addition, the Department would like to clarify its position with respect to the interface between the Stormwater Pollution Prevention Plan and the Environmental Management & Compliance Plan. Finally, the Department has identified additional information based on Staff's preliminary review of the Application that merits inclusion in the record to expedite the review process.

1. NYSDEC Comments on Motion for Waiver of Application Requirements

Except as noted below, NYSDEC generally does not object to NYSEG's waiver requests provided that (1) all pertinent information is included on the alternative maps and (2) NYSEG provides NYSDEC with the GIS Shape files of the proposed facility location, alternative routes, and other original coverages developed by the Applicant or its consultants for analysis in the Application (*see* Letter from Secretary Brilling to Messrs. Draghi and Mahlmeister dated June 22, 2012, Appendix A (R)). The GIS Shape files would need to be in the following format: Projected Coordinate System: NAD_1983_UTM_Zone_18N; Projection: Transverse_Mercator for parties to be able to use them in coordination with NYSDEC's State GIS databases.

16 NYCRR § 86.3(a)(1)

The Department does not object to the use of USGS maps to depict the information specified in 16 NYCRR § 86.3(a)(1). The USGS 2010 edition topographic quadrangles based on orthophotography rather than the traditional topographic quadrangles, which are dated 1980 for the project area coverage, would be preferable as indicated by DPS Staff in its letter dated July 23, 2012. The USGS Maps should include the information and resources specified in regulation.

16 NYCRR §86.3(a)(1)(ii) requires the Applicant to provide mapping showing where the construction or reconstruction of the proposed facility would necessitate permanent clearing or other changes to the topography, vegetation or man-made structures. NYSDEC does not oppose this waiver request to provide the requested data using the aerial photography provided in the Application documents so long as the GIS Shape files also include this information as indicated above.

16 NYCRR §86.3(a)(1)(iii) directs the Applicant to provide maps showing the location of sensitive archeological sites. NYSDEC does not object to NYSEG's request to file information pertaining to archeological resources as a confidential document, however, NYSDEC requests that NYSEG file this information with NYSDEC at the same time it files with the Commission. NYSDEC needs access to this information in order to make balanced and complete regulatory assessments. Moreover, NYSDEC's practice, consistent with OPRHP's directive, is not to disclose information which is subject to protection pursuant Section 14.07 of the Parks, Recreation and Historic Preservation Law.

Section 14.07 states that the Commissioner of OPRHP shall, upon request, provide information on the places listed on the state register and on sites including the statewide inventory maintained by the office, with the exception of sites that may be damaged by unauthorized investigators if their location were to be publicized. Information on such sites may be withheld from the public "*at the discretion of the Commissioner of OPRHP in consultation with the Commissioner of Education and will be released, where appropriate, in a format approved by such commissioners*" (emphasis added). It is unclear whether the information at issue here is already subject to an OPRHP Commissioner's determination. In any case, NYSDEC does not disclose sensitive archeological and cultural resources information except in limited cases where disclosure is permissible under the statute.

16 NYCRR § 86.3(a)(2)

The Department does not object to the request to utilize USGS maps at a scale of 1:250,000 for the information requirements contained in 16 NYCRR § 86.3(a)(2)(i)–(iv) so long as the information specified in regulation is provided and NYSEG submits GIS Shape files to NYSDEC as discussed above.

16 NYCRR § 86.3(b)(1)(iii)

The Department objects to that portion of the Motion seeking a waiver of the 16 NYCRR § 86.3(b)(1)(iii) which requires aerial photographs showing the location of access and maintenance roads. The Motion seeks a deferment of the requirement to delineate access and maintenance roads until the EM&CP phase of the Project. Foregoing this requirement in the Article VII Application is not acceptable to the Department. In lieu of aerial photography, the Department would accept GIS Shape files as discussed above showing the dimensions and location of access and maintenance roads along the primary route location.

