

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 26, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 14-G-0019 - Petition of New York State Electric & Gas
Corporation for a Declaratory Ruling Concerning
Regulation of a Proposed Compressed Natural Gas
Supply Station and Related Facilities.

DECLARATORY RULING AND ORDER APPLYING THE
COMMISSION'S JURISDICTION TO
PROPOSED CNG SUPPLY STATION

(Issued and Effective July 1, 2014)

BY THE COMMISSION:

INTRODUCTION

On January 24, 2014, New York State Electric and Gas Corporation (NYSEG) submitted a Petition for Declaratory Ruling (January 24 petition) in which it requested the Public Service Commission (PSC, Commission) declare that (1) third-party compressed natural gas (CNG) suppliers with whom NYSEG plans to contract for peak gas supplies not be subject to Commission regulation and (2) only NYSEG's facilities at the proposed "CNG Supply Station," as described in NYSEG's January 24 petition, be subject to 16 NYCRR Part 255, the Commission's rules governing transmission and distribution of gas.

As more fully described in this ruling and order, and consistent with our recent ruling in Case 13-G-0187, third-party

CNG suppliers with whom NYSEG contracts to provide natural gas supply are not subject to the Commission's jurisdiction within the parameters established by the Procurement Ruling.¹ The "CNG Supply Station," as NYSEG proposes it in its January 24 petition, however, assigns to third-party suppliers facilities that extend beyond the limitations of the Procurement Order and conflicts with the definition of gas "pipeline" in our regulations.² Therefore, we will not assert jurisdiction over NYSEG's CNG suppliers consistent with the Procurement Ruling. NYSEG, however, will be required to install and operate, subject to 16 NYCRR Part 255 oversight, the remainder of the CNG Supply Station to the extent described herein.

Notice of the Petition for Declaratory Ruling was published in the State Register on March 12, 2014 in conformance with the State Administrative Procedure Act (SAPA). The minimum period for receiving comments expired on April 28, 2014. No comments were received.

DISCUSSION AND CONCLUSION

Pursuant to Public Service Law §§65 and 66, the Commission oversees the provision of safe and adequate gas services. In furtherance of that supervision (Public Service Law §66(1)), transmission and distribution gas regulations were adopted, which provide standards for gas safety and service. Based upon our obligation to ensure the safety of gas service to NYSEG's Mechanicville customers, and as more fully described in

¹ Case 13-G-0187 - Petition of Procurement Energy, LLC for a Declaratory Ruling Regarding Regulation of Compressed Natural Gas Filling Stations and Related Facilities, Declaratory Ruling Regarding Jurisdiction (issued August 16, 2013) ("Procurement Ruling"); see Public Service Law §2(10) [definition of gas plant].

² 16 NYCRR §255.3(24).

this ruling and order, we deny NYSEG's request and declare that the demarcation point at which the Commission's jurisdiction attaches is where the CNG supplier's trailers attach to pipe that will be used to supply NYSEG's customers.

With respect to the ratemaking treatment of NYSEG's proposed CNG Supply Station, and consistent with our authority to establish just and reasonable utility rates pursuant to Public Service Law §65, we grant NYSEG's request for rate treatment. We will allow recovery, in NYSEG's Gas Supply Charge (GSC), of the reasonable gas supply costs that NYSEG incurs through contracts with its CNG suppliers whose commodity services are needed to provide CNG during peak demand, subject to later Commission review.³ The Company can seek recovery of the costs of the facilities this ruling and order deems "gas plant" through the normal rate setting process.

