

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 13, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

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.

ORDER ON WAIVER REQUESTS

(Issued and Effective September 14, 2012)

BY THE COMMISSION:

On May 25, 2012, New York State Electric & Gas Corporation (NYSEG, the Applicant) filed an application (Application) for a Certificate of Environmental Compatibility and Public Need (Certificate). Such Certificate, if granted, would authorize NYSEG to construct approximately 11.1 miles of 115 kilovolt (kV) transmission line. The new transmission lines will consist of a 2.5-mile line from the existing National Grid trunk #15 115 kV transmission line, which will be cut and extended into Ghent Substation, and 8.6 miles of 115 kV transmission line (Circuit 726) from Ghent Switching Station to Klinekill Substation. In addition, the Columbia County Transmission Project includes related facilities in the Towns of

Chatham, Ghent, and Stockport, Columbia County. These facilities include a new 115 kV Ghent Switching Station, and improvements to the existing Klinekill 115 kV/34.5 kV Substation.

With its Application, NYSEG submitted a motion pursuant to Commission Rule 3.3(c)¹ for waiver of certain specific application requirements pursuant to Public Service Commission regulations, governing the content of an application for a Certificate. A Notice of Proposed Rulemaking with respect to the motion for waiver was published in the *State Register*.² The motion specifically seeks waivers of the requirements of 16 NYCRR §§86.3(a)(1) and (a)(2), 86.3 (b)(1)(iii), 86.4(b), and 88.4(a)(4).

On July 23, 2012, Department of Public Service Staff (Staff) responded, supporting the NYSEG requests to waive certain sections, opposing its requests to waive others, and requesting the provision of additional materials. In addition, responses to the applicant's motion were filed August 13 by Protect Ghent, Inc. (Project Ghent) and the New York State Department of Environmental Conservation (NYSDEC); both parties supported the waiver request in part and opposed in part. NYSDEC's response also included, in effect, a countermotion requesting that NYSEG provide additional information, to which NYSEG responded on August 13.³ Mr. Benjamin Swett and the Town of Ghent replied on August 15 and 16, respectively, to NYSEG's response.

¹ 16 NYCRR §3.3(c)

² *New York Register*, June 27, 2012, p.23 (No. 12-T-0248SPI).

³ Pursuant to Commission Rule of Procedure 3.6(d)(3), replies to responses to motion are entertained only when the response. Seeks relief and effectively constitutes a countermotion as in this case.

I. THE APPLICANT'S MOTION FOR WAIVERS

The Proposed Waiver of 16 NYCRR §86.3(a)(1)

§86.3(a) (1) requires the Applicant to submit, with the Application:

Detailed maps, drawings and explanations showing the right-of-way for each proposed facility. Such maps and drawings shall include: (1) New York State Department of Transportation maps (1:24,000 topographic edition), showing (i) the proposed right-of-way (with control points indicated), covering an area of at least five miles on either side of the proposed facility location; (ii) where the construction or reconstruction of the proposed facility would necessitate permanent clearing or other changes to the topography, vegetation or man-made structures; (iii) any known archaeological, historical or scenic area, park, or untouched wilderness on or within three miles of the right-of-way.

NYSEG requests that the Commission waive the requirement of submission of NYSDOT 1:24,000 scale maps, instead offering to provide United States Geological Survey (USGS) 7.5 Minute Topographic Quadrangles showing the proposed right-of-way and covering an area of at least five miles on either side of the proposed facility and any known geologic, historical or scenic area, park or untouched wilderness on or within three miles of the right-of-way in satisfaction of the requirements of §86.3(a)(1)(i) and (iii). NYSEG asserts that the required NYDOT maps at a scale of 1:24,000 are no longer available and that the USGS maps, drawings and other information it provided in the Application (Figure 2-1) effectively provide the required information. Staff supports this waiver request, in light of the unavailability of the NYSDOT maps. However, it suggests the Applicant provide the USGS 2010 edition topographic quadrangles based on orthophotography rather than the USGS 1980 topographic triangles. NYSEG does not object to Staff's recommendations.

In light of the unavailability of NYSDOT maps at a scale of 1:24,000, Applicant also requests waiver of the requirements of §86.3(a)(1)(ii) to accept its provision of aerial photography by Leading Edge Geomatics at a scale of one inch to 500 feet and photography by Leica Geosystems at the same scale for the USDA National Agriculture Imagery Program in May and October 2011, to demonstrate where construction and reconstruction of the proposed facility would require clearing or other changes to topography, vegetation or structures. Staff concurs that this waiver request should be granted. NYSDEC does not oppose the waiver, provided that the GIS Shape files include the relevant information. Project Ghent considers the 2011 imagery significantly outdated, and objects to the submission of imagery provided by a non-party federal agency, on the ground that cross examination regarding this imagery would be limited.