The construction, operation, and maintenance of access and maintenance roads to support a major electric transmission facility, including roads constructed on a temporary basis, can be a significant source of environmental impacts for the Project, especially if these activities occur in, around and near wetland and adjacent areas, protected plant and animal habitat areas, protected streams, and other sensitive resource areas. Consideration of the appropriate location of access and maintenance roads so as to avoid and minimize adverse environmental impacts and the evaluation of which route alternative can best achieve these objectives are issues that fall squarely within the scope of the administrative proceeding for the Article VII certificate Application.

Notably, the facility proposes to share ROW with existing NYSEG owned electric transmission facilities for a distance of approximately 3.5 miles; no justification exists for not showing the location of access and maintenance roads on this portion of the proposed route. As to other portions of the proposed route, the Project involves a fairly limited geographic scope. NYSEG should be able to anticipate based on its experience operating electric transmission lines, the need for new and temporary access roads to support this Project and approximately where these roads would or could be located (or not) relative to existing resources and other physical constraints.

The Department further supports DPS's requests to show the relevant locations of permanent access roads for the proposed Ghent switching station and existing access on the National Grid ROW. The Applicant has requested waivers of municipal road design standards for the permanent access necessary for construction and operation of the proposed Ghent Switching station. The relevant locations should be designated on revised figures so that review of the Application may progress. Likewise, mapping showing existing access on the National Grid ROW to the proposed tap point for the Ghent Switching station should be provided.

16 NYCRR § 86.4(b)

The Department does not object to the inclusion of alternative routes on USGS maps provided NYSEG provides GIS Shape files for the alternative routes as the Commission has requested for the primary route, and the USGS maps are of the same scale and detail as maps showing the primary route.

2. Stormwater Pollution Prevention Plan (SWPPP)

Section 8.2 of the Project *Other Pending Filings New York State Department of Environmental Conservation – SPDES Permit for Construction Stormwater* - characterizes guidance from NYSDEC to the Applicant as suggesting that EM&CP filing requirements will also satisfy the requirement for a SWPPP:

Based on guidance provided by the Department of Environmental Conservation (NYSDEC), NYSEG understands that the erosion control section of the Project's EM&CP, which section will be submitted to the NYSDEC as a separate Application, will fulfill the NYSDEC's requirement that a Storm Water Pollution Prevention (SWPPP) be submitted to it. Concurrent with the EM&CP filing, NYSEG will provide the NYSDEC with the required Notice of Intent for coverage of this Project under General Permit No. GP-0-10-001 for Stormwater Discharges from Construction Activities. . . . (p. 8-1).

During pre-application discussions with NYSDEC, the Applicant expressed concern about managing various construction-related documents, including the EM&CP and the SWPPP and asked whether the EM&CP could suffice for the SWPPP. NYSDEC advised that the SWPPP is a separate legal document from the EM&CP and must be prepared in accordance with the dictates of the General Permit. A stand-alone SWPPP is necessary to ensure that no confusion exists as to its scope and content and that the mandates of Article 17 of the Environmental Conservation Law (ECL) and the General Permit are satisfied. NYSDEC suggested that the Applicant consider whether the SWPPP could simultaneously satisfy EM&CP erosion control requirements and could be incorporated therein.

The requirement for a SWPPP and the required contents of a SWPPP are dictated solely by the terms of the General Permit for Stormwater Discharges from Construction Activity Permit No. GP-0-10-001 ("General Permit") which the Department issued in accordance with its authority under Article 17 of the ECL. To obtain coverage under the General Permit, an applicant must first develop a SWPPP in accordance with the applicable requirements of the General Permit and then submit a Notice of Intent (General Permit Part II A.). Construction may not commence nor are any discharges authorized until the SWPPP has been prepared.

Part III A of the General Permit describes the *General SWPPP Requirements*, including the requirement that the SWPPP shall describe the erosion and sediment control practices and where required, post-construction stormwater management practices that will be used and/or constructed to reduce the pollutants in stormwater discharges and to assure compliance with the terms and conditions of the General Permit.

Part III B details *Required SWPPP Contents* and provides that all SWPPPs prepared pursuant to the General Permit shall include erosion and sediment control practices designed in conformance with the most current version of the technical standard, New York State Standards and Specifications for Erosion and Sediment

Control. Where erosion and sediment control practices are not designed in conformance with this technical standard, an applicant must demonstrate equivalence to the technical standard; coverage under the General Permit may be delayed. Minimum specifications for the SWPPP are further spelled out in Part III B of the General Permit.

