

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on June 19, 1996

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Harold A. Jerry, Jr.
William D. Cotter
Thomas J. Dunleavy

CASE 96-G-0365 - Petition of New York State Electric & Gas Corporation for Approval, Pursuant to Section 68 of the Public Service Law, for the Exercise of a Gas Franchise in the Towns of Plattsburgh and Saranac, the Village of Dannemora and the City of Plattsburgh, Clinton County.

ORDER GRANTING
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued and Effective July 31, 1996)

BY THE COMMISSION:

INTRODUCTION

By petition filed April 22, 1996, New York State Electric & Gas Corporation ("NYSEG" or "company") sought our approval, pursuant to §68 of the Public Service Law, to construct gas plant and exercise gas franchises granted to it by the Towns of Plattsburgh and Saranac, the Village of Dannemora and the City of Plattsburgh, Clinton County. The Town of Plattsburgh granted NYSEG the right to construct and operate a gas line through the town to serve the neighboring Town of Saranac and the Village of Dannemora; however, it did not grant the utility the right to distribute gas throughout the Town of Plattsburgh. Appendix A is a map depicting the proposed franchise areas.

NYSEG also moved for expedited consideration of its uncontested application, pursuant to 16 NYCRR §21.10. As required by that section, NYSEG published a notice of its motion in a local newspaper of general circulation. No objection to the motion has been received, and we will grant it.

DISCUSSION

Description of the Franchise Application

NYSEG is proposing to construct a pipeline along a designated route through the franchise areas to supply gas to six (6) large volume interruptible, 11 commercial and 42 residential customers. Gas supplies would come from Alberta, Canada and be transported to the Plattsburgh area under existing firm and interruptible transportation contracts with TransCanada Pipelines Limited and North Country Gas Pipeline Corporation.

Interruptible sales service rates have been established for five of the large volume customers and negotiations are ongoing with a sixth. Minimum annual contract quantities were also agreed to for a five-year period. NYSEG proposes to finance the conversion costs of three of the large volume customers with a \$437,000 loan^{1/} that would be reimbursed, along with associated carrying costs, through the net revenues generated from sales to these customers at the predetermined contract rates.

NYSEG would provide service to the firm customers under two service classifications: S.C. 1 (residential sales service) and S.C. 2 (commercial sales service). NYSEG is proposing to use its current P.S.C. No. 82 combined districts base rates in the new areas.

^{1/} In Case 29017, NYSEG was authorized, under Section 107 of the Public Service Law, to use utility revenues to finance the conversion of its customers' facilities to permit the use of natural gas as a fuel.

The project would consist of 135,930 feet (25.7 miles) of various-sized steel and plastic main, three district regulator stations, and a metering and regulator station. Total plant cost is estimated at \$5.3 million.

Gas Supply and Requirements

In 1992, NYSEG acquired 8,100 dekatherms per day (dt/day) of firm pipeline capacity on TransCanada Pipelines Limited (TCPL) that was intended to serve firm load in the Plattsburgh area. The franchises were not obtained at that time, however, and the company diverted 4,500 dt/day of firm transportation capacity from the north country area (i.e., the NYSEG franchise areas served by North Country Pipeline) to an interconnection with Tennessee Gas Pipeline at Niagara Falls. The remaining 3,600 dt/day of capacity is dedicated to serving the requirements of the north country firm customers, who have a demand of 371 dt/day, and interruptible loads. This allowed NYSEG to bring lower cost Canadian supplies to the Lockport and Geneva districts, to mitigate the cost associated with existing upstream capacity on Tennessee and CNG Transmission by selling it on the secondary market, and to keep interruptible load on its system for longer periods of time. Now that the franchises in the north country have been granted, the company plans to shift the 4,500 dt/day capacity back to its original purpose, although initially it will assign only a small portion of the TCPL cost to the new area commensurate with the new firm load there.

An argument can be made for assigning all or a portion of the cost of the TCPL capacity to this new franchise. We have not been able to resolve the question of the assignment of the TCPL capacity cost as it requires an extensive evaluation of load/capacity issues. Rather than delay the expansion pending resolution of this issue, the company agrees that it will assume all risk of the proposed expansion. With this caveat, and given NYSEG's assertion that a delay in processing its petition would

adversely affect its ability to obtain other environmental approvals in time to supply gas this winter, we will allow the project to proceed subject to certain conditions.

