

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

OPINION NO. 96-15

CASE 95-T-0248 - Application of New York State Electric & Gas Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of the Seneca Lake Storage Project Gas Transmission Facilities - Phase II.

OPINION AND ORDER GRANTING A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

CASE 95-T-0248

Issued and Effective: June 26, 1996

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APPEARANCES

FOR DEPARTMENT OF PUBLIC SERVICE:

Robert R. Garlin, Esq., Three Empire State Plaza, Albany, New York 12223-1350

FOR NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS:

Diane B. Smith, Esq. and Matthew Browder,  
1 Winners Circle, Albany, New York 12235

FOR NEW YORK FARM BUREAU:

Paul McDowell, Associate Director, Route 9W, PO Box 992,  
Glenmont, New York 12077

FOR NEW YORK STATE OFFICE OF PARKS, RECREATION AND  
HISTORIC PRESERVATION:

Megan Lesser Levine, Esq., One Empire State Plaza, Albany,  
New York 12238

FOR NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

Keith Silliman, Esq., 50 Wolf Road, Albany, New York 12223

FOR NEW YORK STATE ELECTRIC AND GAS CORPORATION:

Huber, Lawrence & Abell (by John Draghi, Esq.),  
605 Third Avenue, New York, New York 10158

Luke Mickum, Chief Legal Counsel, Natural Gas  
4500 Vestal Parkway, Binghamton, New York 13902-3607

FOR NIAGARA MOHAWK POWER CORPORATION:

M. Margaret Fabric, Esq., 300 Erie Boulevard West, Syracuse,  
New York 13202-4250

FOR CODDINGTON VALLEY ASSOCIATION:

Ward & Sommer, L.L.C. (by Douglas Ward, Esq.), Plaza Office  
Center, 122 South Swan Street, Albany, New York 12210

Lewis Freedman, 2161 Coddington Road, Brooktondale,  
New York 14817

CASE 95-T-0248

APPEARANCES

PRO SE:

Mrs. Alice Supa, 48 Harrington Road, Johnson City,  
New York 13790

Mr. Randy Lewis, 2152 Bradley Creek Road, Johnson City, New  
York 13790

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

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

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BY THE COMMISSION:

INTRODUCTION

This proceeding was initiated on March 14, 1995, when New York State Electric & Gas Corporation (NYSEG or the company) filed an application and supporting evidence pursuant to Article VII of the Public Service Law (PSL) for a certificate of environmental compatibility and public need (certificate) authorizing the construction and operation of two gas transmission lines (western and eastern pipelines) and appurtenant facilities as part of its proposed Seneca Lake Storage Project. The application included a motion to bifurcate

the proceeding. Phase I addressed the western pipeline<sup>1</sup> route, the need for the project, and all other issues required under PSL Article VII except the site specific routing for the eastern pipeline,<sup>2</sup> which was reserved for Phase II. The unopposed motion to bifurcate was granted at the Phase I prehearing conference on April 28, 1995.

Phase I of the case resulted in a settlement agreement that a partial certificate would be granted for the construction of the western pipeline and appurtenant facilities. The settlement was initially approved without opposition, and on September 14, 1995, a Partial Certificate of Environmental Compatibility and Public Need was issued in Opinion No. 95-15.<sup>3</sup>

On October 16, 1995, Mr. Lewis Freedman (Mr. Freedman) filed a petition for rehearing with respect to Opinion No. 95-15. The petition challenged the fairness of the Phase I process, the need for the pipeline, and the adequacy of the Phase I public notices. Department of Public Service staff (staff) and the company replied in opposition to the petition, and on May 16, 1996 we granted the petition in part by reopening the record to incorporate additional public statements and evidence on the question of need. We concluded, however, that the Phase I public notices were sufficient to allow the public a reasonable opportunity to participate and reaffirmed our conclusion that the

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<sup>1</sup> The western pipeline consists of a 19-mile, 16-inch diameter pipeline running from the gas storage cavern west of Watkins Glen to an interconnection with the CNG Transmission Company (CNG) gas transmission line in the Town of Big Flats.

<sup>2</sup> The eastern pipeline is a 35-mile, 12-inch diameter line running from the CNG pipeline south of Ithaca to two interconnections with NYSEG's distribution facilities in the Binghamton area.

<sup>3</sup> Case 95-T-0248, Opinion No. 95-15 (issued September 15, 1995).

project was needed and should be constructed expeditiously.<sup>4</sup>

PHASE II PROCEDURAL HISTORY

Nine Phase II public statement hearings were held on six different days in Ithaca, Candor, and Binghamton, and public statements were allowed at the beginning of evidentiary hearings on two additional occasions in Owego and Candor. A total of approximately 120 separate statements were made by approximately 95 different people<sup>5</sup> covering 589 pages of transcript.

The vast majority of the public speakers were landowners directly affected by the company's prime route and no one supported the construction of the gas pipeline across their property.<sup>6</sup> Many landowners stated that they were not personally convinced of the need for the line,<sup>7</sup> and others argued that the environmental cost of its construction was so high that the line should not be built, even if it was needed. One person characterized the environmental impact as "stupendous,"<sup>8</sup> and the majority of speakers appeared to share that view. Other speakers were concerned with the proximity of the pipeline to their residences, barns, wells or other water sources, septic systems, children's play areas, hunting areas, berry-picking areas, bird-watching areas and areas in which

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<sup>4</sup> Case 95-T-0248, Opinion No. 96-11 (issued May 16, 1996), mimeo pp. 16 and 19.

<sup>5</sup> A number of people spoke on multiple occasions.

<sup>6</sup> Appendix A to the Judge's recommended decision in Phase II (issued April 12, 1996) contains a detailed listing of the concerns raised by the public at these hearings.

<sup>7</sup> The need for the project was determined in Opinion No. 95-15 and reaffirmed in Opinion No. 96-11 and need related issues will not be revisited in this opinion.

<sup>8</sup> Tr. 1,255.

"religious rituals" were practiced. Many speakers were concerned with the proposed line's proximity to their residences because of fear of an explosion. Concern was also expressed regarding the allegedly toxic effects of the herbicides proposed for right-of-way (ROW) management. Other environmental concerns expressed included the impact of construction and blasting on the local hydrology, erosion on steep slopes, impacts of ROW clearing on the flora and fauna, wetland impacts, and visual and noise impacts. All the Phase II public statement concerns were addressed by one or more of the active parties in the evidentiary phase and are discussed below.

Evidentiary hearings were held on September 21 and 22, 1995 to cross-examine the company's pre-filed case and on December 19, 20, and 21, 1995 to cross-examine all other filings. The evidentiary hearings generated 1,641 pages of transcript and 40 exhibits.<sup>9</sup> The parties who actively participated in Phase II included the company, staff, the Department of Environmental Conservation (DEC), the Department of Agriculture and Markets (Agriculture & Markets), Niagara Mohawk Power Corporation (Niagara Mohawk), Lewis Freedman (the Coddington Valley Association (CVA) was substituted for Mr. Freedman prior to the December hearings), Alice Supa (Mrs. Supa), and Randy Lewis (Mr. Lewis). The active parties, except Niagara Mohawk, filed testimony, exhibits, and initial briefs; reply briefs were filed by all active parties except Agriculture & Markets.

On April 12, 1996, Administrative Law Judge Jeffrey E. Stockholm issued a recommended decision in which he concluded that a certificate should be issued for the eastern pipeline. Briefs excepting to the recommendations and briefs opposing the exceptions have been received from staff, the company, CVA, and Mrs. Supa. Agriculture and Markets filed a

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<sup>9</sup> The Phase II exhibits were numbered 31 through 70.



letter in lieu of a reply brief on exceptions.

THE RECOMMENDED DECISION

The recommended decision addressed the issues raised by the parties in four general areas: routing, construction, maintenance and operations, and licensing. The Judge's conclusions in each area are summarized below.

Routing

With two exceptions (the Danby Tap alternate and Bradley Creek alternate),<sup>10</sup> the Judge recommended the certification of the company's prime route. He concluded that such routing met the Public Service Law standard that the facility represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives.<sup>11</sup>

The Judge also concluded that this routing was superior to the various CVA proposals (i.e., Columbia Tap alternate, roadside construction in the Coddington Valley and burying the electric distribution facilities with the pipe in the Coddington Valley), and the Hullsville alternate.<sup>12</sup> The Columbia Tap alternate and Coddington Valley roadside construction were found inferior on the bases that they were more costly and posed greater environmental impacts. The Hullsville alternate and undergrounding the electric lines in Coddington Valley were not recommended based mainly on cost considerations. The Judge also

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<sup>10</sup> Maps of these alternates are attached as Appendix A, maps 1 and 3, respectively.

<sup>11</sup> Public Service Law, §126(1)(c).

<sup>12</sup> The Hullsville alternate is shown on Appendix A, Map 2.

recommended that additional safety precautions<sup>13</sup> be taken during construction of the prime route in the Hullsville area to protect neighborhood children who congregate in that area to play.

Finally, the recommended decision addressed site specific routing concerns at the crossings of Candor Hill Road, Eastman Hill Road and Heisy Road (on the Danby Tap alternate), the Danby State Forest and Danby Fir Tree Swamp (Danby Tap) and along Coddington Road (on the prime route). At the Eastman Hill Road crossing, the Judge supported staff's proposed mitigation measures, and at the other locations a wider-than-normal certified corridor was recommended to allow additional routing flexibility in the preparation of the environmental management and construction plan (EM&CP).

#### Construction

The recommended decision addressed construction related concerns expressed by the parties in a number of areas. In response to concerns about blasting damage to wells, the Judge recommended the adoption of a pre- and post-construction company monitoring program as set forth in a staff-proposed ordering clause.<sup>14</sup> Another staff-sponsored ordering clause was recommended regarding special mitigation measures for construction through the Danby Fir Tree Swamp, if required.<sup>15</sup> The Judge also recommended that special protections for children be provided during construction along the portion of the prime

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<sup>13</sup> Among other things, the Judge recommended limiting construction to hours when schools are in session.

<sup>14</sup> See ordering paragraph 66(b) infra.