The Need for CNG and
the Jurisdictional Demarcation Point

In its January 24 petition, NYSEG explains that it needs CNG to provide added supply to natural gas customers in its Mechanicville franchise because of the transport and pressure constraints that exist in the Company's distribution system. Given these constraints and to ensure the reliable provision of gas service to NYSEG's current Mechanicville customers, the Company has placed a moratorium on new natural

³ See City of New York v. Pub. Serv. Commn. of State of N.Y., 105 A.D.2d 1200, 1204 (3d Dept. 2013) [wherein the Appellate Division found that the allocation of fuel costs beyond utility's current rate plan was reasonable]; see Matter of Niagara Mohawk Power Corp. v. Pub. Serv. Commn. of State of N.Y., 69 N.Y.2d 356 (1987) [Commission's authority to refund fuel adjustment charges implied from Commission's authority to allow fuel adjustment charges].

gas service requests.⁴ NYSEG states that its contract with National Grid permits delivery of no more than 3,000 dekatherms (Dth) per day to Mechanicville and that growth in demand in Mechanicville has exhausted that supply.⁵

Therefore, NYSEG has developed a plan to purchase CNG for the foreseeable future from third-party suppliers to meet peak natural gas demand, primarily in the winter months. As NYSEG envisions it,

[w]hen needed, compressed natural gas will be delivered in tube trailers to the [CNG Supply] Site, where they will be interconnected to NYSEG's natural gas distribution system through a decompression skid and delivery system to be constructed, owned, and maintained by the Supplier just upstream of the demarcation point between NYSEG's distribution system and the Supplier's equipment. The CNG Station will be designed and built to store up to three tube trailers of CNG.⁶

NYSEG posits that its CNG supplier should not be regulated by this Commission and should be regulated like Procurement Energy LLC, pursuant to federal and state laws that govern the transport of fuel products, as well as by fire and environmental regulations and safety codes, up to NYSEG's proposed demarcation point. Beyond NYSEG's proposed demarcation point, NYSEG's Public Service Law regulatory obligations would

⁴ January 24 petition at 2. Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) gas pipelines feed supply to NYSEG's Mechanicville franchise. Improving supply via National Grid's infrastructure, NYSEG states, is cost-prohibitive.

⁵ Were NYSEG and National Grid able to negotiate additional supply to Mechanicville, the pressure capability of NYSEG's delivery system would be exceeded. January 24 petition at 4.

⁶ January 24 petition at 3.

begin.⁷ The question we must answer, therefore, is whether NYSEG's proposed demarcation point is the appropriate dividing line between the CNG services the Commission will not regulate and the regulated utility services.

We determine that the Commission's regulatory authority attaches, as shown in Appendix A (green line) and as explained more fully below, when the CNG supplier with whom NYSEG contracts releases its supply from the tube trailers that carry the CNG to NYSEG.⁸ NYSEG will be bound to adhere to regulatory safety requirements for all facilities beyond a CNG supplier's tube trailers.

Jurisdiction Over CNG Supplier

NYSEG's January 24 Petition seeks a ruling that the CNG supplier with whom NYSEG contracts for service will not be subject to Commission jurisdiction for the same reasons we ruled that Procurement Energy would not be subject to our oversight. NYSEG states that the companies with whom it will contract to supply CNG will be similar to Procurement Energy and that the CNG suppliers will be required to comply with the following:

(i) Federal laws and regulations pertaining to gas pipeline safety and compressed natural gas facilities set forth in 49 U.S.C. 60101 et seq. and 49 CFR Part 192;

(ii) National Fire Protection Association (NFPA) Part 52 standards applicable to the design, installation, operation, and maintenance of compressed natural gas (CNG) engine fuel systems on vehicles of all types and for

⁷ See Appendix A, which is a colorized reproduction of Appendix A to the January 24 petition, showing NYSEG's proposed jurisdictional demarcation point in red.

⁸ Whenever the CNG supplier is on NYSEG property, NYSEG also becomes responsible for the safety and adequacy of the CNG supplier's apparatus', equipment, and actions.

fueling vehicle (dispensing) systems and associated storage;

(iii) Occupational Safety and Health Administration (OSHA) regulations relating to the transport, delivery, and unloading of heating fuel products;

(iv) State and federal laws and regulations regarding the transport, delivery, and unloading of heating fuel products, including, as applicable, those requirements in the states of Massachusetts, Maine, and New York;

(v) Requirements of the New York State Fire Marshall and those of local fire protection, public health, and emergency response personnel in Mechanicville;

(vi) DEC air permitting requirements under applicable law and regulation, and use restrictions in the Site Management Plan for the former manufactured gas plant site where the CNG Station will be located; and

(vii) Any other applicable state, federal, or local laws, rules, regulations, or standards applicable to the construction, operation, and maintenance of suppliers' facilities at the Site.

