

August 13, 2012

**VIA ELECTRONIC SERVICE**

Hon. Eleanor Stein  
Administrative Law Judge  
NYS Department of Public Service  
Three Empire State Plaza, 3<sup>rd</sup> Floor  
Albany, New York 12223

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

Dear Judge Stein:

This office represents Protect Ghent, Inc. ("PG"), a 501(c)(3), not-for-profit corporation with a membership consisting of a wide array of residential and agricultural landowners and business owners along, adjacent to, and/or near the proposed route of the above-referenced "Columbia County Transmission Project." PG is an Active Party in the instant Article VII proceeding. Please consider the following comments as PG's partial opposition to New York State Electric & Gas Corporation's ("Applicant") May 1, 2012, "Motion for Waivers" in this proceeding ("Motion").

In the Motion, the Applicant seeks a waiver of the Article VII application requirements contained in 16 N.Y.C.R.R. §§ 86.3(a)(1) and (a)(2), 86.3(b)(1)(iii), 86.4(b) and 88.4(a)(4). Clearly, these regulatory requirements are intended to ensure that DPS Staff, and the public, are furnished with sufficient data and information with which to evaluate the merits of an Article VII application. Where, as here, the Applicant proposes to construct an above-ground transmission line, including along new rights-of-way, the need for detailed depictions of and information concerning the proposed route is paramount. Accordingly, waivers from DPS regulations should only be granted only when supported by good cause, and when a reasonable substitute for the required information is made available by the Applicant. In this proceeding, NYSEG filed its Article VII application as if the waivers had already been granted, thus inappropriately treating Your Honor's consideration of the instant Motion as a *fait accompli*.

**16 N.Y.C.R.R. § 86.3(a)(1):**

PG generally concurs with the positions expressed by DPS Staff and staff of the New York State Department of Environmental Conservation ("NYSDEC") as to the Applicant's

request for a waiver of the requirement to show the proposed right-of-way on New York State Department of Transportation (“NYSDOT”) topographic maps at a scale of 1:24,000. Specifically, while NYSDOT topographic maps at that scale may indeed not be available, PG disagrees with Applicant’s conclusion that Figure 2-1 of the application “effectively present[s] the required information.”<sup>1</sup> Merely presenting the required information is insufficient -- it must be presented in a thorough, accurate and user-friendly manner to facilitate DPS Staff and public review.

Accordingly, PG agrees with DPS and NYSDEC Staff that the Applicant should be directed to use the USGS 2010 edition topographic quadrangles based on orthophotography rather than the traditional topographic quadrangles, which appear to be significantly outdated. Because the Columbia County Transmission Project threatens to impact valuable agricultural lands, historic resources, public recreational areas and open space, it is critical to have the most up-to-date base maps in the record.

**16 N.Y.C.R.R. § 86.3(a)(1)(ii):**

In the Motion, Applicant seeks to provide “aerial photography taken by Leading Edge Geomatics in November 2011 at a scale of 1 inch equals 500 feet (1:6,000) and aerial photography taken by Leica Geosystems for the USDA National Agriculture Imagery Program in May of 2011 and October 2011 . . . to show where the construction and reconstruction of the proposed facility would necessitate clearing or other changes to the topography, vegetation or man-made structures.”<sup>2</sup> PG does not oppose the waiver request, in general, but notes that the referenced aerial photography should be updated to reflect current conditions to the greatest extent practicable.

For example, 16 N.Y.C.R.R. § 86.3(b)(2) states, in pertinent part, “[A]erial photographs shall reflect the current situation. Aerial photographs of urban areas and urbanizing fringe areas shall be taken within six months of the date of filing.” *Id.* While PG is by no means suggesting that the proposed right-of-way runs through “urban areas” or “urbanizing fringe areas,”<sup>3</sup> PG suggests that six months presents a reasonable reference date for the purpose of evaluating the timeliness and accuracy of Applicant’s aerial photography. Using that metric, the USDA imagery is significantly outdated. Further, it is unclear how intervenors would be able to cross-examine the Applicant’s witnesses on the source, origin and accuracy of aerial photography created -- not by the Applicant or for the Applicant’s use -- but by a non-party Federal agency. Accordingly, the Applicant should be compelled to collect up-to-date aerial photography, rather than being allowed to rely on potentially outdated photography collected by a non-party.