NYSEG also seeks waiver of the requirement in §86.3(a)(1)(iii) that its maps indicate sensitive archaeological sites inasmuch as this public disclosure may risk harm to these resources and conflicts with New York State Parks, Recreation and Historic Preservation Law §14.07. The Applicant offers to provide this information to parties upon an information request, subject to a protective order. Staff supports this waiver request. The NYSDEC does not object to the Applicant's request to file information pertaining to archaeological resources on a confidential basis; however, NYSDEC requests that this material be filed by the Applicant with NYSDEC at the same time it is filed with the Department of Public Service (DPS). Consistent with the directive of the Office of Parks, Recreation, and Historic Preservation (OPRHP), it states, NYSDEC does not disclose information protected by §14.07 of the Parks, Recreation and Historic Preservation Law, or otherwise sensitive

archeological and cultural resources information unless permissible by law.

Project Ghent argues that the Applicant should be compelled to certify it has inventoried the relevant sites, and to provide parties with a summary of how many sites it has located, and their characteristics. NYSEG responds that it has provided this summary data.

The Proposed Waiver of 16 NYCRR §86.3(a)(2)

§86.3(a) (2) requires the Applicant to submit, with the Application:

(2) New York State Department of Transportation maps (scale 1:250,000) showing the relationship of the proposed facility to the applicant's overall system with respect to: (i) the location, length and capacity of the proposed facility, and of any existing facility related to the proposed facility; (ii) the location and function of any structure to be built on, or adjacent to, the right-of-way; (iii) the location and designation of each point of connection between an existing and proposed facility; and (iv) nearby, crossing or connective rights-of-way or facilities of other utilities.

NYSEG states that the referenced mapping does not appear to be available. The Applicant asserts that Figure 2-2 of the Application documents, based on USGS 1:250,000 scale topographic maps presented at a scale of 1:250,000 (1 inch equals approximately 4 miles), illustrates the proposed facilities in conjunction with other components of the existing systems of the Applicant and others, and that it provides the information required by 16 NYCRR §86.3(a)(2)(i)-(iv). DPS Staff supports this waiver request and states that the figure provided is an acceptable substitute. NYSDEC does not oppose this waiver request provided Applicant provides the GIS Shape files including the information and resources specified in the regulations.

The Proposed Waiver of 16 NYCRR §86.3(b)(1)(iii)

The regulations require the Applicant to provide:

[b]lack-and-white or color aerial photographs of such coverage to show at least 1,200 feet on each side of the proposed right-of-way, and of such scale and enable discrimination and identification of all natural and cultural features. Such aerial photographs shall include overlays ... (iii) showing the location of access and maintenance routes.

NYSEG requests a waiver of this provision asserting that, because this project is in the conceptual design phase, the exact locations of access and maintenance are not yet known with certainty. The Applicant offers to provide this information in the plans and profile drawings of the Environmental Management and Construction Plan (EM&CP), for approval with the EM&CP. The EM&CP is finalized subsequent and pursuant to the approval of the route, and details the site-specific environmental protection requirements.

Staff opposes this waiver request in part. Staff concedes that site-specific details, including access for the cross-country portions of the facility, will be further developed during the certification proceeding. Staff notes, however, that the facility is proposed to share right-of-way with existing electric transmission facilities owned by the Applicant for a distance of nearly 3.5 miles. It asserts that NYSEG is therefore able to show locations of existing access roads to or along that portion of the existing right-of-way.

Staff also points out that the Applicant has requested waivers of municipal road design standards for the permanent access needed for construction and operation of the proposed Ghent Switching Station. Staff asserts that the relevant locations should be designated on revised figures and that mapping showing existing access roads to or along the existing National Grid right-of-way to the proposed tap point for the

Ghent Switching Station should be provided to facilitate review of the application.

New York State NYSDEC opposes this portion of the motion. It would, however, accept GIS Shape files as specified showing the dimensions and location of access and maintenance roads along the primary route location. NYSDEC notes that the environmental impacts of construction and use of access and maintenance roads can potentially impose significant adverse environmental impacts, particularly if occurring in or near wetlands or other sensitive resource areas. As to those portions of the proposed right-of-way shared with existing NYSEG-owned facilities, NYSDEC sees no justification for not showing the location of access and maintenance roads. As to the balance of the proposed route, it asserts NYSEG should be able to anticipate the need for and location of additional access roads.

NYSDEC supports the Staff request that the Applicant show the relevant locations of permanent access roads for the Ghent Switching Station and existing access on the National Grid right-of-way. On the ground that NYSEG has requested waivers of municipal road design standards relevant to the proposed Switching Station, NYSDEC requests that relevant locations should be designated and that mapping should be provided showing existing access to the National Grid right-of-way to the proposed tap point for the Ghent Switching Station. Project Ghent concurs with Staff and NYSDEC, and urges that the impacts of access roads should be considered prior to the granting of a Certificate of Environmental Compatibility and Public Need and not postponed until the EM&CP phase.