In our Procurement Ruling, we relied on Public Service Law §2(10)'s definition of "gas plant" as excluding "property used solely for or in connection with the business of selling, distributing or furnishing of gas in enclosed containers" as the basis for abstaining from asserting jurisdiction over CNG suppliers. NYSEG's CNG suppliers will be providing services similar to Procurement's in many respects. In one vital respect, however, NYSEG's suppliers will be different than Procurement Energy's -- NYSEG's CNG suppliers will not be providing CNG to end-users who will consume CNG on-site; NYSEG's supplier will be "furnishing gas in enclosed containers" that will be delivered to a regulated utility, which will then distribute it to its customers. However, like the large, end-use customers Procurement Energy will serve, whose "piping required to transport natural gas from the location of the

trailer at a customer's site to other locations at the customer's location will be the responsibility of the customer," NYSEG must also own the delivery facilities that extend from the CNG supplier's tube trailers to NYSEG's distribution system.⁹ NYSEG will own and operate the facilities that extend from the tube trailers directly into NYSEG's distribution system (utility gas plant), which will all be subject to 16 NYCRR Part 255 safety requirements. This is because the facilities meet the definition of "pipeline" in Commission rules; as such, the Commission is obligated to ensure that NYSEG, as a gas corporation, provide safe and adequate service to its end-use customers. Therefore, the demarcation point at which our jurisdiction attaches is the point at which a CNG supplier attaches its tube trailers to utility gas plant used to transfer, decompress, and meter gas to end-use utility customers.

Definition of Pipeline

Our jurisdictional oversight appropriately attaches in this case as soon as the CNG leaves the tube trailers because our rules define "pipeline" to mean "all parts of those physical facilities through which gas is transported, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies."¹⁰ Further, the Scope of 16 NYCRR §255.1(a)

prescribes minimum safety requirements for the ... installation ... inspection, testing and operation and maintenance of gas transmission and distribution systems, including ... gas compressor stations, gas metering and

⁹ Procurement Ruling at 3.

¹⁰ 16 NYCRR §255.3(24).

regulating stations...(b) Every person engaged in the transportation of gas via pipeline within the State of New York shall comply with the rules set forth in this Part.¹¹

Because NYSEG is a gas corporation within the meaning of Public Service Law §2(11) in that it owns, operates and manages gas plant, the facilities needed to supply CNG to NYSEG's customers to meet peak demand are subject to the Commission's Part 255 regulation, which prescribes safety standards for pipe, compressors, pressure reduction, and valves. Therefore, every part of NYSEG's proposed CNG Supply Station beyond the tube trailers fits into the definition of the "pipeline" that is part of a distribution company's facilities that we regulate.¹²

Notably, in somewhat of a contradiction, the Company admits that pipeline will be used to deliver to NYSEG's customers, stating "none of the supplier's facilities at the [CNG Supply] Site will constitute 'gas plant' ... because no piping will be used in the Supplier's operations except for limited piping needed to deliver the gas from the tube trailers to the decompression skid ..."¹³ Even the "limited piping needed to deliver the gas from the tube trailers," however, is "pipeline" within the meaning of 16 NYCRR §255.3(24).

¹¹ 16 NYCRR §255.1(a). Further, Part 255 "does not apply to: (1) design and fabrication of pressure vessels covered by the ASME Boiler and Pressure Vessel Code," which would include the CNG supplier's tube trailers.

¹² Similarly, in the Procurement Ruling, we ruled that Commission jurisdiction would not attach to Procurement because Procurement Energy would not "install or use any piping, whether aboveground or underground in connection with its proposed operations. . . [and] that its customers may have piping at their locations, but that such piping will be installed and owned by the customer, not PE." Procurement Ruling at 4.