In sum, the only measure by which the SWPPP can be judged satisfactory and in compliance with ECL Article 17 is whether the SWPPP is prepared and executed in accordance with the provisions of the General Permit. While NYSDEC does not object to the incorporation of the SWPPP into the EM&CP, the SWPPP must be identifiable and exist as an independent legal document.

3. NYSDEC Request for Additional Information

NYSDEC concurs with Secretary Brilling's Letter dated June 22, 2012, advising NYSEG that the documents submitted on May 25, 2012, do not comply with § 122 of the Public Service Law and requesting additional information to expedite the review of the Application (Requests for Additional Information, Appendix A). NYSDEC has identified additional information below that would further expedite the Application review.

Noise

Noise is considered a form of pollution under section 3-0301(i) of the Environmental Conservation Law (ECL). Department Staff understand that the Public Service Commission can and does require applicants to take local noise ordinances into consideration along with other factors when filing applications and designing transmission line projects. Accordingly, the Applicant should be required to conduct an assessment of noise in accordance with a study scope established after consultation with local governments and concerned agencies.

According to the Application, overhead transmission line construction will generate noise levels that are periodically audible. It also points out that the majority of the land traversed by that the Project would traverse is rural and presently has would have comparatively lower ambient sound levels (30 dBA or less during nighttime hours). Application Tables 4-17 and 4-18 contain typical construction phase noise levels for overhead line construction and switching station construction respectively. However, the Application does not identify whether any sensitive receptors are present along the proposed Project route which could be potentially impacted; nor does it identify measures to avoid or minimize impacts. The Application should include a noise assessment that includes the baseline ambient noise levels at representative locations and under representative conditions, particularly for sensitive receptors. A more comprehensive noise assessment is necessary even at this phase of the Project so that public may understand the potential for adverse noise impacts and evaluate the effectiveness of measures to mitigate these impacts, particularly during construction.

Selective Clearing

The Applicant is seeking authorization to conduct selective clearing of vegetation along and adjacent to the ROW. NYSDEC recognizes the need to remove danger trees and other conditions that could be hazardous or detrimental to the transmission line. At the same time,

sufficient information must be provided for a fair assessment of potential short and long term environmental impacts associated with this activity. According to the Application

The long-term conversion of existing forested communities to managed grassland or shrubland would occur as a result of construction and maintenance of the Project. Widening of the existing right-of-way and clearing for new right-of-way will require the permanent removal of forest cover, while improved road access and other construction activities will require the selective clearing of undesirable woody species or saplings. The extent of direct impacts will vary depending on the quality of vegetation and soils, the type of proposed Project activity, and the methods used to facilitate construction. The estimated acreage forest cover that would be removed as a result of the Project is 47.5 acres. (p. 4-43-4-44).

A more precise description of “selective clearing” is necessary so that parties have sufficient information in the Application to fully comprehend the potential scope and extent of vegetation clearing that would be authorized to occur along the extent of the ROW during each phase of the Project and assess the resultant impacts of these activities.

Invasive Species

The invasive species discussion within *4.5.1.1 Environmental Effects* is limited and needs enhancement. Specifically, the Interim Invasive Species Plant List by itself is not helpful in terms of assessing the potential impacts that the construction and operation of this Project would have on the spread and proliferation of invasive species in and along the ROW. As a preliminary matter, the Applicant should undertake a baseline survey of invasive species that occur along and in the existing ROW as part of the Application, rather than deferring this work to the EM&CP phase. Similarly, efforts should be undertaken to survey invasive species along the proposed new ROW. This information would then be available for the assessment of appropriate project-specific invasive species management measures and the development of best management practices.

Thank you for the opportunity to comment on NYSEG’s Motion. Please feel free to contact Sarah Evans, NYSDEC Project Manager at 402-9156 or me at 402-9185 if you have any further questions.

Sincerely,

/s/

Lisa A. Wilkinson

cc: Active Party List (via Email)