The Proposed Waiver of 16 NYCRR §86.4(b)

This provision requires the Applicant to, "on New York State Department of Transportation maps, indicate any alternative route considered."

NYSEG requests a waiver of this requirement on the ground that Figure 3-3 of the Application effectively shows the alternative routes for proposed Circuit 726 and an alternative location for the proposed Ghent Switching Station on aerial photography provided by Leading Edge Geomatics in November 2011 and by Leica Geosystems for the USDA National Agriculture Imagery Program in May and October 2011. NYSEG asserts that these aerial photographs are preferable representations of the existing conditions in these areas.

Staff supports this waiver request because the NYSDOT maps are no longer available. Staff concurs that Figure 3-3 of the Application effectively shows the alternative routes for proposed Circuit 726 and the alternative locations for the proposed Ghent Switching Station via aerial photography.

Generally NYSDEC does not object to the waiver requests provided that all pertinent information is included on the alternative maps, and that NYSEG provides the agency with GIS Shape files for the proposed facility location and alternative routes. NYSDEC requests GIS Shape files in a specific format to allow parties to use the files in coordination with NYSDEC's State GIS databases.⁴ Project Ghent, a membership organization of landowners and business owners along the proposed route, also generally concurs with the positions of Staff and NYSDEC.

NYSDEC supports Staff's preference for the submission of USGS 2011 edition topographic quadrangles based on

⁴ The format specified is Projected Coordinate System:
NAD_1983_UTM_Zone_18N Projection: Transverse_Mercator.

orthophotography, specifying that the USGS Maps should include the information and resources specified in the regulations.

Project Ghent agrees that the

Applicant should provide the relatively current (USGS 2010 edition) topographic quadrangles based on orthophotography

The Proposed Waiver of 16 NYCRR §88.4(a)(4)

16 NYCRR §88.4(a)(4) requires the Applicant to provide:

appropriate system studies, showing expected flows on the line under normal, peak and emergency conditions, including the system reliability impact study by the Transmission Planning Advisory Subcommittee for approval by the operating committee of the New York Independent System Operator, which shows effects on stability of the interconnected system.

NYSEG requests a waiver of the requirement that it provide a System Reliability Impact Study, asserting that a System Impact Study is the appropriate study for a transmission project of this type. However, NYSEG asserts, a System Impact Study is required only if minimum changes in transfer limits on each of the interfaces would result from the project. NYSEG asserts that the New York Independent System Operator (NYISO) requirements provide that no System Impact Study is necessary if the changes in transfer limits were 10 MW or less on each of the interfaces. NYSEG avers that in consultation with National Grid and the NYISO, it confirmed that changes on the interface were less than 10 MW and, for the interfaces most affected by this project, less than 6 MW, and that therefore no System Impact Study is required.

Staff does not oppose the grant of this waiver, but requests that NYSEG be required to provide the relevant documentation and correspondence with the NYISO. NYSEG responds that it concurs with Staffs' request for additional

documentation. Project Ghent urges us to compel the Applicant to produce all relevant correspondence and other communication with the NYISO and National Grid and to reserve judgment on this aspect of the waiver motion inasmuch as the issue of the need for a System Reliability Impact Study may be the subject of litigation in the Article VII proceeding.

II. THE NYSDEC COUNTERMOTION

In addition to filing its comments on the NYSEG motion for waiver of specific filing requirements, NYSDEC in effect counter-moves as to two issues, supported by the Town of Ghent and Mr. Benjamin Swett.

The first issue concerns the Stormwater Pollution Prevention Plan to be developed pursuant to New York State Environmental Conservation Law (ECL) Article 17. NYSDEC references Application language to the effect that the erosion control section of the Project's EM&CP would fulfill the NYSDEC requirement for submission of a Stormwater Pollution Prevention Plan. While NYSDEC does not object to the incorporation of the plan into the EM&CP, the agency's position is that this plan must be clearly identifiable and exist as an independent legal document to fulfill the legal requirements under the ECL. NYSEG responds that NYSDEC's motion does not actually seek relief from the Commission on this issue, but represents a statement of the NYSDEC position on the relationship between the stormwater permit process and the EM&CP.

The second issue concerns a NYSDEC request for additional information, in reference to the Secretary's June 22, 2012 letter advising NYSEG that its Application does not comply with Public Service Law (PSL) §122 and requesting additional information. In effect, NYSDEC requests that the additional information it requests should be required prior to the

Secretary accepting the Application as complete. NYSDEC seeks additional studies on noise impacts, selective clearing of vegetation along and adjacent to the right-of-way, and invasive species. NYSEG responds that Commission regulations do not provide for other agencies to request additional information prior to a Secretary finding of compliance, that the issues raised are properly discovery issues to be resolved in the course of the proceeding, and that undue delay could result from adding to the Secretary's list of required additional information.