¹³ January 24 petition at 11, emphasis added.

Therefore, Commission jurisdiction attaches as soon as the pipe that will deliver CNG to NYSEG's customers attaches to the tube trailers.

Odorization

In NYSEG's proposal, NYSEG's facilities "downstream from the demarcation flange will include interconnection piping, a gas regulator station, [and] odorization equipment."¹⁴ While we will not require precisely where odorization of the CNG must occur, our rules require that all gas transported in transmission lines, distribution mains, and service laterals be adequately odorized in accordance with 16 NYCRR §255.625.¹⁵ Therefore, while the transported CNG need not be odorized during transit in its enclosed containers to NYSEG's property, under our regulations, it will have to have been odorized once it enters the pipes leaving the tube trailers at the PSC's jurisdictional demarcation point.¹⁶

Cost Recovery

In its January 24 petition, NYSEG seeks recovery of "the supplier's costs" associated with the Mechanicville CNG plant through the Company's monthly gas supply charge (GSC). Further, as NYSEG proposes it, the demand charges associated

¹⁴ January 24 petition at 6. One supplier states it will odorize much earlier in the transfer process.

¹⁵ 16 NYCRR §255.625(a) and (b).

¹⁶ Because the tube trailers will be used only for peak demand, they may sit for some time on site at the CNG Supply Station. Odorization may dissipate over time; therefore, NYSEG will be responsible for ensuring the odorization of CNG in stored tube trailers remains at levels that comply with 16 NYCRR §255.625 so that when it is delivered into NYSEG's distribution system, it is odorized at Part 255 levels.

with the service would be recovered through NYSEG's system-wide Weighted Average Cost of Capacity and its Reliability Surcharge.¹⁷

NYSEG's request that the supplier's costs associated with the Company's Mechanicville CNG Supply Station be recovered through the Company's GSC, Weighted Average Cost of Capacity, and Reliability Surcharge is granted in part. In its petition, NYSEG identifies "the supplier's costs" as almost the entire CNG Supply Station, which includes facilities we have determined are utility gas plant. Therefore, while we will allow NYSEG to recover in its GSC "the supplier's costs," those costs are limited to the costs associated with only the delivery of CNG to NYSEG, which will include CNG supply to meet peak demand.

With respect to the ratemaking treatment of the rest of NYSEG's CNG Supply Station -- the gas plant that NYSEG will own and operate to deliver the CNG from the tube trailers to supply NYSEG's customers -- will be subject to normal rate treatment. Consistent with our authority to establish just and reasonable utility rates pursuant to Public Service Law §65, we will determine, upon later Commission review, whether the supply station costs should be included in rate base or recovered through the GSC.

The Commission finds, declares and orders:

1. The Public Service Law excludes from Commission jurisdiction third-party suppliers of compressed natural gas who transport compressed natural gas in containers to New York State Electric and Gas Corporation.

2. The requirements of 16 NYCRR Part 255 applies to the facilities installed, owned and operated by New York State Electric and Gas Corporation to distribute or furnish,

¹⁷ January 24 petition at 9.

decompress, and meter the compressed natural gas at the point the CNG leaves the (enclosed) tube trailers that have transported to New York State Electric and Gas Corporation.

3. Public Service Commission jurisdiction attaches at the point the compressed natural gas leaves any compressed natural gas supplier's tube trailers that have transported the CNG onto New York State Electric and Gas Corporation property.

4. New York State Electric and Gas Corporation is authorized to charge ratepayers through New York State Electric and Gas Corporation's Gas Supply Charge for the supplier's costs to provide the compressed natural gas, which are the contractual costs incurred to meet peak demand. All remaining facility costs are subject to review and normal rate treatment.

5. This proceeding is closed.

By the Commission,

KATHLEEN H. BURGESS
Secretary

Appendix A:
CONCEPTUAL DRAWING