Franchise Expansion Policy

On December 11, 1989, we issued a Policy Statement^{1/} regarding the rate treatment afforded the expansion of gas service into new franchise areas. This statement establishes, among other things, that if a new franchise proposal is projected to earn the allowed rate of return by the fifth year, all investments and revenues would be afforded normal rate treatment.

Economic Feasibility

NYSEG's economic analysis shows that the project would exceed the company's allowed rate of return (9.25%), earning 13.80% by year two and 15.53% by year five. The company's economic feasibility analysis utilized an incremental, rather than traditional (embedded), cost methodology for calculating net margin.

The utility's favorable economic analysis is based on the assumption that interruptible customers are fully incremental to the system and, therefore, no capacity costs are allocable to their service. However, those customers may utilize valuable capacity that might otherwise be excess. If it is excess, NYSEG could either release this capacity (and possibly lower costs to existing customers), or allocate a portion to serve the needs of the expansion. If it chooses the latter, the resultant economics of this expansion do not satisfy our current policy. As already discussed, resolution of this complex issue will take time, and NYSEG has agreed to proceed at its own risk before our staff's analysis of the issue is completed. It is within the context of

^{1/} Case 89-G-078, In the Matter of the Formulation of a Policy Regarding the Rate Treatment Afforded to Expansion of Gas Service into New Franchise Areas, Statement of Policy Regarding Rate Treatment to be Afforded to the Expansion of Gas Service into New Franchise Areas.

this agreement by NYSEG that we are granting this certificate. Thus, the company's shareholders assume all risk for the project, including plant investment costs related to non-core load and costs associated with the gas supply and capacity needed to serve the load.

We note that sales to the six large volume interruptible customers will account for 96% (\$1,281,374) of the projected net revenues of \$1,333,974 in year five. Our policy on expansions contemplates approval if the rate of return on investment to serve new customers is expected to meet or exceed the system average authorized return, an assumption that might not be supportable when interruptible loads are involved. Where, as here, most of the new loads are interruptible and served under five-year contracts, recovery of the investment after year five should not be shifted to other customers. For revenues from non-core customers, we approved a term in the multi-year settlement filed in NYSEG's last rate proceeding (Case 95-G-0427) that provides as follows (Opinion No. 95-19, Appendix A, Page 10):

12. Non-Core Revenue Imputation

In determining NYSEG's revenue requirement, a revenue imputation of approximately \$3 million per year has been made for flexibly-priced Non-Core services. In recognition of this adjustment, there will be no margin sharing on any net revenues (above the imputation level) NYSEG may obtain from flexibly-priced Non-Core customers. In further recognition of the Non-Core Revenue Imputation, NYSEG shall be at risk for recovering the cost of all incremental investment dedicated to serve Non-Core customers, and shall be permitted to establish appropriate depreciation rates for the recovery of such investment costs.

NYSEG's core customers are protected from the risk of attaching these interruptible sales customers during the pendency of the settlement agreement (i.e., through July 31, 1998). During the first five years, all interruptible customers will be

under contract with minimum take-or-pay volumes. The company agrees to take all risk associated with this expansion so that there will be no increases to core customers' rates as a result of adding interruptible/non-core load.

Service to Village of Dannemora

The February 19, 1992 franchise agreement with the Village of Dannemora ("Village") provides as follows:

NYSEG shall make natural gas available along the road or street adjacent to any dwelling within the political boundaries of the Village upon receipt of written request of the owner of the dwelling (the "Customer").

NYSEG shall construct the facilities within the streets and roads of the Village which are necessary to provide gas service to all Customers within the political boundaries of the Village existing on the date of this resolution within seven (7) years from the date of this resolution. (Agreement page 3, paragraphs 4 and 5).

NYSEG's petition contemplates constructing a pipeline principally along one road in the Village that leads to the premises of a large volume customer, the Clinton Correctional Facility. Thus, service would initially be provided only to the prison and a few residential customers.