<sup>15</sup> The wetland construction provisions will be moot if the CVA-sponsored alternate routing around the swamp is approved in the EM&CP. See ordering paragraph 24(b) infra.

route that corresponds to the Hullsville alternate. To mitigate impacts on known logging operations it was recommended that the company identify in its EM&CP the specific measures it intends to employ. In addition, the ordering clauses and EM&CP guidelines which address the entire range of construction impacts as supported by staff and the company,<sup>16</sup> were also recommended for our adoption. Finally, the Judge recommended waiving various local land-use ordinances that would prohibit the pipeline in certain areas, but refused to so recommend regarding the applicability of zoning ordinances to valve stations and flood plain ordinances to the pipeline generally.

#### Maintenance & Operations

In response to numerous concerns about the planned use of herbicides for ROW maintenance and based on the extensive evidentiary record on this issue, the Judge embraced the company's offer to avoid using herbicides wherever the landowners so desired. To effectuate this result, it was recommended that the company be required to advise landowners during easement negotiations that they have the right to preclude herbicide use, and that the certificate specify that NYSEG's eminent domain authority does not include the right to apply herbicides. The Judge also recommended that NYSEG include in its long-range ROW management plan, both specific wind speeds beyond which herbicides would not be applied, and a recalculation of the economics of herbicide use in the long-range management of this ROW.

The recommended decision supports following our long-standing policy that the cost of future adjustments to the

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<sup>16</sup> Exhibit 50. DEC and Agriculture & Markets also supported a number of these clauses and guidelines addressing issues within their respective interests.

pipeline required by new land-uses would be borne by the party benefiting from the adjustment. The Judge also recommends against the request that all landowners be personally notified when the pipeline is placed in service.

### Licensing

The recommended decision reviewed the record evidence on the probable environmental impacts of the facility including, inter alia, the impact on agricultural lands, wetlands, park lands, and river corridors. The Judge concluded that the recommended routing, construction limitations and controls, and restoration requirements resulted in the facility representing the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives.<sup>17</sup> He characterized the project as "one of the most environmentally benign, if not affirmatively beneficial, utility transmission projects that can be imagined if all the probable positive and negative impacts . . . are considered."<sup>18</sup>

### EXCEPTIONS

All exceptions that have not previously been decided in this case are discussed below. Requests in the nature of clarifications are discussed under the topic "Other."

### Routing

The only routing recommendation to which the parties except involves the conclusion that the company prime route should be certified rather than the Hullsville alternate. The

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<sup>17</sup> Public Service Law §§126(1)(b),(c).

<sup>18</sup> R.D., p. 71.

Hullsville alternate is a 1.6 mile deviation from the prime route in the Town of Owego. Half of the Hullsville alternate is new ROW and the balance is on NYSEG's electric transmission ROW. The alternate is supported by staff and local residents<sup>19</sup> and is opposed by the company and Agriculture & Markets, because, respectively, it will be approximately \$250,000 more expensive to build and it impacts an additional 2,800 feet of active farmland.<sup>20</sup>

In its exception, staff notes that the prime route, which parallels a Mobil petroleum pipeline ROW, bisects a new housing subdivision along Genesis Court. In addition, clearing of some mature forest would be required for the prime route, as well as clearing through a tree plantation that has overgrown the Mobil ROW. Staff also notes the prime route's potential residential impacts where shallow bedrock exists, where screening vegetation may be lost, and during construction.

In contrast, according to staff, the Hullsville alternate crosses approximately 4,400 feet of new ROW and creates a slightly greater impact on wetlands, one additional stream crossing, and construction along "modestly" steep slopes. The balance of the alternative would be constructed within NYSEG's existing 235kV and 345kV transmission corridor. Staff notes, in particular, that while the alternate traverses property on which no ROW currently exists, it closely parallels property lines<sup>21</sup> and its placement, therefore, should not interfere with future

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<sup>19</sup> There are approximately six residences in relatively close proximity to the prime route in this area.

<sup>20</sup> While DEC preferred the prime route in its arguments before the Judge, it did not take a position on exceptions.

<sup>21</sup> The prime route generally cuts diagonally across property lines in this area.

development. Staff prefers the alternate because: 1) it views the incremental cost (\$250,000) to build the alternate as insignificant compared with total project costs (\$57 million); 2) there would be no significant incremental adverse environmental or other impacts; and 3) it would avoid potential land-use conflicts to a greater extent than the prime route.

Staff also excepts to the recommended additional safety measures recommended for the Genesis Court area as impractical, noting that the construction would likely take place during the summer when schools are closed. Staff further contends that even when schools are open, not all children are old enough to attend full session classes.<sup>22</sup> Staff believes that the construction requirements set forth in exhibit 50, efforts to limit the duration of construction in this area, and construction scheduling coordination with affected landowners will provide an adequate assurance of safety for the neighborhood children.

The company raises similar issues and notes that the conditions recommended by the Judge will increase costs. The company also indicates that the conditions can be met, and that the prime route would still remain less expensive than and is preferable to the alternate. It argues, however, that if extra safety measures in this area are to be required, the company should be allowed to propose functionally equivalent restrictions during the EM&CP phase and construction should be allowed outside of normal school hours.

As noted in the recommended decision, the choice between the Hullsville alternate and the prime route in this area is a close one. Although the alternate increases the cost of the project by a small amount, the impacts of the prime route on residents, mature forests, and the tree farm are substantial,

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<sup>22</sup> Letters received from residents in the area raise similar concerns.

particularly given the concern for the safety of children. On balance, the impacts of the Hullsville alternate seem somewhat less. Current and future land uses will be more compatible with the alternate, and the alternate poses fewer safety issues, especially in an area where children tend to congregate near Genesis Court. Accordingly, staff's exception is granted, and the Hullsville alternate is certified.

We also share the Judge's concern for the protection of the children. The company and staff urged the rejection of the Judge's extra precautions and recommended relying on the work site safety provisions of the EM&CP guidelines<sup>23</sup> and the company's testimony concerning safety precautions near residences where children will be present.<sup>24</sup> That evidence, however, does not address all of the concerns implied by the conditions recommended by the Judge. For example, the existence of open trenches over a number of days protected only by construction fencing was one of the problems the conditions sought to correct, but which is not addressed in the guidelines and testimony. In addition, equipment, pipe and other materials could create attractive and dangerous play areas for children during the hours following the cessation of daily construction activities. On the other hand, the Judge's construction restrictions to hours when schools are in session and his focus only on the Genesis Court area does not provide protection to all children along the line.

Based on the above, we grant in part the company and staff exceptions by rejecting the Judge's recommendation that construction in areas where children are present be limited to hours when school is in session. We also believe the Judge erred in recommending additional precautions focusing only on the

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<sup>23</sup> Exhibit 50, ACD-3, p. 9.

<sup>24</sup> Tr. 2512-2513.

Genesis Court area. While that area would have been the most heavily used by children were the Hullsville alternate not approved, similar protection should be provided in other areas where children are present. Accordingly, while the exceptions are granted as noted, we will require the company to detail in its EM&CP those areas along the certified line where children are expected to be present. In those areas the company should provide the details of the efforts it will make to assure the safety of children during the construction process. Those protections should include the consideration that children be protected during construction and non-construction work hours from injuries that could result from playing in and around construction equipment, pipe and related supplies, and open trenches.

Except as set forth above, we find the Judge's routing recommendations to be reasonable and we adopt his analyses and conclusions.

#### Construction

Mrs. Supa and CVA except to a number of the Judge's recommendations regarding construction. Their concerns range from a desire to change a single word to clarify an ordering paragraph to expanding the 150 foot well testing zone to 1/8 mile from any blasting. Staff requests clarification of the Judge's discussion of well impact testing and logging operation mitigation. NYSEG excepts to the recommendation that the substantive requirements of local zoning ordinances regarding valve stations and local flood plain ordinances not be waived.

CVA excepts to the recommended ordering clause that would require the company to conduct pre- and post-construction monitoring of water quality and quantity wherever blasting or rock shattering operations are to occur within 150 feet of domestic wells, and where any trenching operations occur within



200 feet uphill from shallow sub-surface collection systems or hand dug wells. CVA's exception to the 150 foot well testing zone is based on its argument that there is no record such a distance would be adequate "in any and all geologic and hydrologic situations." It contends that 150 feet is a completely arbitrary distance. In its place, CVA would substitute a one-eighth mile standard based on the blasting notification required to residents and farmers within one-eighth mile of a blasting site.<sup>25</sup>

CVA also takes exception to the Judge's conclusion that well testing as long as two years after pipeline construction would provide little useful information. CVA argues that changes in underground hydrology may take a considerable time to manifest themselves, and it "strongly recommends that a discovery period of no less than two years (starting with notification of landowners when the pipeline is put in service) apply to any negative impact of the pipeline, not just impact on agricultural lands, and particularly to impacts on wells."<sup>26</sup>

In reply to these exceptions, NYSEG contends that staff's monitoring requirements are more than adequate, and it concurs with the observation in the recommended decision that there is no record support for the adoption of any other requirement. NYSEG also suggests it would not be reasonable to require well testing within one-eighth of a mile of all blasting, explaining notice of blasting is given to such a distance to

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<sup>25</sup> For its part, staff requests a clarification to be certain that the Judge's recommendations would apply not just to wells that are within 150 feet of blasting but to all drinking water sources potentially affected under the circumstances described in staff's proposed ordering clause. The ordering clause adopted in this opinion and order provides the clarification sought.

<sup>26</sup> CVA's Brief on Exceptions p. 5.

alert residents to the noise or vibrations that could be experienced from the blasting and not to identify a zone within which blasting damage could be reasonably expected. CVA's recommendation that the company remain responsible for damage to wells for up to two years after completion of the project is a new position, in the company's view, raised for the first time on exceptions and without record basis. Contrary to CVA's claim, changes to underground hydrology from blasting typically manifest themselves rapidly, the company argues. It also contends that changes in well production over a period as long as two years could be caused by a great number of factors other than the pipeline construction, which may supersede any damage or dislocation caused by construction blasting.

The staff-recommended ordering clause designed to provide protection to wells and other water collection systems is reasonable and is adopted. The CVA exception based on its desire to have all wells tested within one-eighth mile of blasting lacks record support and is rejected. We also note that the 150 foot standard for testing wells has been routinely used in other pipeline construction projects and is the standard used by the Federal Energy Regulatory Commission for pipeline construction subject to its jurisdiction. Finally, the CVA suggestion that we mandate a two-year discovery period for damaged wells is simply unnecessary because there is no evidence well damage can be expected to occur up to two years after blasting.

CVA also takes exception to the recommended ordering paragraph that requires NYSEG to "instruct" its contractors to park in designated areas. CVA contends that the ordering clause should direct NYSEG to "require" its contractors to park only in designated areas. In the absence of such language, CVA predicts that contractors will not understand that they are precluded from parking elsewhere. In response, NYSEG indicates that it has had no problems or complaints with contractor parking under the same

ordering clause approved for the western line, and that CVA's request should not be granted.

Parking areas for construction crews, other contractors, and NYSEG personnel will be identified in the EM&CP and will be enforced by Commission order. Whether NYSEG "instructs" or "requires" its contractors to park in these areas is of little consequence in that NYSEG remains responsible that it and its contractors abide by the terms of the approved EM&CP. Accordingly, the CVA exception on this issue is denied.

CVA excepts to the Judge's conclusion that an ordering clause requiring that "revegetation should be done properly" was unnecessary. According to CVA, such an ordering clause should be required because the record evidence on revegetation is less than adequate, especially in sensitive areas. The company opposes the exception, noting the existence of "numerous" ordering clauses and other staff recommendations to ensure proper revegetation.

CVA is correct that the evidentiary record does not provide all of the details required to accomplish proper revegetation in environmentally sensitive areas and elsewhere. The specific revegetation plans and the details of the company's efforts are intended to be identified in the EM&CP, however, once the specific location of construction is determined. In addition, it is often necessary to complete construction before all of the revegetation details can be identified. Further, the company's long-range ROW maintenance plan may also address revegetation needs that do not become apparent until that plan is required. We, of course, expect revegetation to be done properly, but believe that an ordering clause so requiring would be superfluous. Accordingly, CVA's exception on this issue is denied.

Finally, CVA excepts to the conclusion that an additional notice should not be provided to all landowners regarding remedial plantings. CVA urges that the intent of the

ordering clauses be made known to landowners.

Landowners are provided notice of and an opportunity to comment on the EM&CP which details plans to replace or not replace existing vegetation. In addition, all landowners will be provided with the information needed to contact the company or the Department with questions or concerns about the project. These provisions fully protect the public's rights and a further layer of notice, comment, and review is not required. CVA's exception is therefore denied.

Mrs. Supa excepts to the 80-foot temporary easement recommended for use in agriculture lands. She contends that it will take agricultural land two years to return to normal and that a temporary easement of that width will take enough land out of production that farmers' incomes will be seriously reduced.

In response to this exception, Agriculture & Markets disputes Mrs. Supa's contention that a two-year recovery period is required in agricultural lands. Its experts believe that in most cases, with appropriate separate stockpiling of topsoil and sub-surface soils, agricultural lands should return to normal within one year. Agriculture & Markets also contends that an 80 foot temporary ROW is required to properly return the land to production and to permit the separate stockpiling of different soils. Indeed, a narrower ROW would limit the effectiveness of stockpiling and would result in a much longer recovery period.

The record clearly indicates that the additional temporary ROW width in agricultural lands has been proposed to minimize impacts on farmers. In the absence of these increased widths, the impacts on farmers are likely to be greater. While we agree with Mrs. Supa that impacts on farmers should be minimized to the extent reasonably possible, her exception on this question will not accomplish that result. Accordingly, Mrs. Supa's exception on this issue is denied.

Mrs. Supa also appears to except to the recommendation

that penalties not be established in the Article VII certificate to be paid by NYSEG to landowners if NYSEG strays from its ROW. Mrs. Supa also suggests that NYSEG should be required to pay for surveying private property for the pipeline. NYSEG responds by noting that damages for trespass are properly addressed in state courts, and that the fair value for NYSEG's surveying activities is an issue for the courts in the context of eminent domain.

NYSEG is correct. The jurisdiction to determine private damages, whether they be caused by trespass or by the exercise of the eminent domain power, has been vested in the courts of the state. Accordingly, Mrs. Supa's exception on this point is denied.

Staff excepts to the recommendation that the company further explore impact mitigation options in areas where logging activities will cross the pipeline. According to staff, hardened crossings for logging activity at one or two points on a given parcel have been used in past cases and have proved adequate.

Staff is correct that one or two such crossings per parcel may be entirely adequate. To this extent, the staff exception is granted. The Judge is correct, however, that appropriate mitigation for this land-use should be based on a site specific examination of actual uses and detailed proposals to deal with such circumstances can be proposed and reviewed in the context of the EM&CP.

NYSEG excepts to the Judge's conclusion that there is no need to waive the substantive provisions of local ordinances as they relate to valve stations and local floodplain ordinances. Regarding local ordinances as they apply to valve stations, the company acknowledges that some provisions of the law could be met, and, depending on the circumstances, it might be advisable to do so. It would prefer, however, to have them waived now and permit staff to apply those it finds appropriate once final locations and designs are known. As to the floodplain

ordinances, the company is concerned that they may prevent pipeline construction in floodplains.

Staff argues that the ordinances that apply to valve stations should not be waived now, as they can be waived, to the extent necessary, once final circumstances are known. In floodplains, staff notes that the company has agreed to comply with the substance of the local laws and that no waiver is required.

We remain willing to waive the substantive requirements of these local laws to the extent such laws would prevent the construction of the project as contemplated in this order. The record does not establish, however, that the laws will have this effect on the contemplated construction. If circumstances change, we will entertain further requests in an expeditious manner. NYSEG's exceptions on these issues are denied for now.

Except as discussed above, the recommendations regarding the pipeline's construction requirements and local ordinance waivers are reasonable and are adopted.

#### Maintenance & Operation

CVA excepts to the recommendation that herbicides may be used by the company subject to the approval of the landowners. It argues that the recommendation is not adequate to fully protect landowners. First, CVA claims that herbicides could "travel" from parcels where landowners permitted their use to downstream or downwind parcels where landowners would not permit its use. Second, CVA notes that applicator error could result in herbicides being applied to areas where the landowners would object. Finally, CVA argues that the cost savings from herbicide use are so negligible that the minimum adverse environmental impact for the facility can only be obtained if herbicide use is banned outright.

In reply, the company notes that the recommended

decision found that the company's agreement to use herbicides only where permitted was a responsible and appropriate reaction to the concerns expressed by the public. It notes that the half-lives of herbicides it uses are short and that the herbicide products it uses bind to the soil and do not migrate. It also contends that there is no evidence that properly applied herbicides affect potable water, that wind borne herbicide drift is a problem, or that applicator error has resulted in unintended herbicide applications. NYSEG concludes, as does the recommended decision, that the use of herbicides is reasonably safe and that the evidence in the case does not provide a basis for a total ban on their use.

The evidence in this case does not establish any significant likelihood of herbicides being wind blown, water transported or applied by mistake to adjacent properties. Nor can we conclude from this evidence that herbicides are unsafe. The company's agreement to use herbicides only with the landowners' permission is a responsible and appropriate reaction to the concerns expressed. Accordingly, CVA's exception in this regard is denied.

Mrs. Supa suggests that herbicides not be applied when winds exceed 7 mph. As previously noted, the recommended decision requires the company to propose an objective wind standard for herbicide application when it files its long-range ROW management plan. While the company contends in opposition to Mrs. Supa that an objective wind speed limitation is impractical and unworkable, the company did not except to the recommended filing requirement, and we expect the company to submit a justification for its position when the long-range ROW plan is filed. Accordingly, Mrs. Supa's suggestion is premature and the issue will be revisited when the company's filing is submitted.

CVA next recommends that a buffer zone for herbicide spraying adjacent to potable water be established at 1,000 feet

and that wells be tested for herbicides. As staff notes, the company has agreed to establish buffer zones around wells and other potable water sources that exceed herbicide label requirements. The record does not establish that any greater buffer zone or that any need to test well water for herbicides is required. CVA's exceptions on these matters are denied.

Staff and the company except to the recommendation that the company recalculate the cost-effectiveness of herbicide use on this ROW once it knows which landowners will permit herbicides. We will not require the company to perform this calculation in its long-range ROW management plan filing. If the company is not maintaining the ROW in the most cost-effective manner, adjustments can be made when rates are set. The company and staff exceptions in this regard are granted.

CVA also excepts to the recommendation that the cost of changes to the pipeline required by changes in future land uses be borne by the party benefiting from the change. CVA argues that paying current fair market value for a permanent easement does not compensate the owner for all future loss of land value due to the easement. This would only be true, CVA argues, if land values never rise.

The company argues that CVA is legally incorrect. NYSEG contends that all pipeline interference with land-uses is compensated through a current fair market value payment, and, if the landowner wants to take back a portion of the easement rights to undertake a land-use inconsistent with the existing pipeline, the landowner should pay the cost of rendering the pipeline consistent with the new use.

The company is correct. The fact that land values may increase or decrease in the future is no more relevant to the purchase of an easement than it is to the purchase of any other interest in land. Permanent real property rights are transferred at fair market value, and no future change in that value can



create an obligation on the purchaser to pay more or return to the seller any consideration. Once the easement is acquired, NYSEG has the legal right to keep its pipeline in the easement as constructed. A landowner who subsequently wants it moved or changed must acquire that right from NYSEG at a price equal to its cost. The CVA exception on this issue is denied.

Mrs. Supa also recommends that all landowners be notified when the pipeline is put in service. She argues that such notification would be good public relations and give closure to the construction portion of the project. The company and the recommended decision failed to find any valid purpose to notifying every landowner and concluded that the request should be denied. We agree. We will not dictate the public relations efforts of the company. Further, the in-service date of the pipeline will not necessarily coincide with the end of construction. A number of construction activities, such as revegetation efforts, need not be completed prior to gas flowing through the line. Mrs. Supa's recommendation will not be adopted.

#### Licensing

CVA excepts to the assumption in the recommended decision that the NYSEG and the adjacent Mobil ROW can overlap. It argues that the record does not contain evidence of any agreement between the company and Mobil to share a ROW and, until this practice is established as viable, CVA argues that no certificate should be granted.

The company notes first that CVA's position was never presented on the record or to the Judge, and its exception therefore is improper. It also notes that the law allows it to condemn an existing ROW where required. The company further observes that Mobil has been aware of NYSEG's plan to overlap its easement, and Mobil has not intervened in this case or advised

that it has any concerns with that plan. Finally, the company notes that an agreement in principle to overlap the Mobil easement has already been reached and "all that remains is for the formal documents to be signed."<sup>27</sup>

CVA's concern should have been raised at the hearings so the company would have been able to submit evidence establishing the factual matters noted above. Given that CVA raised the issue late, in brief, it is reasonable to evaluate NYSEG's factual arguments in reply. In its brief, NYSEG shows that an overlap can be accomplished here as has been done in connection with many previous Article VII proceedings. Accordingly, the CVA exception is denied.

CVA excepts to the overall certification of the facility on the basis that all environmental externalities have not been specifically quantified.<sup>28</sup> It more particularly excepts to the recommended decision's conclusion that such externalities need not be quantified and monetized in this case. CVA disagrees with the Judge's conclusion that the benefits of the facility are substantially greater than the unmitigated environmental impacts.<sup>29</sup> CVA's challenge to this conclusion is based on its belief that the need for the project has not been satisfactorily established (or could be obtained in more benign ways), and on its view that the unmitigated environmental damage from the project will be substantial.

The Judge observed that there are significant environmental and public health and safety benefits offered by the project that would be lost if it were not constructed. These

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<sup>27</sup> NYSEG's Brief Opposing Exceptions, p. 11.

<sup>28</sup> Mrs. Supa generally supports the CVA position.

<sup>29</sup> Of course, the mitigated environmental impacts have been internalized within the construction costs for the project.

forgone benefits together with the loss of the project's capacity, reliability, and price competition benefits that we recently reaffirmed were found by the Judge to be vastly greater than the external costs of the project. Accordingly, he concluded that a specific quantification of the external costs was not necessary.

The company replies that in no PSL, Article VII certificate order has the quantification and monetization of externalities been required. In fact, the company notes that we have previously addressed this issue and concluded that such quantifications are not generally possible.<sup>30</sup> It contends that the recommended decision's conclusions were fully supported by the record.

It is not necessary to quantify and monetize every possible impact of the facility in order to determine whether the project fulfills the statutory standard (i.e., minimum environmental impact considering available technology, alternatives, and other considerations), even assuming arguendo that both the benefits and detriments of the facility could be reduced to dollars. A combination of qualitative and quantitative analyses and comparisons have served us well in all prior cases, and no reason has been forwarded here that would justify any departure. The CVA exception on this issue is denied.

Mrs. Supa excepts to the discussion in the recommended decision of the general impacts of the facility with regard to the description of the general project area. In particular she excepts to the Judge's characterization of the landscape of the project area as a combination of rolling hills, and a mix of

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<sup>30</sup> Case 70126, Power Authority of the State of New York - Marcy - South 345kV Transmission Facilities, Opinion No. 85-2 (issued January 30, 1985), mimeo p. 74.

forests and open fields which are lightly populated. Mrs. Supa contends that the area should be described as "fairly heavily populated areas, prime land, crop land, and historic farm etc."<sup>31</sup>

The primary difference between the Judge's description and Mrs. Supa's is the Judge describes the landscape (hills, fields, forests, etc.) while Mrs. Supa describes land-uses and a cultural feature (farming or crops and a possible historic site). These descriptions are not in conflict and both are accurate. However, the record does not support Mrs. Supa's characterization of the project area as "fairly heavily populated," and her exception on that issue is denied.

Both CVA and Mrs. Supa mention the denial of staff's request to require the company to provide digital orthographic or scale-corrected aerial photography with the EM&CP. CVA requests for the first time on exceptions that ordinary, current aerial photographs be required. Mrs. Supa contends that the specialized photographs would be a useful tool for staff and landowners, and suggests that the company may be overestimating its costs.

Staff notes on exceptions that it has accepted the company offer to provide scale-corrected photographs to correspond with and supplement EM&CP alignment sheets. As staff is satisfied that the proposed submissions are adequate for its review, and in the absence of any specified reason to require greater efforts and expense, CVA's and Mrs. Supa's exceptions are denied.

Except as set forth above, the Judge's recommendations in the area of licensing are reasonable, based on the record evidence and are adopted.

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<sup>31</sup> Mrs. Supa's Brief on Exceptions, p. 4.

Other

In its briefs to the Judge, CVA recommended that the company not be granted a certificate to condemn a permanent easement, but be limited to acquiring a lease for a specific term of years. CVA excepts to the recommended decision's opposition to its proposal on the grounds that it conflicts with established Commission precedent and is not supported by the record. CVA argues, for example, that a lease has been used for the western pipeline within the Watkins Glen State Park and notes that a few landowners raised concerns regarding the possible future abandonment of the pipeline and ROW by the utility. It further notes that an abandoned distribution line was discovered in the vicinity of Bradley Creek during this case. According to CVA, that pipeline indicates there is an abandonment problem. NYSEG argues that prudence requires obtaining permanent easements to protect the substantial investment associated with laying the pipe.

The record in this proceeding does not support any change in the traditional process of allowing the company to determine the type of legal interest required for its transmission facilities. Further, as the incident with the abandoned pipelines in Bradley Creek suggests, accomplishing a clean-up of abandoned property is very difficult. If title to the pipeline and easement around Bradley Creek had reverted to all the underlying landowners the cost of the clean-up and proper closure of the line would depend upon and be borne by the underlying owners. Because Columbia Gas in this case retained title to the easement and pipe, it also retained the responsibility to abandon it properly.

So long as NYSEG takes permanent easements, we will retain the jurisdiction to require the company to take any actions necessary in the event the use of the ROW is abandoned. Adopting the CVA position on this issue would eliminate that

possibility. Accordingly, the CVA exception is denied.

Mrs. Supa excepts to the Judge's recommendation that NYSEG not be required to provide public training in eminent domain procedures. Mrs. Supa argues that when the need for the pipeline was established, the taking of land by eminent domain was authorized, and "therefore" education in the eminent domain process should be provided by NYSEG. We disagree. The rights of landowners in an eminent domain proceeding can be fully protected by other means and landowners should consider retaining counsel. Therefore, Mrs. Supa's exception is denied.

Mrs. Supa also proposes that farm taps<sup>32</sup> along the pipeline be provided free of charge. The record indicates that farm taps would cost the company approximately \$2,500-\$3,000 each and the company would be willing to provide those taps at cost. If Mrs. Supa's suggestion were adopted, the cost of individual service connections would be borne by the general body of customers. There is no justification for requiring such cross-subsidies. This exception is denied.

NYSEG expresses as an exception its concern that it would be required to meet with a host of unidentified experts and non-experts in preparing its proposed EM&CP for the Danby Fir Tree Swamp. It does not object to meeting with the CVA experts who testified in the case, the responsible government agencies (e.g., DEC) or with the underlying landowners. In our view, this level of consultation in preparing the draft document is adequate. To the extent that the recommended decision suggests more be done, the company's exception is granted.

At CVA's request, the Judge concluded that any "significant" changes to the final EM&CP be served on the

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<sup>32</sup> A "farm tap" is a connection to a transmission pipeline that allows gas to be distributed to customers in the vicinity.

affected landowners in accordance with proposed ordering paragraph 6. The company casts as an exception its concerns that the term "significant change" is undefined, and that there is more than one type of service under proposed ordering paragraph 6. A clarification is required, according to the company, to make certain that the Judge meant to refer to "major EM&CP changes," which we must approve, and the notification provisions of proposed ordering paragraph 6(a)(i).

The purpose of the recommendation was to provide landowners notice of major changes, not minor adjustments approved by staff. The notification provisions of proposed ordering paragraph 6(a)(i) would suffice for that purpose if they included notice to directly affected landowners. The company's request for clarification is accordingly granted except that directly affected landowners should be notified of any major changes that affect their properties as otherwise provided in proposed ordering paragraph 6(b).

NYSEG excepts to the recommendation that a public information meeting be held on its proposed EM&CP, if holding such a meeting would delay the EM&CP approval. If no delay will result, NYSEG has no objection, but it requests that a facilitator from the Department be provided to "establish and maintain structure for the meeting" to make it as productive as possible.

If landowners are notified of a public meeting on the proposed EM&CP when they are provided notice of the filing, and if a notice of the meeting is published and provided to the libraries, a meeting could be held within a week to ten days from the EM&CP filing date. This would allow, as the company noted, sufficient time for interested parties to attend the meeting and thereafter file their comments within the typical 30 day comment period. This approach should not delay the approval process and

the company's exception is therefore moot.<sup>33</sup>

The company excepts to the Judge's refusal to strike the Columbia Tap alternate from the record despite his conclusion that the alternate was beyond the scope of Phase II. NYSEG argues that ". . . the record would be better protected if the Commission struck from the record material on the Columbia Tap Alternative, after finding that the ALJ's recommended findings are correct - that NYSEG's proposals are superior . . . ." NYSEG believes it was legal error to refuse to grant its motion to strike.

We agree with the conclusions reached by the Judge regarding the Columbia Tap alternate, i.e., the prime route is superior and the CVA proposal should have been considered in Phase I. We disagree with the company, however, that our record and decision will be best protected by striking the evidence after relying on it to reach these conclusions. Indeed, if the evidence is stricken, there will be no record on which a comparison of the prime route and Columbia Tap could be based. Further, the delineation between a Phase I project alternative and a Phase II pipeline routing alternate cannot be made with surgical precision, and, while the Judge might have been justified in striking the evidence, his refusal to do so does not constitute an abuse of discretion or an error of law. The company's exception on this issue is denied.

NYSEG JUNE 3 MOTION

On June 3, NYSEG filed a motion for expedited processing of its EM&CP requesting that the ordinary public comment period be shortened from 30 to 20 days. In the absence of this relief, the company contends that construction

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<sup>33</sup> A facilitator from the Department will be provided as requested by the company.



commencement will be delayed from August to September, thereby increasing the cost of the line and placing the December 1 in-service date in jeopardy. Mrs. Supa, Mr. Randy Lewis, and CVA oppose the motion noting the importance of the EM&CP review process and the landowners' need for the full 30-day period to prepare comments.

While construction should begin as soon as reasonably possible, we disagree with the company's assumption that allowing the public the ordinary 30-day comment period will delay approval of all portions of the EM&CP until at least August 21. Further, the public's participation in the eastern line siting process has been significant, and shortening the period allowed for the public to prepare its comments is not justified under these circumstances. We will review the company's filing expeditiously, but its June 3 motion to shorten the EM&CP comment period is denied.

#### CONCLUSION

We conclude that a Certificate of Environmental Compatibility and Public Need should be issued for the eastern pipeline in accordance with the terms and conditions set forth above. Except as noted above, the recommended decision is adopted as part of this opinion and order and the parties' exceptions are denied.

#### The Commission orders:

1. New York State Electric & Gas Corporation (NYSEG) shall, within 30 days after the issuance of the Certificate, submit to the Commission either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate. Failure to comply with this condition shall invalidate the Certificate.

2. (a) Each substantive state and local law and

regulation applicable to the location of the facility authorized by the Certificate shall apply, except any substantive local law or regulation which the Commission has refused to apply as being unreasonably restrictive.

(b) No state or local legal provision purporting to require any approval, consent, permit, certificate or other condition for the construction or operation of the facility authorized by the Certificate shall apply, except those of the Public Service Law and regulations and orders adopted thereunder, and those provided by otherwise applicable State law for the protection of employees engaged in the construction and operation of the facility.

3. (a) Prior to commencement of construction of the Seneca Lake Gas Storage Transmission Facilities, NYSEG shall receive all required governmental authorizations and shall deliver copies thereof to staff.

(b) NYSEG shall comply with any conditions contained in a Water Quality Certification issued pursuant to Section 401 of the Federal Clean Water Act.

4. NYSEG shall not commence any proceeding except for the right to survey and inspect property under the Eminent Domain Procedure Law, where applicable, or begin site preparation or construction (except for surveying, boring, and such other related activities as are necessary to prepare final design plans) before it has submitted to the Commission, and the Commission has approved, an Environmental Management and Construction Plan (EM&CP) generally consistent with EM&CP guidelines adopted in the proceeding and covering the portion of the project for which the activities are necessary. To calculate the three-year period for acquisition of property pursuant to the Eminent Domain Procedure Law, the date of Commission approval of an EM&CP covering the affected parcel shall be regarded as the date on which this Article VII proceeding was completed.

5. NYSEG shall construct the facilities in accordance with Staff's Standards and Practices for Environmental Management and Construction of Gas Transmission Facilities in New York State (Standards and Practices) applicable to this proceeding and not specifically prescribed in the EM&CP, particularly with regard to archaeological resources, construction practices and techniques, water bodies and wetlands, erosion control, right-of-way, clearing and maintenance, and right-of-way restoration, except as otherwise specified herein. NYSEG shall construct the facility in accordance with all applicable safety laws, codes, and regulations, including, but not limited to, the requirement that the pipe trench be backfilled to provide firm support under and around the pipe without damaging the pipe or pipe coating.

6. (a)(i) NYSEG shall serve four copies of the EM&CP on the Commission, five copies on the Department of Environmental Conservation (DEC), one copy on the Department of Agriculture and Markets (Ag. & Markets), and two copies on the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation. At least one copy shall be served on any New York State agency, affected municipality or person on the service list requesting the document. Also, copies shall be placed for inspection in at least one public library or other convenient location in each municipality in which construction will take place. With the submission and service of the EM&CP, the company shall provide notice, in the manner specified below, that the EM&CP has been filed.

(ii) NYSEG shall serve written notice(s) of the filing of the EM&CP and notice of a public meeting regarding the EM&CP on all active parties to this proceeding, on each person on the Commission's service list, on all statutory parties to this proceeding, on each person from whom rights-of-way are acquired, on each person owning the underlying land rights to an easement being acquired from another utility, and on landowners within 150

feet of either side of the center line of the certified facilities (as identified by local tax maps). A copy of the notice shall be attached to each copy of the EM&CP. NYSEG shall publish EM&CP filing notice(s) in a newspaper or newspapers of general circulation in the vicinity of the certified facility.

(iii) The written notice(s) and the newspaper notice(s) shall contain, at a minimum, the following: a statement that an EM&CP has been filed; a general description of the EM&CP; a listing of the locations where the EM&CP is available for public inspection; a statement that any person desiring additional information about the specific geographical location or specific subject may request it from the company or may attend the public meeting on the EM&CP; the name, address, and telephone number of the company's representative; the address of the Commission; the date, time, and location of the public meeting on the EM&CP; and a statement that any person may comment on the EM&CP by filing written comments with the Commission and NYSEG within 30 days of the filing date with the Commission (or within 30 days of the date of newspaper notice, whichever is later). Where possible, the notice(s) shall be written in language reasonably understandable to the average person, as determined by NYSEG. The newspaper notice(s) shall be at least one-half page in size or page dominant and 10-point type in display format. A certificate of service indicating upon whom all EM&CP notices and documents were served and a copy of the written notice shall be submitted to the Commission at the time the EM&CP is filed and shall be a condition precedent to approval of the EM&CP.

(b) NYSEG shall report any proposed changes in the approved EM&CP to staff. Staff will refer to the Secretary of the Commission (or a designee) reports of any proposed changes that do not cause substantial change in environmental impact or are not related to contested issues decided during the

proceeding. All other proposed changes in the EM&CP shall be referred by staff to the Commission for approval. Upon being advised that staff will refer a proposed change to the Commission, NYSEG shall notify all affected statutory and active parties as well as all property owners or lessees whose property is affected by the proposed change. The notice shall describe the requested change and state that documents supporting the request are available for inspection at specified locations, and state that persons may comment by writing or calling (followed by written confirmation) to the Commission within ten days of the notification date. Any delay in receipt of written confirmation will not delay Commission action on the proposed change. NYSEG shall not execute any proposed change until it receives oral or written approval, except in emergency situations or as specified in the EM&CP.

7. Except where this opinion and order requires otherwise, the terms of any settlement and the environmental protection measures contained in the application and in related papers, statements and interrogatory responses made by NYSEG shall be applied during preparation of the EM&CP and during construction, operation and maintenance of the certified facility.

8. (a) Deviations of up to one-eighth mile in either direction from the certified centerline shall be allowed for appropriate environmental or engineering reasons, except as indicated in the opinion and order. Proposed deviations shall be detailed in the EM&CP. Deviations exceeding one-eighth mile from the certified center line may be proposed if the deviation is approved by the landowner, limited to the lands of a single owner, does not involve a contested issue, and does not affect any other landowner. Such deviations may be approved by staff.

(b) The above notwithstanding, any proposal to deviate from the Mobil ROW in the vicinity of the Danby Fir Tree

Swamp must be reviewed and approved by the Commission in the EM&CP approval process and based on the submittals of interested parties.

9. NYSEG shall make available to the public a toll free or local phone number of an agent or employee where complaints may be received during construction of the certified facilities. In addition, the phone number of the Commission, and the phone number of its Environmental Compliance Section, shall also be provided in the event there are questions or concerns. Phone complaints shall be logged and made available to staff upon its request. During staff's compliance inspections, NYSEG shall report to staff every unresolved complaint.

10. (a) Before or at the time NYSEG or its representative contacts landowners in the project area to conduct engineering surveys or environmental studies on their land or to negotiate for the purchase of rights to their land or to notify them of the filing of an EM&CP, the company shall provide such landowners with a letter describing the surveys and studies to be undertaken and fully disclosing the owners' rights to comment on the EM&CP. The letter shall include, at minimum: background information on the proceeding; a statement indicating the status of the certification proceedings or that the Commission has issued a Certificate; an explanation of why engineering surveys and environmental studies are needed; a listing of precautions and protective measures to be used during the surveys and studies to minimize damage to owners' property; an explanation of the EM&CP preparation and approval process; a statement that property owners will receive notice of the filing of the EM&CP, and that they have the right to comment upon it; and the name and toll-free or local telephone number of an employee or agent of NYSEG who can answer questions or receive complaints. In addition, the Commission's phone number and the number of its Environmental Compliance Section shall be included for use in the event there

are questions or concerns. Before the letter is provided to landowners, NYSEG shall confer with staff concerning its content. A copy of the letter and the names and addresses of those to whom it was provided shall be submitted to the Secretary of the Commission at the time or as a part of the EM&CP filing. In the letter or before NYSEG requests that a landowner execute an easement, NYSEG shall notify the landowner that he/she has the right to preclude the use of herbicides on his/her property.

(b) Before commencing site preparation, NYSEG shall give notice to local officials and emergency personnel. NYSEG shall also provide such notice for dissemination to local media and display in public places (such as general stores, post offices, community centers and conspicuous community bulletin boards). The notice shall contain a map and description of the project in the local area, the anticipated date for start of construction and name, address and local or toll-free telephone number of an employee or agent of NYSEG. The notice shall also contain a statement that the project is under the jurisdiction of the Public Service Commission which is responsible for enforcing compliance with environmental and construction conditions, which may be contacted at an address and telephone number to be provided. Where possible, the notice will be written in language reasonably understandable to the average person, as determined by NYSEG. Upon distribution, a copy shall be submitted to the Secretary of the Commission.

11. NYSEG shall provide construction contractors with complete copies of the Certificate, EM&CP, 401 Water Quality Certification, and 6 NYCRR Parts 700-704.

12. The authority granted in the Certificate and any subsequent order(s) in the proceeding is subject to the following conditions necessary to ensure compliance with such order(s):

(a) NYSEG shall regard the staff representatives (certified pursuant to Public Service Law §8) as the Commission's

designated representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate or may violate the terms of the Certificate or any other order in this proceeding, such staff representatives may issue a stop-work order for that location or activity.

(b) A stop-work order shall expire within 24 hours unless confirmed by a single Commissioner. If a stop-work order is confirmed, NYSEG may seek reconsideration from the confirming Commissioner or the whole Commission. If the emergency prompting the issuance of a stop-work order is resolved to the satisfaction of the Commissioner or the Commission, the stop-work order will be lifted. If the emergency has not been satisfactorily resolved, the stop-work order will remain in effect.

(c) Stop-work authority shall be exercised sparingly and with due regard to the potential economic costs involved and possible impact on construction activities. Before exercising such authority, staff field representatives shall attempt (wherever practicable) to direct preventive or remedial action through representatives of NYSEG possessing comparable authority. In the event that staff field representatives issue a stop work order, neither NYSEG nor the contractor will be prevented from undertaking such safety-related activities as they deem necessary and appropriate under the circumstances.

(d) In the event of any emergency involving specific construction or maintenance activities that violate or threaten to violate the terms of the Certificate or any other order in this proceeding, staff field representatives may direct NYSEG to install appropriate mitigative measures or devices.

#### NOTIFICATIONS

13. NYSEG shall inform the Secretary and staff at



least five days before commencing construction or clearing on this project.

14. NYSEG shall provide staff and DEC weekly status reports summarizing the previous week's construction and indicating locations of construction scheduled for the next two weeks.

15. Within ten days after the facility is in service, NYSEG shall notify the Commission of that fact.

ROADS AND HIGHWAYS

16. (a) In preparing the EM&CP, NYSEG shall consult with each local department or agency having jurisdiction over the roads in the project vicinity that will be crossed by the certified pipeline or used for direct access to the right-of-way. At least five days before the company begins construction within the right-of-way limits of such roads or takes direct access therefrom, NYSEG shall notify each such department or agency of the approximate date work will begin.

(b) All work within state highway rights-of-way shall be performed in accordance with the traffic and safety standards and other substantive requirements contained in 17 NYCRR Part 131. NYSEG shall develop the details of state highway crossings and use in consultation with the New York State Department of Transportation and will include information responding to the requirements of 17 NYCRR Part 131 in the EM&CP. If the Department of Transportation fails to act in a timely fashion or refuses to concur in the manner proposed by the Company for any highway crossing or use, NYSEG shall bring the disagreement to the Commission for resolution by fully describing such disagreement when the EM&CP is filed. Nothing in this clause alters the Commission's jurisdiction as the ultimate decision-making authority with respect to the siting of major transmission facilities authorized hereby.

RIGHTS-OF WAY CLEARING

17. NYSEG shall confine clearing and subsequent maintenance to the certified right-of-way.

18. Any fines, penalties or environmental damage resulting from actions performed by contractor personnel working on this project (from work directly or indirectly associated with this project) shall be the responsibility of the contractor. The Commission may also seek appropriate penalties from NYSEG as a result of its contractors' actions.

PIPELINE CONSTRUCTION

19. NYSEG shall take appropriate measures as outlined in the EM&CP to minimize fugitive dust and airborne debris from construction activity.

20. Noise mitigation procedures shall follow those set forth in staff's Standards and Practices, with the exception that staff shall be notified if Sunday or holiday construction becomes necessary.

21. During the main trenching operation, NYSEG shall install temporary crossings or ditch plugs as necessary for property owners, farmers, or wildlife, and to minimize the flow of water along the open ditch. Such crossings will be maintained during the various stages of construction.

22. Open ditch through soil type terrain shall be backfilled within 5 days of the pipe being lowered into the ditch, unless conditions or circumstances warrant a different period as determined by the construction foreman, the environmental forester, or staff inspector. Tie-ins or test section openings and boring pits, where necessary, will not be included in this restriction as long as adequate safety precautions and environmental controls are adhered to.

23. Access across streams or wetlands where necessary shall be confined to approved crossing techniques, indicated on a

site specific basis in the EM&CP. Equipment turn outs may be provided for machinery and equipment to pass at intervals in non-sensitive areas. The company shall instruct its contractors to park in designated areas which do not interfere with normal traffic, do not cause any safety hazard or interfere with existing land uses.

WATERBODIES AND WETLANDS

24. (a) NYSEG shall minimize any disruption to wetlands encountered along the certified route. The company shall cross such wetlands giving due consideration to the environmental features of the wetlands and the 100-foot adjacent area associated with DEC regulated wetlands (adjacent area). NYSEG shall, to the extent feasible, construct access roads outside any wetland and outside the adjacent area. Construction of any access roads and the pipeline itself through such wetlands shall be carried out using methods of construction set forth in the EM&CP. Any temporary gravel road and associated work pad material shall be removed following construction. Where necessary to maintain a wetland's natural water level, the company shall place impervious plugs or seals composed of environmentally appropriate material in the trench. In regulated wetlands, NYSEG shall separate the vegetative mat and the upper soil horizon during excavation and replace them to as near the original position as possible during backfilling.

(b) For construction in and access to the Danby Fir Tree Swamp, NYSEG shall adhere to the following requirements in order to minimize disruption of hydrology soils and vegetation:

- (i) Clearing and destruction of standing trees and timber shall be minimized, with details shown in the EM&CP.
- (ii) Construction mats shall be used to the

- extent possible. Any log corduroy roads shall be removed to the extent necessary to restore hydrology and drainage patterns.
- (iii) Hydrologic effects of pipeline construction shall be minimized to the extent practicable. The EM&CP shall be based on site-specific soils and drainage information and shall indicate construction and restoration criteria for minimizing impacts to the site hydrology.
  - (iv) The EM&CP shall specify techniques for precluding introduction of undesirable vegetation species into the swamp during pipeline construction and site restoration.
  - (v) The long-range ROW management plan required in Ordering Clause 33 shall include specific criteria for monitoring the right-of-way in the swamp for undesirable vegetation, and shall specify treatments to eradicate and prevent the spread of undesirable species along the right-of-way into other areas of the swamp.
  - (vi) The certificate holder shall attempt to coordinate efforts with landowners to allow salvage and relocation of rare plants from the construction ROW prior to initiation of clearing or construction in the swamp.

25. NYSEG shall maintain the hydrological integrity of streams over limestone bedrock by means such as (but not limited to) use of appropriate backfill material and sealing of any fissures with quick setting grout and mesh reinforcement. Stream crossings shall be conducted during periods to be identified in the EM&CP. Exceptions to these dates may be proposed, based on

stream conditions, by the DEC or Certificate holder. For all classified streams crossed, there shall be no increase in turbidity 400 feet downstream of the construction site that will cause a substantial visible contrast to natural conditions. For all classified streams crossed, there will be no settleable solids (as defined in 6 NYCRR 703.2) 100 feet downstream of the construction site that will cause deposition or impair the waters for their best usages. All gravel road and associated work pad material shall be removed following construction (and during the window of construction for the affected stream) except as provided in the EM&CP approved by the Commission. In all cases, the pre-disturbance flow regime shall be maintained. NYSEG shall exercise all necessary and reasonable precautions to minimize stream sedimentation and soil erosion in work areas and on the right-of-way. The company shall take prompt and effective action to control excessive sedimentation and erosion, in the event it does occur.

26. Hydrostatic testing shall meet all applicable standards set forth in 6 NYCRR Parts 700-704. The company shall consult with DEC regarding hydrostatic testing, if there will be any impact to a classified stream or DEC regulated wetland. Details of hydrostatic testing, including intake and discharge sites, and noise, drainage and erosion controls, shall be presented for review and approval by staff at least ten days before initiation of testing procedures.

#### EROSION CONTROL

27. In areas of the right-of-way subject to soil erosion, NYSEG shall install temporary erosion control devices as soon as practicable and appropriate as indicated in the EM&CP and any storm water and erosion control plans.

#### ENVIRONMENTAL SUPERVISION

28. NYSEG's environmental forester or a qualified designee shall be on site at the start-up of each field operation and at all times during environmentally sensitive phases of construction in areas such as streams, wetlands, significant wildlife or rare plant habitats and active croplands (defined as improved pasture, rotation pasture/hayland, hayland, rotation hayland/cropland, long term cropland including agricultural land enrolled in either the annual set aside or the Conservation Reserve Program of Consolidated Farm Service Agency and unique agricultural land, including specialty land, muckland, orchards and vineyards) on each project. Each environmental forester or designee and construction inspector shall be equipped with sufficient documentation, and transportation and communication equipment to monitor effectively contractor compliance with the provisions of this opinion and order, applicable sections of the Public Service Law and the Commission approved EM&CP.

29. NYSEG shall organize and conduct site compliance inspections as needed but not less frequently than once a month during the clearing, construction and restoration phases of the project, and at least annually for two years after the project is operational. The inspection shall include a review of the status of all certification conditions, requirements, and commitments, as well as a field review of the project, if necessary. The inspection may also include:

- (a) reviews of all complaints received, and their proposed or actual resolutions;
  - (b) reviews of any significant comments, concerns or suggestions made by the public, local governments, or other agencies;
  - (c) reviews of the status of the project in relation to the overall schedule established prior to the commencement of construction;
- and

- (d) any other items NYSEG or staff consider appropriate.

A written record of the results of the inspection will be circulated to involved agencies by the company.

RIGHTS-OF-WAY AND MAINTENANCE

30. NYSEG shall acquire a 40-foot wide permanent easement over the length of the pipeline except as otherwise indicated in the EM&CP. In addition, the company, where necessary, shall negotiate for additional temporary easement for construction purposes as identified in the EM&CP and approved by the Commission. In no event shall any acquired easement include the right to apply herbicides unless voluntarily approved in writing by the landowner. Any temporary easement or construction areas must be identified in the EM&CP or requested through changes thereto. Unless otherwise specified in the EM&CP, NYSEG shall, following restoration, let the temporary construction area revegetate naturally or return to its original land use to the extent that forest canopy development does not interfere with the inspection, operation or maintenance of the utility facilities. Except where otherwise specified in the EM&CP, in areas where forest canopy growth precludes aerial inspections of the right-of-way, stem-specific removal of trees or side trimming shall be conducted in accordance with long-range right-of-way management plans.

31. Any herbicide use for facility construction shall employ appropriate techniques and environmental restrictions as set forth in NYSEG's Detailed Specifications for Transmission Right-of-Way Vegetation Maintenance. In environmentally sensitive areas, the following herbicide restriction distances shall be applied:

- (a) All water bodies except DEC-regulated wetlands and potable water supplies:

- No application by the high-volume, selective, stem-foliar method within 50 feet of water.  
No application within 30 feet of water.
- (b) DEC-regulated wetlands and their adjacent areas:
  - Only stem-specific applications of herbicides labeled for use in wetlands applied by Commission-approved methods.
  - No application within 30 feet of water.
- (c) Potable water supplies:
  - No application within 100 feet of potable water supplies.

32. There will be no mowing within a DEC regulated wetland except where the treatment site is dry at the time of mowing, and as provided in the EM&CP or long term right-of-way management plan approved by the Commission.

33. The company shall prepare for staff review and approval a Long-Range Right-of-Way Management Plan for the certified pipeline facility within one year of completing construction of the facility. At least 90 days prior to start of scheduled vegetation maintenance work, NYSEG shall file detail work description with appropriate maps. The plan shall provide details of the right-of-way management program goals and objectives, and address relevant considerations such as:

- a) special environmental considerations;
- b) landowner notification procedures;
- c) right-of-way vegetation influences on management decisions;
- d) vegetation treatment types, procedures, and practices;
- e) timing or scheduling considerations;
- f) protection or maintenance of screening vegetation, buffer zones, and non-target



- vegetation;
- g) maintenance of drainage and erosion control facilities;
  - h) evaluating and resolving access problems;
  - i) special considerations;
  - j) conditions of right-of-way management activities on right-of-way common with other facilities, utilities, or pipelines;
  - k) monitoring, evaluating, and modifying the plan and its components; and,
  - l) minimizing windborne herbicide drift including the identification of a wind speed beyond which herbicides will not be applied or a detailed justification of why a maximum wind speed cannot reasonably be established.

AGRICULTURE

34. Standard specifications for depth of cover over the pipeline will be as follows:

(a) In active croplands, as defined herein, and improved pasture, a minimum of four feet (48 inches) depth of cover, except that where the pipeline is adjacent to an existing pipeline buried with less than 40 inches depth of cover and is on the same or expanded right-of-way, the minimum depth of cover will be 40 inches.

(b) In unimproved pasture, a minimum of three feet (36 inches) depth of cover.

(c) In agriculture lands where overburden conditions range from zero to four feet above bedrock, the pipeline will be buried entirely below the top of the bedrock; at no time will the depth of cover be reduced to less than two feet.

All variances from these specifications will be clearly stated in contract documents, construction drawings, or detailed

drawings for special areas or crossings.

(d) NYSEG shall include in the EM&CP reference diagrams which illustrate the above-noted depths and materials specifications for all applicable references used including, but not limited to, EM&CP development, contract specifications, farmer information, and project construction and rehabilitation work and inspection.

35. NYSEG shall retain a qualified Agricultural and Soil Conservation Specialist/Inspector (Agricultural Specialist) from EM&CP development through construction and initial restoration, post-construction monitoring and follow-up restoration. The Agricultural Specialist shall submit site-specific agricultural information for EM&CP development to NYSEG. This information shall be obtained through field review as well as direct contact with affected farm operators, County Soil and Water Conservation Districts, the Department of Agriculture & Markets, and others. The Agricultural Specialist shall maintain regular contact with NYSEG's Environmental and Engineering Coordinators and appropriate on-site Project Inspectors throughout the construction phase. The Agricultural Specialist shall also maintain regular contact with the affected farmers and County Soil and Water Conservation Districts concerning farm resources and management matters pertinent to the agricultural operations and the site-specific implementation of the EM&CP. NYSEG shall consult with Ag & Markets at the same time it submits a request for an EM&CP modification concerning agriculture. To help ensure successful site-specific agricultural post-construction mitigation and restoration, the Agricultural Specialist shall be retained, on at least a part-time basis, for not less than two years following the activation of the pipeline. During this time, such Agricultural Specialist shall maintain direct contact with the Project Sponsor, affected farm owner/occupant, County Soil and Water Conservation Districts,

Agriculture & Markets, and others as necessary to solve any outstanding restoration problems.

36. NYSEG shall identify Black Cherry trees located on the right-of-way near active livestock use areas during EM&CP development. Black Cherry tree vegetation is toxic to livestock when cut and wilted, and shall not be stockpiled in areas accessible to livestock. During the clearing phase, such vegetation shall be disposed of in a manner which prevents contact with livestock.

37. (a) For lands disturbed within or adjacent to agricultural areas where the alignment and physical excavation of the trench or cut-and-fill grading alters the natural soil drainage patterns, NYSEG shall rectify the drainage problems with measures such as subsurface intercept drain lines. The Agricultural Specialist shall select the type of drainage improvement to be used. All drain lines shall be installed with gravity-flow and safe outletting to an open ditch-waterway, according to Natural Resource Conservation Service (formerly SCS) standards and specifications.

(b) In all agricultural portions of the right-of-way, topsoil shall be removed from the combined width of the subsoil stockpile area, trench, construction assembly, and traffic zones. The depth of topsoil removal shall include all of the "A" horizon down to the beginning of the subsoil "B" horizon, generally not to exceed a maximum of 12 inches, however, topsoil removal up to a depth of 16 inches shall be required in specially designated soils encountered along the pipeline route and identified in the EM&CP. All topsoil shall be stockpiled separate from the other excavated materials. The exposed surface of the subsoil shall be the work surface. The Agricultural Specialist shall determine depth of topsoil stripping per affected farm during EM&CP development by means of the County Soil Survey and on-site soil auguring, if necessary. All topsoil

material shall be stripped, stockpiled, and returned in its natural sequence to restore the original soil profile. During the clearing/construction phase, site-specific depths of topsoil stripping shall be monitored by NYSEG. Where right-of-way construction requires cut-and-fill of the soil profile across grades, all topsoil shall be stripped and separately stockpiled, where practical, on the upslope edge of the right-of-way.

(c) In agricultural areas, where the materials excavated during trenching are insufficient in quantity or are otherwise inadequate to meet backfill requirements, the soil of any agricultural land adjacent to the trench and corresponding construction zone shall not be used as backfill nor surface cover material. Under no circumstances shall any topsoil material from areas of active agriculture be used as pipe padding material or trench backfill. In situations where imported soil materials are employed for backfill on agricultural lands, such material shall be of similar texture to the existing soils on site. Imported soils may be obtained from a variety of sources. In order to satisfy agricultural restoration requirements, a portion of a farm's non-cropland may be considered as an alternative source of imported soils, in some specific instances.

(d) Farm owners/occupants shall be given timely notice prior to blasting on farm property. In agricultural areas of till over bedrock requiring blasting, NYSEG shall use matting or controlled blasting to limit the dispersion of blast rock fragments.

(e) In areas of cropland, including rotation hayland, blasted bedrock or concentrated volumes of excavated rock material may be used to backfill the trench to a level 24" below subsoil grade. From that level to subsoil grade, spoil removed from the non-consolidated soil profile may be utilized as backfill, provided the spoil's rock content is similar to the undisturbed non-consolidated subsoil profile. Trench crowning

shall occur during backfilling operations, using subsoil material over the width of the trench to allow for trench settling. The stockpiled topsoil shall be spread over the entire affected right-of-way in uniform thickness. In areas where subsequent trench settling occurs after the topsoil spreading, imported topsoil shall be used to fill each depression. Topsoil from the right-of-way or adjacent agricultural land shall not be used to backfill depressions.

(f) In all agricultural sections of the right-of-way where topsoil is stripped, NYSEG shall break up the exposed surface subsoil with deep fracturing by such devices as, but not limited to, a deep-ripper and heavy duty chisel plow. Following the deep ripping and chiseling, all stone and rock material four inches and larger in size which has been lifted to the surface shall be collected and taken off site for disposal. The topsoil that has been temporarily removed for the period of construction shall be replaced after deep ripping and stone removal. Finally, deep subsoil shattering shall be performed with a subsoiler tool having angled or L-shaped legs. Stone removal shall be completed as necessary to eliminate any additional rocks and stones brought to the surface as a result of the final subsoil shattering.

(g) After the relative soil moisture of the affected right-of-way has returned to equilibrium with the adjacent off right-of-way land, subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests shall be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the right-of-way shall be compared with those of the adjacent off right-of-way portion of the affected farm field/soil unit to determine if the decompaction of the affected "B" horizon has achieved a compaction level no greater than that of the unaffected land.

Where necessary, additional deep tillage using an angled leg subsoiler tool shall be undertaken during periods of relatively low soil moisture to ensure the desired mitigation and prevent additional subsoil compaction. In the event that subsequent construction, testing or clean-up activities result in new compaction, NYSEG shall carry out additional deep tillage to alleviate such compaction.

38. In existing agricultural fields where future surface and subsurface drainage plans have been identified by the owner/occupant or are on file with the Soil and Water Conservation District prior to EM&CP development, NYSEG shall provide adequate cover over the pipe to allow the future installation of major header drains and main drains across the right-of-way without obstruction due to the burial depth of the pipeline. Deviations from the standard depth of cover shall be specified in the EM&CP.

39. Where crop productivity within the affected right-of-way is less than that of the adjacent unaffected agricultural land, crops will be observed during July and August and samples of the disturbed agricultural soils shall be tested for Ph and basic nutrient requirements if necessary. NYSEG shall restore nutrient levels to those recommended in the lab reports.

40. In active agricultural fields, a detailed drainage line repair procedure for the repair of crushed/severed clay tile and plastic drain lines shall be developed during preparation of the EM&CP. The procedure shall be developed by the Agricultural Specialist in consultation with the local Soil and Water Conservation District. Specific drawings showing the generic repair technique for drain lines shall be provided by NYSEG. The repair or replacement of functional stone drainage systems severed during pipeline construction shall be designated by the Agricultural Specialist, in consultation with Ag and Markets and/or the Soil and Water Conservation District during the

restoration phase.

41. As part of the line location surveys conducted during the EM&CP phase, NYSEG shall verify the location of all commercial sugar bushes maintained for maple syrup production within the right-of-way. NYSEG shall attempt to adjust the centerline location to avoid such operations.

42. In all livestock grazing areas, and other areas identified by the farm owner/operator, the open trench and associated construction area shall be fenced by NYSEG where requested and livestock crossings shall be provided where needed. Segments of active fences and gates affected by construction shall be rebuilt to like-new condition upon completion of construction. The base of all new posts shall be secured to a reasonable depth below the surface to prevent frost heave.

43. (a) NYSEG and/or its representatives shall provide all farm owners/operators with a telephone number by which direct contact can be maintained with the company.

(b) Farm operators shall be given timely notice by the company prior to blasting on farm property.

44. NYSEG shall provide a remediation period of no less than two years immediately following the full-length activation of the pipeline. The remediation period shall be used to identify any remaining agricultural impacts associated with right-of-way construction which are in need of mitigation. NYSEG shall maintain an Agricultural Specialist on at least a part-time basis through this period for contact by such farmland operators and by respective Soil and Water Conservation Districts. The Agricultural Specialist, in conjunction with NYSEG as well as other appropriate organizations, shall help to determine and to implement the appropriate rehabilitation measures. All affected farm owners/occupants shall be periodically apprised of the remediation period by their respective work spread Agricultural Specialist during the various stages of the project. Because

conditions which require remediation (e.g., settling of fill material, dysfunctional drainage system, sections of damaged fence, etc.) may not be noticeable at or shortly after the completion of construction, any signing of a release form prior to the end of the remediation period shall not obviate NYSEG's responsibility to redress fully redress all project impacts. After completion of the specific remediation period, NYSEG shall continue to respond to the reasonable requests of the farmland owner/operators to correct project impacts on agricultural resources.

ARCHAEOLOGICAL

45. (a) NYSEG shall obtain an archaeological survey, prepared by a qualified archaeologist, on the portions of the right-of-way and associated sites which will be disturbed by construction or associated operations. Areas which must be surveyed include, but are not limited to, pipeline locations, and access road locations. The purpose of the survey is to facilitate protection of archaeological resources.

(b) The archaeologist may use professional judgment to limit the areas to be physically surveyed, decide which sections of the right-of-way should receive particular attention or decide not to physically survey areas which have been substantially disturbed by prior construction or other activities. The archaeologist will give due regard to any area likely to contain archaeological resources, as identified by the Office of Parks, Recreation and Historic Preservation (Parks) or in the literature or by means of other recognized techniques such as predictive modeling.

(c) The company shall submit to the Commission as part of its EM&CP, or thereafter as available, the archaeologist's final report describing the survey, the basis for decision concerning the design and extent of the survey, along



with any findings. Upon completion of the survey, NYSEG shall consult with Parks to determine whether it is necessary to avoid or mitigate the impact of the project on the resources identified in the survey, and if so, propose appropriate action.

(d) If Parks fails to act in a timely fashion or refuses to concur in the action proposed by the company, NYSEG shall bring the disagreement to the Commission for resolution. Nothing in this clause alters the Commission's jurisdiction as the ultimate decision-making authority with respect to the siting of major utility transmission facilities authorized hereby.

46. Prior to initiation of construction, all environmental foresters involved with the proposed facility shall become thoroughly familiar with identification of cultural resources, the procedure for identifying and protecting them, and all agency notification procedures identified herein.

47. Should archaeological materials be encountered during construction, the company shall stabilize the area and cease construction activities in the immediate vicinity of the find and protect the same from further damage. Within 24 hours of such discovery, NYSEG shall notify staff and Parks to determine the best course of action. No construction activities shall be permitted in the vicinity of the find until such time as the significance of the resource has been evaluated and the need for the scope of impact mitigation has been determined.

48. Should human remains or evidence of human burials be encountered during the conduct of archaeological data recovery fieldwork or during construction, all work in the vicinity of the find shall be immediately halted and the remains shall be protected from further damage. Within 24 hours of any such discovery, NYSEG shall notify the Commission and Parks.

49. The company shall refrain from undertaking construction in areas where cultural resource surveys have not been completed, and until such time as the results of any such

cultural resource surveys have been reviewed by the appropriate authorities, including Parks and staff. Staff shall be contacted prior to commencement of construction in any such areas.

OTHER UTILITIES

50. NYSEG shall undertake a site specific study of the portions of the right-of-way in close proximity to overhead electric lines of 65 kV or greater. The company shall file an engineering report, including a summary and analysis of calculation results and mitigation procedures to protect the pipeline from anticipated fault currents, and to maintain step-and-touch voltages under steady state conditions at the level(s) determined by a final, non-appealable order of the Commission.

51. NYSEG shall consult with its electric department concerning proper minimum clearances to energized conductors, foundations, and structures. These minimum clearances will be observed at all times during construction, maintenance, and operation of the pipeline facilities.

52. NYSEG shall show the location of blow-down valve vents or other potential sources for planned gas releases on electric line rights-of-way in the EM&CP or changes thereto.

53. NYSEG shall engineer its facilities to be fully compatible with the operation of nearby electrical facilities and to ensure proper coordination of the cathodic protection of the pipeline with transmission structure foundations. The company shall take remedial measures with regard to its cathodic protection system if, upon monitoring, such measures are indicated.

54. NYSEG shall ensure that its electric department has access to its transmission rights-of-way and electric facilities. If cross-overs of the right-of-way are required, NYSEG shall work with the electric department to identify mutually acceptable cross-over points for heavy equipment.

55. NYSEG shall provide an electrical safety inspector, who shall ensure that appropriate safety practices are followed when construction takes place in close proximity to electric facilities.

RIGHTS-OF-WAY RESTORATION

56. Roadside boring and receiving pits shall be backfilled for a distance of at least 15 feet from the travel portion of the road within one week of the pipe installation unless conditions or circumstances warrant a different period as determined by the construction foreman, environmental forester, or staff inspectors.

57. NYSEG shall, upon completion of the project, conduct an assessment of needs for remedial vegetation plantings. The results to the assessment and any proposals for the addition of new plantings or rearrangement of existing plantings, and specifications for plantings, shall be submitted to staff for review and acceptance by the Secretary of the Commission no later than six months after the facility is in service.

58. All trees over two inches in diameter (measured four feet above ground) or shrubs over four feet in height damaged or destroyed by the company's activities during construction, operation, or maintenance, regardless of where located, shall be replaced by NYSEG with the equivalent type trees or shrubs, except where:

- (a) permitted by any approved EM&CP;
- (b) equivalent-type replacement trees or shrubs would interfere with the proper clearing, construction, operation, or maintenance of the facility;
- (c) replacement would be contrary to sound right-of-way management practices or to any approved long-range right-of-way management plan applicable to the project; or
- (d) a property owner (other than NYSEG) on whose

land the damaged or destroyed trees or shrubs were located declines replacement.

59. In its EM&CP, NYSEG shall address the timely restoration of its right-of-way.

60. Within ten days of the completion of final restoration, NYSEG shall notify the Commission that all restoration has been completed in compliance with the EM&CP.

BLASTING AND ROCK REMOVAL

61. NYSEG in consultation with staff, or any other interested or concerned party, shall determine which structures, features or facilities might be at risk from blasting operations.

62. Where blasting is required, the company shall adhere to applicable blasting regulations, guidelines, and permit requirements. NYSEG shall only use certified and licensed blasters.

63. A qualified consultant shall be engaged by NYSEG to measure vibration resulting from representative blasting operations.

64. A limit of 0.006 inches maximum amplitude of vibrations and a limit of maximum horizontal peak particle velocity of 2 inch/sec shall not be exceeded at the nearest monitored structure, feature or facility.

65. The NYSEG inspector or qualified designee shall halt blasting operations if the limits listed above are exceeded. Work shall be halted if travel of flyrock is observed, or if any unsafe practices are seen to occur.

66. (a) All structures, features or facilities determined to be at risk of damage or destruction after preliminary surveys shall be inspected before, monitored during, and inspected after blasting.

(b) (i) NYSEG shall conduct pre-construction and post-construction monitoring of water quality and quantity as detailed and approved in its EM&CP in the following situations:

[a] Where blasting and rock shattering operations occur within 150 feet of domestic water wells and systems.

[b] Where any trenching operations occur within 200 feet uphill from shallow subsurface collection systems or hand-dug wells (for human or livestock water consumption or for other uses).

(ii) Where significant temporary disruptions of domestic systems result, NYSEG shall provide potable water until the systems have recovered.

(iii) Where disruptions are permanent, NYSEG shall:

[a] Drill new wells, replace systems, or compensate landowners for new domestic potable water systems.

[b] Repair shallow subsurface collection systems or wells, or compensate for same, for systems used for watering livestock, or for other purposes.

67. No holes shall be loaded with explosives until all holes are drilled at a given site.

68. No equipment shall be driven over loaded holes.

69. Staff, local public safety officials, and any other appropriate state or local agency shall be contacted no less than 48 hours prior to the initiation of blasting for this project.

70. NYSEG shall make every reasonable attempt to warn

all inhabitants of residences, occupied structures or operators of farm fields within one eighth mile on either side of the center line of proposed blasting operations no less than 24 hours before blasting begins in that area. If necessary, said inhabitants shall be temporarily moved to a safe location while blasting is conducted.

71. Any structures, features or facilities deemed to be at risk shall be monitored before, during and after the use of any rock shattering devices.

72. If necessary, occupants of nearby structures shall be temporarily moved while rock shattering devices are being used in the area.

73. Pipeline construction operations with high decibel noise levels such as blasting of rock, breaking of concrete, hoe ramming, and similar activities near noise-sensitive locations shall be restricted to hours between 8:00 a.m. and 7:00 p.m., Monday through Saturday inclusive.

PROJECT-SPECIFIC CONDITIONS

74. NYSEG shall design the pipeline to be compatible with "smart pig" technology.

75. NYSEG shall identify in its EM&CP those areas along the route where children are expected to be present, and shall provide a detailed description of the protective measures it will take to protect children during the construction of the facility.

76. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY  
Secretary