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<sup>1</sup> Motion, p. 2.

<sup>2</sup> *Id.*

<sup>3</sup> To the contrary, the proposed right-of-way cuts through active agricultural fields, parklands and open space in a remarkably bucolic part of New York State.

**16 N.Y.C.R.R. § 86.3(a)(1)(iii):**

PG appreciates the Applicant's apparent concern over public disclosure of the location of sensitive archeological sites along the proposed route, particularly in this historic part of New York State where there are likely to be many such sites, both known and currently unknown. However, Applicant should be compelled to certify that it has inventoried such sites, and should be further compelled to furnish the parties with at least quantitative data as to the number of such sites it has located with a brief discussion of each sites' characteristics. And in order to avoid undue delay and facilitate discovery, Applicant should draft and circulate to the Active Parties a form Protective Order, which could then be submitted for Your Honor's review and approval long before the discovery phase commences.

**16 N.Y.C.R.R. § 86.3(a)(2):**

PG does not object to this portion of the Motion.

**16 N.Y.C.R.R. § 86.3(b)(1)(iii):**

PG objects to this part of the Motion on several grounds. First, the Applicants, having identified a proposed route, must have some understanding of the access roads that might be needed to access that route. While PG certainly understands -- indeed, anticipates -- that the location of access roads (and other aspects of the proposed facility) may change as this proceeding progresses, the Applicants have not justified the wholesale omission of that information from the record. Applicants should be compelled to depict now the location of proposed access and maintenance roads.

Next, the Applicant's suggestion that the depiction of access and maintenance roads should be delayed to the EM & CP phase presupposes that the Commission will issue a Certificate of Environmental Compatibility and Public Need ("CECPN") for the Project. At this early stage of the proceeding, where the Applicant has not yet even filed an application that conforms to PSL § 122, such an assumption is clearly unwarranted. As NYSDEC observed in its August 8, 2012, comments on the Motion, the siting and construction of access and maintenance roads has potentially adverse environmental impacts. Those impacts must be considered *before* the Commission can even consider issuing a CECPN. See PSL § 126.1(b) & (c). Therefore, deferring the identification of new access roads to some indeterminate point in the future is unacceptable.

Finally, PG concurs with DPS and NYSDEC Staff that there is nothing that would prevent the Applicant from identifying now all *existing* access and maintenance roads along the shared portion of the proposed route and/or the proposed access roads for the proposed Ghent switching station.

**16 N.Y.C.R.R. § 86.4(b):**

PG does not object to this part of the Motion, provided Applicant complies with that part of the Secretary's June 22, 2012 deficiency letter which requires the Applicant to label facility routing Alternatives 1 through 4 and the preferred and alternative switchyard sites on Figure 3-3.

**16 N.Y.C.R.R. § 88.4(a)(4):**

Before Your Honor acts on this part of the Motion, Applicant should be compelled to produce to the Active Parties all of the correspondence and communications with the New York Independent System Operator ("NYISO") and National Grid referred to at page 4 of the Motion. The Active Parties, including by and through their transmission experts, should then be allowed the opportunity to comment on that correspondence and communication before Your Honor renders a ruling. PG anticipates disputes in this proceeding over the need for the Project and its alleged benefits, and NYISO's correspondence with the Applicant regarding the Project may inform the record on those issues.

Please accept my thanks in advance for Your Honor's consideration of this correspondence.

Respectfully submitted,

**GREENBERG TRAURIG, LLP**

*/s William A. Hurst*

William A. Hurst

WAH/srg

cc: Active Parties  
(via Electronic Service)