The language contained in the Village of Dannemora franchise agreement appears to require NYSEG to attach any customer requesting service, without restriction, by the year 1999. We note that similar language was not incorporated into the other franchise agreements contained in NYSEG's petition. The language is not consistent with our guidelines for economic expansions (reflected in the company's tariff provisions governing the installation of mains and services), which generally require surcharges for plant investments in excess of 100 feet of main and/or 100 feet of service lateral for space heating customers (additional footage is also permitted if economical).

In order to avoid any confusion, we will require NYSEG to notify the Village in writing about the potential inconsistency between the franchise agreement and NYSEG's tariff. In the alternative, NYSEG may choose to absorb the costs that would otherwise be recovered through surcharges in the event that customer attachments fall short of yielding the system average rate of return by the fifth year of expansion.

Execution of Large Volume Customer Contracts

Our staff requested that NYSEG provide copies of the gas service contracts it negotiated with the large volume interruptible sales service customers. NYSEG provided five such contracts, noting that negotiations with a sixth potential customer (Bouyea Bakery) are continuing. This customer would account for less than 2% of annual net revenues from the project, and therefore, is not critical to the project's economic viability.

However, contracts with two customers, the Clinton Correctional Facility and the State University of New York College at Plattsburgh (SUNY Plattsburgh), accounting for 59% of net revenues in year five, have not as yet been fully executed. Each contract is attached to a letter from the customer noting that the signature of the New York State Comptroller must still be obtained. Since those two customers would generate a significant portion of expected revenues from the project, we will require that NYSEG receive fully executed contracts before construction of pipeline segments necessary to provide them service may begin. If NYSEG begins construction of the project without having fully executed contracts for both customers, it shall assume the associated risk.

Contract Terms with Interruptible Customers

All of NYSEG's agreements with the project's large volume customers contain language regarding the price to be paid by the customer if the average commodity cost of gas rises above \$1.90/dekatherm (dt). The rate will be increased by 50% of the

amount the cost rises above \$1.90/dt up to \$2.10/dt, and increased further by 100% of any rise above \$2.10/dt. With the exception of the SUNY Plattsburgh contract, each contract also contains a "mirror" provision in the event gas costs fall (i.e., the rate will be decreased by 50% of the amount the cost falls below \$1.90/dt down to \$1.70/dt, and decreased further by 100% of any drop below \$1.70/dt). Any differences between \$1.90/dt and the \$0.20/dt sharing band shall be absorbed by NYSEG.

Environmental Quality Review

We assumed lead agency status pursuant to the State Environmental Quality Review Act (SEQRA) and its implementing regulations (6 NYCRR Part 617). Pursuant to those regulations, and in order for us to make our SEQRA findings and decision, the applicant must submit a description, analysis, and Full Environmental Assessment Form (EAF) for the entire proposed action. Except for the Saranac River crossing, which is discussed below, we have received adequate information for the initial construction, but not for the entire franchise area. While NYSEG has committed to limit construction, where practical, to previously disturbed areas within road and utility rights-of-way (ROW), without complete information we are unable to adequately assess probable environmental impact for the requested franchises. However, we can assess impact for the initial service construction.

The information provided by NYSEG includes a written project description and environmental analysis, a facility routing map, a Full EAF, a checklist of construction and environmental protection measures pursuant to staff's approved Environmental Management & Construction Standards & Practices (EM&CS&P), and a large scale environmental sensitivities map covering the requested franchise area. Our staff has visited the initial construction route accompanied by NYSEG personnel.

The proposed construction consists of approximately 25.7 miles of 4- to 10-inch steel and plastic gas main installed primarily in road shoulder and grass strip within roadway,

railroad, and utility ROW. The facility extends from the Plattsburgh Metering and Regulating (M&R) Station into the City of Plattsburgh, then westward through the Towns of Plattsburgh and Saranac, and northward into the Village of Dannemora. The environmental sensitivity maps locate sensitive resources along the route; they include several historic sites in the City of Plattsburgh, specialty agriculture (orchards), protected streams and wetlands, floodplains, community water supplies, significant habitats, and recreation areas. Major resources include the Saranac River within the Plattsburgh city limits and the Adirondack Park, whose boundary coincides with the Town of Saranac boundary.