III. DISCUSSION AND CONCLUSIONS

With respect to the motion to waive 16 NYCRR §§86.3(a)(1) , (2), and §86.4(b), in view of the availability of effective substitutes as identified by Staff for the unavailable DOT maps and other information, the NYSEG waiver request is reasonable and is granted. NYSEG will provide this information as indicated and in the formats requested by Staff. With respect to the specific location of archeological resources, NYSEG will provide that information to parties pursuant to a motion for confidentiality and a protective order issued by the administrative law judge in this proceeding.

As to the requested waiver of 16 NYCRR §88.4(a)(4), the motion is only granted conditionally. A full System Reliability Impact Study is required by the NYISO for proposed transmission facilities expected to affect the transfer capacity of one or more transmission interfaces by 80 MW or more. A System Impact Study would be required only if certain minimum changes in transfer limits on each of the interfaces would result from the project. The NYISO requirements provide that no System Impact Study is necessary if the changes in transfer limits are 10 MW or less on each of the affected interfaces.

NYSEG avers that, based on its consultations with National Grid and the NYISO, no System Impact Study is required. However, an unsupported assertion regarding calculations by the NYISO provides an insufficient basis to waive this requirement. Therefore NYSEG is hereby directed to provide documentation of its correspondence and any other records of its consultation with the NYISO on the issue of a System Reliability Impact Study or a System Impact Study no later than November 1, 2012. NYSEG states on reply that it is preparing this documentation. Upon its filing of sufficient documentation in compliance with this order the condition will be fulfilled and the waiver will be granted.

With respect to the motion to waive 16 NYCRR §86.3 (b)(1)(iii), NYSEG's argument is persuasive as to those locations where access and maintenance locations are unknown at this point in the certification process. However, Staff's position is correct, that the Applicant should identify existing access roads to or along certain portions of the proposed route where the facility is proposed to share right-of-way with existing electric transmission facilities owned by the Applicant for a distance of nearly 3.5 miles. Staff is also correct that where the Applicant has requested waivers of municipal road design standards for the permanent access needed for construction and operation of the proposed Ghent Switching Station, those relevant locations should be designated on revised figures and that mapping showing existing access roads to or along existing National Grid right-of-way to the proposed tap point for the Ghent Switching Station should be provided to facilitate review of the application. Accordingly, the motion is granted in part, as to the undefined access and maintenance locations, and denied as to those already in place along existing rights-of-way and those identified in request for

waivers of municipal road design standards related to the proposed Ghent Switching Station.

With respect to the NYSDEC countermotion concerning the interplay between the required Stormwater Pollution Prevention Plan and the EM&CP, and its interest in the provision of additional studies and data by the Applicant, these concerns are appropriately resolved in the litigation of this proceeding after the acceptance of the Application as complete. The NYSEG motion for waiver of certain regulation requirements pursuant to Commission Rule of Procedure 3.3(c) pertains to the mandatory filing requirements in an Article VII proceeding. The issues of concern to NYSDEC should be explored and resolved in the course of this proceeding, not in this preliminary phase, and therefore the NYSDEC countermotion is premature. This conclusion is without prejudice to the eventual outcome of this litigation on those issues.

The Commission orders:

1. The May 25, 2012 motion of New York State Electric & Gas Corporation to waive certain of the filing provisions set forth in our regulations, specifically as to the requirements of 16 NYCRR §§86.3(a)(1) and (a)(2), and 86.4(b), is granted subject to its submission of substitute data, as discussed herein.

2. The motion to waive the requirements of 16 NYCRR §86.3(b)(1)(iii) is granted in part and denied in part. The Applicant is not required to show the possible locations of access roads for the cross-country portions of the facility. The Applicant is, however, required to show the locations of existing access roads to or along those portions of the existing right-of-way shared with existing transmission facilities, both its own and those of National Grid, and those designated in the

Applicant's request for waivers of municipal road design standards related to the proposed Ghent Switching Station.

3. The motion to waive the requirements of 16 NYCRR §88.4(a)(4) is only granted conditionally. NYSEG is hereby directed to provide documentation of its correspondence and any other records of its consultation with the NYISO on the issue of a System Reliability Impact Study or a System Impact Study no later than November 1, 2012. Upon its filing of sufficient documentation in compliance with this order the condition will be fulfilled and the waiver will be effective.

4. The countermotion of NYSDEC seeking an order to require the Applicant to provide additional information is dismissed as premature.

5. The deadlines provided for in this Order may be extended by the Secretary at her discretion.

6. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary