

BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK

Joint Application of New York State Electric
& Gas Corporation and Niagara Mohawk
Power Corporation d/b/a National Grid for a
Certificate of Environmental Compatibility
And Public Need for the Construction of
Approximately 14.5 Miles of 115kV Electric
Transmission Facilities from the State Street
Substation in Cayuga County to the Elbridge
Substation in Onondaga County, NY

Case 13-T-0235

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
REPLY BRIEF and
STATEMENT IN SUPPORT OF THE JOINT PROPOSAL**

Larry S. Eckhaus
Senior Attorney
Office of General Counsel
Department of Environmental
Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500
Tel: (518) 402-9533
Email: larry.eckhaus@dec.ny.gov

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The Department of Environmental Conservation (“NYSDEC”) takes this opportunity to join the other Signatory Parties¹ in support of the Joint Proposal (“JP”) filed June 22, 2015, for the reasons explained below. The procedural history of this proceeding, and a detailed description of the Project and its components, is detailed in the JP and in the Initial Briefs of the other Signatory Parties and is not repeated here. The testimony, affidavits, and exhibits support the finding that the Project will comply with applicable State laws, in particular the Environmental Conservation Law, its implementing rules and regulations and policy guidance.

Furthermore, NYSDEC has reviewed the Initial Briefs filed by the other Signatory Parties and is in agreement with their comments, with the sole exception of some of those provided by the New York State Department of Agriculture and Markets (“NYSDAM”) with regard to certain vegetative clearing easements. In addition, we do not agree with the Cayuga Operating Company LLC’s Statement in Opposition to Joint Proposal with regard to Phase 2.

I. INTRODUCTION

As a statutory party to all PSL Article VII proceedings, NYSDEC advises the Public Service Commission (“Commission”) on matters arising under its authority and on assessment of environmental impacts. NYSDEC is satisfied that the JP and Appendices, including Certificate Conditions, are acceptable, resolve any settlement issues, are protective of the environment and produce results that are within the range of reasonable outcomes that would arise from a PSC decision following a litigated proceeding. The Project is necessary to reinforce NYSEG’s electric transmission system in its Auburn Division by enabling NYSEG to maintain

¹ The Signatory Parties include: New York State Electric & Gas (“NYSEG”) and National Grid – the Applicant; New York Department of Public Service (“DPS”) Staff; the New York State Department of Environmental Conservation, the New York State Department of Agriculture and Markets; Nucor Steel Auburn, Inc.; Ratepayer and Community Intervenors; and the Sierra Club.

adequate service throughout the division during temporary or extended outages of generating units at the Cayuga Generating Facility. Currently, NYSEG's ability to ensure reliable service to customers in the Auburn Division is dependent on the generating units at the Cayuga Generating Facility being available to operate. This dependency exists only because of limitations in transmission capacity to the Auburn Division. Both phases of the Project are needed to improve transmission system reliability throughout the Auburn Division, and accommodate future growth in that division.

The Project will be designed, constructed and operated in a manner that avoids or minimizes impacts to environmental resources, will address Environmental Conservation Law ("ECL") concerns for freshwater wetlands, stream crossings, rare, threatened and endangered species, and will prevent the introduction and spread of invasive species, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.

The Environmental Management & Construction Plan ("EM&CP") will be developed in accordance with the JP and the Certificate Conditions (Appendix D), as well as the Commission's *Specifications for the Development of EM&CP* in Appendix E, which is the standard for Article VII applications, and both NYSEG's and National Grid's *Best Management Practices* (Exhibits 18 & 19). The EM&CP will also be developed consistent with the US Army Corps of Engineers' Nationwide Permits for construction in federal wetlands, and in accordance with the Stormwater Pollution Prevention Plan ("SWPPP") requirements in NYSDEC's then current State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Construction Activity. Finally, the Project Components will be maintained in accordance with both Applicants' Commission-approved *Transmission Right of Way Management Plans*.

II. ISSUES PRESENTED BY INITIAL BRIEFS

None of the Signatory Parties, and no other Party, objected to the Joint Petition and the need for Phase 1 of the Project in their Initial Briefs, with the following limited exceptions:

1. Phase 2 Construction

Cayuga Operating Company, LLC's ("Cayuga") Initial Brief only objected to the need for constructing Phase 2 of the Project. It asked, therefore, that the Commission: deny the Applicants a Certificate of Environmental Compatibility and Public Need ("CECPN") for Phase 2 only; accept Cayuga's Revised Repowering Proposal²; and direct Cayuga and NYSEG to enter into a third Reliability Support Services Agreement ("RSSA") (Cayuga Brief p. 42). Cayuga proposed, on July 20, 2012³, to mothball its recently acquired Cayuga facility by January 16, 2013⁴, necessitating NYSEG's review of alternatives. The need for issuing a CECPN for the entire Project, including Phase 2, is evident in the JP, and supported by the evidence as addressed in the Initial Briefs of the Applicants, DPS Staff and Nucor, and need not be restated here. In addition, The Signatory Parties had previously considered Cayuga's proposal, as part of the no-action alternative:

"Furthermore, under the no-action alternative, NYSEG would remain dependent on the Cayuga Generating Facility in the central area, and NYSEG would remain at risk indefinitely of (a) equipment overloads, (b) having to load shed or request customer curtailments during peak period power plant outages, and (c) a permanent shutdown of the Cayuga Generating Facility units." (JP Para. 89)

The issuance of a CECPN for the entire ATP Project is not a determination by the Commission in this proceeding that the Cayuga facility should operate, be repowered, mothballed or retired; that determination will be made by Cayuga – just as it had done before. While Cayuga seems to agree that there is some "need" – it prefers that need be met by the Cayuga facility rather than Phase 2. Unfortunately Cayuga fails to show that continued dependence on the Cayuga facility is a better alternative from a financial⁵, environmental, and reliability⁶ perspective for NYSEG and its customers. In any event, operation of the Cayuga

² Submitted in Case 12-E-0577.

³ Nucor Brief p. 2

⁴ Cayuga Brief p. 3

⁵ Cayuga's statement that with a transmission solution under traditional utility ratemaking, ratepayers bear *all* the risk for any cost or schedule overruns (Cayuga Brief p. 8, fn 28), any such recovery would be subject to approval by the Commission in a rate proceeding.

⁶ For example, Cayuga Unit 1 has experienced an extended shutdown – for the past 8 months - due to fire. (Nucor Brief, p. 8, fn 26)

Generating Facility is outside the scope of this proceeding and should be addressed elsewhere. (JP Para. 92)

Although all the Signatory Parties – including the Applicants - agree that that the entire Project, Phase 1 and Phase 2, should be constructed, unless the Commission orders otherwise the issuance of the CECPN for the entire Project only provides the Applicants with the authorization to do so, and then only after an EM&CP is approved.

2. Conservation Easements

NYSDAM's Initial Brief indicates that it supports the JP, with the exception of encumbering certain existing conservation easements granted to American Farmland Trust ("AFT") and New York Agricultural Land Trust ("NYALT") under ECL Article 49, with proposed vegetation clearing easements, where the latter would limit those landowners' use of the agricultural land. (NYSDAM Brief p. 6) This is based largely on the language in the Applicants' proposed vegetative management easement which might prohibit construction and crops, such as hops and trees, where that right is expressly permitted or permitted with permission under the existing conservation easements. (JP NYSDAM Signature Page) Regardless of Applicants' "sample language", however, the extent of such vegetative easements is described in the JP (Para. 26, 27, 29) and JP Appendix B (pp. 9-10 under "Additional Property Rights").

As ALJ Casutto indicated, issues concerning such additional easements "...will need to be addressed at some point if a certificate is granted to the applicants, but I don't think this is the time and place for that." Tr. 8/17/15 p. 120) In fact, the Applicants may not seek to acquire easements by eminent domain until after an EM&CP is issued. (JP Appendix D Para. 31) As DPS Staff correctly pointed out⁷, there are many factual issues which have yet to be determined. In addition, NYSDAM Witness Behm did not indicate that the

⁷ DPS Staff Initial brief pp. 17-18.

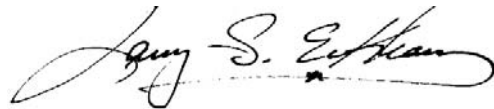
Applicants' obtaining such easements was impossible, either voluntarily or involuntarily, (Tr. 8/17/15 pp. 135-137)⁸, only that he would not recommend voluntary conveyance to the extent such approval was required from NYSDAM. (Tr. 8/17/15, p. 10)

While NYSDEC is not unsympathetic to NYSDAM's concerns, we believe they should be addressed during the EM&CP phase, should a CECPN be issued by the Commission.

III. CONCLUSION

In sum, it is NYSDEC's position that the Project will serve the public interest, convenience and necessity, the Joint Proposal should be approved, and the Certificate of Environmental Compatibility and Public Need for the entire Project should be issued without delay.

Respectfully submitted

A handwritten signature in cursive script, reading "Larry S. Eckhaus", written in black ink. The signature is fluid and stylized, with a horizontal line extending from the end of the name.

Dated: September 25, 2015
Albany, NY

Larry S. Eckhaus
Senior Attorney
NYSDEC

⁸ See also ECL § 49-0307(1)(c) regarding eminent domain.