The M&R station consists of a 12-foot by 16-foot building, a 750,000 BTU natural gas heater with a 15-foot tall exhaust stack, and above ground piping. The setting, however, is industrial, located within an existing fenced area of the North Country Pipeline facilities, adjacent to the Falcon-Seaboard generating plant. There would be no adverse impact on this site. Heading north, the line parallels a railroad ROW in brushland and through an isolated edge of a protected shrub wetland. With appropriate construction techniques, permanent impact would be minimal, and DEC would require NYSEG to obtain a permit before constructing through this wetland.

After crossing under the Northway (I-87), the line turns west through the northern portion of the City of Plattsburgh and into the Towns of Plattsburgh and Saranac. Along this stretch, the line is located primarily in the grass strip within the ROW of Tom Miller Road, NYS Route 3, and Buck Corners Road. At Ryan Road, the line branches north into the Village of Dannemora while another line continues south to the Saranac High School near Picketts Corners. Along this stretch, the line switches from one side of the road to the other in several locations to avoid difficult terrain or construction problems. The route passes several protected wetlands but generally avoids direct intrusion. Minor deviations off ROW into these wetlands would have minimal impact. The route crosses

several small unprotected and one protected C(t) stream--Behan Brook, in the Town of Saranac. At these locations, the line will deviate off road ROW to suitable crossing locations. Most of these streams will be crossed using a "wet" trenching method in accordance with the EM&CS&P. Depending upon flow conditions during construction, Behan Brook will be crossed using a "dry" method; a DEC permit will be required. We find these stream crossing plans adequate to protect the resources. The orchards and community water wells along the route will not be affected.

An above-ground regulator and relief valve facility will be located along NYS Route 3 near Cadyville. The regulator will be enclosed in a 4-foot cube box structure and the 8-foot tall relief valve in a 4-foot square fenced area about 50 feet from the regulator. The visual intrusion in this setting will not be significant.

Within the City of Plattsburgh, the line will be located in either pavement or the grass strip between sidewalk and pavement. Special care will be taken to avoid or bore threatened tree roots of significant street trees encountered at roadway edges. However, removal of some of these trees is likely, and they should be replaced with compatible nursery stock of 2 to 2½ inch caliper. Several historic sites listed on the National Register of Historic Places are located within 500 feet of the initial construction. These are: the MacDonough Monument at City Hall Place; St. John the Baptist Roman Catholic Church and Rectory at 20 Broad Street; and the Fort Brown site at US Route 9 and Elizabeth Street. The line will not permanently affect these sites, although construction will temporarily disturb St. John's church.

NYSEG has proposed to cross the Saranac River with an overhead box truss structure. This structure would be approximately 7 feet wide by 7 feet high, or less, and 155 feet long, suspended about 14 feet above the normal high water elevation. The company has advised that it would build the structure on concrete moorings located outside the ordinary high water mark. The site is located behind an active industrial

facility with adjacent crossings of overhead electric transmission facilities and a US Geological Survey cable. We are concerned that this type of crossing could have long-term visual impacts. The company has not described any combined alternative overhead crossing with adjacent overhead structures such as the nearby pedestrian or other bridges, nor has it described a typical underground river crossing nor other alternatives. Therefore, we will not approve the proposed overhead crossing of the Saranac River. NYSEG will be required to file an alternative crossing on an existing structure to reduce visual impacts and a supplemental EAF for the alternative crossing and associated pipeline. NYSEG is expected to obtain appropriate public input concerning its alternative crossing proposal(s). Included with this alternative should be a revised economic analysis showing the impact of the alternative crossing on rates of return for this project.^{1/}

A second regulator/relief valve site would be located in this vicinity behind the C&A Wallcoverings Plant. A third is planned along Cornelia Street near the CVPH Hospital. Visual impacts of these valves will not be significant.

