

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Case 12-T-0248 - Application of New York State Electric & Gas Corporation for a Certificate of Environmental Compatibility and Public Need for 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

Reply of New York State Electric & Gas Corporation  
To Counter-Motion of the  
New York State Department of Environmental Conservation

On May 25, 2012, New York State Electric & Gas Corporation (“NYSEG”) filed with the Secretary of the Public Service Commission its application in the above-referenced case for a certificate of environmental compatibility and public need under Article VII of the Public Service Law for the Columbia County Transmission Project, a project needed to provide for the continuation of reliable electric service to residents of the area where the project would be constructed. Together with its application, NYSEG filed a Motion for Waivers of Application Requirements, asking that the Commission waive certain of its regulations on what must be included in an Article VII application for a major electric transmission facility. In its motion, NYSEG explained why those waivers were required and what information NYSEG proposed to provide in lieu of the information required by the regulations.

The Department of Public Service Staff designated to serve as trial staff in this proceeding (“Staff”) filed a response to NYSEG’s motion on July 23, 2012. Staff’s response generally supported the granting of NYSEG’s motion, but asked that NYSEG: (i) consider using USGS 2010 edition topographic quadrangles based on orthophotography rather than the traditional topographic quadrangles; (ii) that NYSEG be required to show on its aerial photographs the location of existing access roads where NYSEG’s proposed facility would share right-of-way with NYSEG’s existing Circuit 984 and where the existing access is on the National Grid right-of-way to the proposed tap point for the Ghent Switching Station; and (iii) that

NYSEG be required to provide documentation and correspondence with the New York Independent Operator concerning why a system impact study is not required for the proposed facility. NYSEG does not object to Staff's suggestions and proposed requirements, and has already begun preparing documents to address them.

On August 8, 2012, the New York State Department of Environmental Conservation ("DEC") filed with the Commission a document containing three headings: "NYSDEC Comments on Motion for Waiver of Application Requirements," "Stormwater Pollution Prevention Plan (SWPPP)," and "NYDEC Request for Additional Information." Although NYSEG disagrees with the DEC's Comments on Motion for Waiver of Application Requirements, which would require NYSEG to provide, in order to have its application deemed complete, documents far beyond those required by the Commission's regulations, or information, such as the location of access roads on new right-of-way, which cannot reasonably be determined until the facility is in the final design stage, NYSEG concedes that those comments are a response to NYSEG's motion. (NYSEG wishes to point out, with respect to DEC's first comment on NYSEG's request for waivers, that in response to the Commission Secretary's Request for Additional Information Item R, NYSEG is already in the process of providing GIS shapefiles of all developed data, although the shapefiles are being provided in New York State Plane East Zone projection and not in the UTM projection requested by DEC. These GIS shapefiles will show the areas to be cleared for the Project. Also, with respect to DEC's second comment, NYSEG will be providing, as a replacement for Figure 2-1, USGS 2010 Topographic Quadrangles based on aerial photography.)

Although DEC's comments on NYSEG's motion for waivers may be proper, when DEC goes on to discuss its requirements for a SWPPP or requests that NYSEG be required to supply additional information, its filing is a counter-motion that goes beyond a response to NYSEG's motion and asks for relief completely unrelated to NYSEG's motion. There is no basis for such a motion, particularly before NYSEG's application has been accepted as complete for filing. DEC's counter-motion on these items should be rejected.

### **Stormwater Pollution Prevention Plan**

That part of DEC's motion that deals with DEC's requirements for a SWPPP is a statement of the DEC's regulations, not the PSC's regulations. It asks for no relief from the PSC. DEC acknowledges that "NYSDEC suggested that the Applicant consider whether the SWPPP could simultaneously satisfy EM&CP (Environmental Management and Construction Plan) erosion control requirements and could be incorporated therein." Provided that the section on erosion control requirements that NYSEG includes in its EM&CP complies with the DEC's regulations on a SWPPP, and is submitted to the DEC as a separate document, there does not appear to be a significant difference between what NYSEG said in its application and what DEC suggested to NYSEG. In any case, this is a matter for the DEC to decide, and DEC's counter-motion does not ask for any directive from the Commission on this issue.