A 15-foot permanent and 35-foot temporary construction ROW would be needed in three locations: 1,600 feet along the railroad embankment north of the M&R station; 1,530 feet parallel to the Falcon Seaboard fenceline in the City of Plattsburgh; and 1,000 feet parallel to the MLD Transmission Line near the overhead crossing of the Saranac River. Otherwise, the facility will be located in highway ROW, with minor deviations as discussed above.

The most noticeable impact, other than the proposed Saranac River crossing, will be in the form of temporary disruptions to traffic during construction. NYSEG will obtain

^{1/} The company has supplied staff with work papers showing that the project would be economical, using the same basis contained in the original filing, with alternative river crossings. If NYSEG begins construction prior to receiving our approval of the Saranac River crossing, it shall assume the risk of the project's economic viability.

necessary permits and adhere to construction and traffic control standards of the NYS Department of Transportation and applicable town and county regulations.

Since the initial construction would be located primarily on previously disturbed ROW, the potential for archaeological disturbance is minimal. However, deviations from disturbed areas could disturb these resources. Should artifacts be discovered, construction will be halted and the NYS Office of Parks, Recreation, and Historic Preservation will be notified.

Except for those above-ground facilities noted above, visual and land use impacts would be limited to the construction period and be temporary in nature.

Based on our review of the environmental information and analysis provided by NYSEG, our staff's field assessment, and the construction techniques the company has committed to employ, we conclude that the initial service construction, with the exception of the Saranac River crossing which we are not approving pending the submission of information on an alternative crossing, would not have a significant environmental impact. We cannot, however, reach the same conclusion regarding the entire franchise area without receiving additional environmental information from NYSEG on those areas where no construction plans have been filed. We will therefore allow NYSEG until the end of 1996 to submit an EAF for the remainder of the petitioned franchise areas if the company desires Commission action on those portions. We will also require NYSEG to adhere to staff's approved EM&CS&P, and that a full-time supervisor be responsible for overseeing project construction and restoration. Having received no objections within the 30-day comment period, we assumed Lead Agency status for the purposes of the SEQRA review on June 1, 1996. Based on the foregoing environmental review and the necessity for NYSEG to obtain local and state permits, we have determined that an Environmental Impact Statement need not be prepared, and a DETERMINATION OF NON-SIGNIFICANCE for this Type 1 action, pursuant to 6 NYCRR Part 617 is attached.

CONCLUSION

A hearing having been held on June 19, 1996, we find, pursuant to §68 of the Public Service Law, that the exercise by NYSEG of the gas franchises granted to it by the Towns of Plattsburgh and Saranac, the Village of Dannemora, and the City of Plattsburgh, together with the gas plant described in its petition and in this Order, is necessary and convenient for the public service.

The Commission orders:

1. The Motion for an Expedited Proceeding on a noncontested application made by NYSEG is granted.

2. A Certificate of Public Convenience and Necessity is granted to NYSEG, pursuant to §68 of the Public Service Law, to permit it to exercise the gas franchises granted to it by the Towns of Plattsburgh and Saranac, the Village of Dannemora, and the City of Plattsburgh, and to construct the gas plant necessary to render service in such areas, subject to the following conditions:

- (a) The company shall properly apply all applicable measures and techniques contained in staff's approved Environmental Management and Construction Standards and Practices (EM&CS&P), particularly covering: erosion and sediment control; replacement of pavement, driveways, sidewalks, and lawns; and specifications for boring or trenching through shade trees and limbing procedures. Protective measures for tree roots and trunks inside or outside road rights-of-way shall be applicable to all current and future construction.
- (b) The company shall designate a full-time supervisor with stop-work authority over all aspects of this project. This supervisor shall, at a minimum: review construction procedures with on-site personnel and verify that protection measures are

properly installed prior to the start of construction; check on construction progress at least once daily and be in radio or phone contact with on-site personnel at other times during construction; and take the necessary steps to secure compliance with this Order and promptly report to staff any violations of the EM&CS&P.