### **NYSDEC Request for Additional Information**

The part of DEC's motion that asks that NYSEG be required to provide information beyond that required by the Commission's regulations is, in NYSEG's experience, unprecedented, and is without foundation in the Commission's regulations. NYSEG's application has not yet been accepted for filing, and the Commission's regulations do not provide for other agencies to request that additional information be provided before an Article VII application is determined to be complete. DEC's requests are essentially an attempt to commence discovery prematurely. NYSEG does not wish to have these requests interfere with the acceptance of NYSEG's Article VII application as complete under the Commission's rules, thereby delaying commencement of the Article VII proceeding.

### **Noise**

As DEC's motion recognizes, NYSEG has provided in its application information on noise that construction and operation of the facility may create. DEC would have NYSEG provide as part of its application a noise assessment that includes baseline ambient noise levels at representative locations and under representative conditions, particularly for sensitive

receptors. Development of this information, which could require extensive intrusions onto property that NYSEG does not own or control, at a point where NYSEG's application has not been accepted as complete, is premature. DEC could request this information in discovery after the Article VII proceeding has commenced, subject to review by the administrative law judge should NYSEG challenge the request as too broad, or it could ask for it during settlement negotiations. Adding such a study to the Commission's requirements for an application to be accepted as complete is not justified.

#### Selective Clearing

NYSEG's application says it will perform selective clearing along the right-of-way for the proposed facility. DEC says that a more precise description of "selective clearing" is necessary so that the parties have sufficient information in the application to comprehend the scope and extent of vegetation clearing that would be authorized to occur during each phase of the Project and assess the resultant impacts of these activities. NYSEG does not dispute the relevance of providing such information at some point during the proceeding, but that point should be the EM&CP phase. NYSEG does not concur that development of "precise" clearing information for construction, which could require extensive intrusions onto property that NYSEG does not own or control, is necessary for a determination that NYSEG's application is complete. Detailed information on the extent of clearing is premature until a centerline is determined and NYSEG has obtained access to property.

Electric utilities are required to have vegetation management plans approved by the Public Service Commission. NYSEG has such an approved plan. NYSEG will perform long term right-of-way ("ROW") vegetation maintenance in accordance with that plan and with any further requirements included in the Commission's order in this matter.

#### Invasive Species

DEC asks that NYSEG be required to conduct an invasive species survey along NYSEG's existing right-of-way. Pursuant to Item E of the Commission Secretary's Requests for Additional Information, NYSEG is preparing a survey of where invasive species of concern to New York State occur along the right-of-way that the new facility will share with NYSEG's existing Circuit 984. DEC also asks that "efforts should be undertaken to survey invasive species along the

proposed new ROW.” This goes beyond what the Secretary of the Commission has directed NYSEG to provide, and is premature. Again, this request would require NYSEG to go upon property that it neither owns nor controls, prior to the application being accepted as complete for filing. After the application is accepted as complete for filing, DEC can either make a discovery request for this information, subject to NYSEG’s right to challenge the scope of the request, or ask for the information in furtherance of settlement negotiations. NYSEG does not dispute the relevance of an invasive species survey, but that survey should be conducted as part of the EM&CP once a route is certified. NYSEG simply does not want the requirement for this survey and the others discussed above, which are found nowhere in the Commission’s regulations, to be imposed at this time and thereby delay acceptance of NYSEG’s application.

With respect to the comments filed by Protect Ghent on April 13, 2012, NYSEG wishes to provide the Commission and Protect Ghent the following information. First, the quantitative data as to the number of archaeological sites in the vicinity of the project, with a brief discussion of each site’s characteristics, that Protect Ghent requests is included in NYSEG’s application in Exhibit 4 Section 4.4.1 (c) and in Tables 4-4, 4-5, and 4-6. Second, concerning Protect Ghent’s issue about whether the aerial photographs provided by NYSEG are sufficiently current, the aerials that were flown for NYSEG were flown on November 25, 2011, within 6 months of the May 25, 2012 date NYSEG’s application was filed. These aerials cover approximately 900 -1000 feet from the centerline of the proposed route. The NAIP aerials are only used to show the remaining 200-300 feet of the required 1200 foot corridor

For the reasons set forth above, NYSEG requests that DEC’s counter-motion be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John D. Draghi". The signature is written in black ink and is positioned above the typed name and address.

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