- (c) Construction shall be limited to work within road, highway, or utility rights-of-way with deviations of up to 100 feet for connections to regulator stations and around bridge abutments or culverts; service laterals may extend 1000 feet. Beyond these distances, site specific justifications must be submitted to staff.
- (d) All significant ornamental plants and shade trees disturbed or removed by construction shall be maintained or replaced with landscape material of comparable (where possible) or significant size, consistent with operational requirements. Such replacements shall be monitored, maintained and guaranteed through the first growing season.
- (e) The company, or qualified consultant, shall conduct an archaeological survey for project areas located in undisturbed ground that is beyond road or utility rights-of-way and ditches opened by others. A copy of the report shall be filed with the Commission and the Office of Parks, Recreation and Historic Preservation (OPRHP). Should artifacts be uncovered during construction, those activities shall be halted and the OPRHP notified.
- (f) Prior to construction, the company shall obtain all necessary permits and file copies with the Commission. All construction and restoration activities shall be in compliance with state and local laws and regulations.

- (g) The company shall dispose of spoil only at sites approved by the NYS Department of Environmental Conservation and in accordance with 6 NYCRR Sub-Part 360-7; in no case shall spoil be disposed of in streams or wetlands.
- (h) The company shall notify staff in advance of any proposed change in routing or construction methods, either orally or in writing, and make no changes without staff approval.
- (i) Within ten days after the right-of-way has been completely restored, the company shall notify the Commission in writing.
- (j) The exercise of the franchise will be limited to the initial construction described in the petition, until such time the company provides, and the Commission approves, an environmental assessment for the remainder of the franchise areas, and as described in Clause (k) below.
- (k) The overhead truss bridge crossing of the Saranac River is not approved. NYSEG shall file an alternative river crossing as described in this Order. For the segment of the pipeline that is proposed to lead to the Saranac River crossing, NYSEG shall construct no further than necessary to serve SUNY Plattsburgh pending Commission approval of the Saranac River crossing.

3. Regarding the Village of Dannemora franchise agreement, NYSEG is to notify the Village in writing about the inconsistency between the franchise agreement language and NYSEG's tariff language regarding the installation of mains and services. In the alternative, NYSEG may choose to absorb the costs that would otherwise be recovered through surcharges in the event that customer attachments fall short of yielding the system average rate of return by the fifth year of expansion.

4. NYSEG is to receive fully executed contracts for service from the Clinton Correctional Facility and the State

University of New York College at Plattsburgh before construction of pipeline segments necessary to serve them may begin.

5. As part of the company's response to Order Clause No. 2(k) above, NYSEG shall provide revised economic analyses showing the impact on rates of return as described in this Order.

6. Prior to the commencement of construction or within thirty (30) days of the issuance of this Order, whichever is first, NYSEG shall file with the Commission an unconditional acceptance of this Order agreeing to obey all the terms, conditions and requirements of this Order. If such acceptance is not so filed within a period of 30 days from the effective date of this Order, this Order may be revoked by the Commission without further notice.

7. If construction is not commenced within eight months after issuance of the Certificate, the Certificate may be vacated without notice.

8. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 96-G-0365 - Petition of New York State Electric and Gas Corporation for Approval, Pursuant to §68 of the Public Service Law, for the Exercise of a Gas Franchise in the Towns of Plattsburgh and Saranac, the Village of Dannemora and the City of Plattsburgh, Clinton County.

NOTICE OF DETERMINATION
OF NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the limited exercise of gas franchises, earlier granted to New York State Electric and Gas Corporation (NYSEG) by the City of Plattsburgh, Towns of Plattsburgh and Saranac, and Village of Dannemora. This is based on our determination, in accordance with Article 8 of the Environmental Conservation Law, that such action, which is limited to the initial construction described in the petition and does not include the Saranac River crossing, will not have a significant adverse effect on the environment. The exercise of this approval is a Type 1 Action, as defined in 6 NYCRR §617.4(b)(6)(i), because the initial project involves construction affecting over 10 acres.

Based on its review, the Commission finds that the proposed initial construction, except for the Saranac River Crossing, for which it has received environmental information would not have a significant adverse environmental impact. In addition, the Commission will impose conditions in the Certificate of Public Convenience and Necessity that would minimize any potential impacts.

The address of the Public Service Commission, the lead agency for purposes of the Environmental Quality Review of this project, is 3 Empire State Plaza, Albany, New York 12223-1350.

JOHN C. CRARY
Secretary