

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 14, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 17-E-0533 - Petition of New York State Electric & Gas Corporation for an Original Certificate of Public Convenience and Necessity.

CASE 17-T-0512 - In the Matter of a Part 102 Report of New York State Electric & Gas Corporation Concerning the Proposed Installation of 115 kV Transmission Lines 730 and 731 in the Towns of Stockport and Ghent, Columbia County.

ORDER ADOPTING A NEGATIVE DECLARATION,
DETERMINING THAT NO FURTHER INVESTIGATION
IS WARRANTED UNDER PART 102, AND DISMISSING PETITION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued and Effective December 19, 2017)

BY THE COMMISSION:

INTRODUCTION

By this Order, the Commission issues a Negative Declaration under the State Environmental Quality Review Act (SEQRA) with respect to the environmental impacts associated with New York State Electric & Gas Corporation's (NYSEG) proposal to construct two 115-kilovolt (kV) tap lines in the Town of Stockport, a new 115/34.5-kV substation in the Town of Ghent; and two 34.5-kV feeder lines in the Town of Ghent (collectively, the Project). The Commission further determines

that NYSEG may begin construction of the Project once it deems itself free to do so (i.e. once it has received all required local permits) under Part 102 and that no further investigation is warranted. The Commission also dismisses NYSEG's Public Service Law (PSL) §68 request as unnecessary because the proposed 115-kV taps will not provision service to any new retail customers outside of NYSEG's existing service territory, nor does the construction thereof require any new municipal consents to exercise a franchise to distribute electricity.

BACKGROUND

On May 25, 2012, NYSEG filed an application pursuant to Article VII of the PSL and the Commission's regulations thereunder, for a Certificate of Environmental Compatibility and Public Need (Certificate) that would authorize the construction and operation of 11.1 miles of a new 115 kV transmission line in the Towns of Ghent, Chatham and Stockport, a new switching station in the Town of Ghent, and the modification of an existing substation in the Town of Chatham, all in Columbia County, New York.¹

During the pendency of that case, Department of Public Service Staff (Staff), designated to represent the public interest, and other parties filed alternative Article VII and non-Article VII proposals with the Commission. Among the non-Article VII alternatives filed, Staff proposed a 34.5 kV proposal. Numerous meetings, site visits and procedural

¹ See, generally, 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.

conferences were held regarding the various alternative proposals. After thorough discussion of the issues and the alternatives, the parties focused their joint efforts on a reduced-scope variation of Staff's 34.5 kV proposal.

On July 14, 2015, the parties to Case 12-T-0248, including NYSEG, Staff, the New York State Department of Environmental Conservation (DEC), the New York State Department of Agriculture and Markets (Ag&Mkts), The Town of Ghent, Protect Ghent, Columbia Land Conservancy, Inc. and Mr. Benjamin Swett, filed a Joint Stipulation outlining the details of the reduced-scope variation of Staff's 34.5-kV proposal. This variation, as refined by the parties, is described in the "Description of Proposal" section of the Joint Proposal. On October 21, 2015, NYSEG, pursuant to 16 NYCRR §3.6, requested that the Commission hold in abeyance Case 12-T-0248 (the proceeding under Article VII of the PSL while this non-Article VII alternative was pending consideration. On January 4, 2016 The Chief Administrative Law Judge issues a ruling stating in part that "[g]iven this support of the motion, the apparent lack of any opposition, and the fact that the alternative proposal reflects a promising compromise between parties of diverse interests, NYSEG's motion to hold this proceeding in abeyance is granted."²

The scope of the proposed work for the non-Article VII alternative includes the construction of two 115-kV tap lines in the Towns of Stockport and Ghent; a new 115/34.5-kV substation in the Town of Ghent; and two new or upgraded 34.5-kV feeder lines in the Town of Ghent. This alternative proposal falls outside the scope of PSL Article VII and requires review under SEQRA, Article 8 of the New York Environmental Conservation Law (ECL). As part of the Joint Stipulation in Case 12-T-0248,

² Id. Ruling Granting Motion (issued January 4, 2016).

NYSEG agreed to file with the Commission a report under 16 NYCRR Part 102 (Part 102 Report) for its proposed construction of the two 115 kV Tap Lines.³ NYSEG further agreed to file a petition pursuant to PSL §68 for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the western approximately 1,250 feet of the two 115 kV Tap Lines, which is the only portion of the non-Article VII alternative 34.5 kV proposal that would be located in the Town of Stockport. In connection with the SEQR review contemplated by the Joint Stipulation, the parties recommended that the Commission determine to act as Lead Agency and conduct a coordinated SEQRA review of the proposed Project.

THE PETITIONS

16 NYCRR Part 102

On August 11, 2017, NYSEG filed a report, pursuant to 16 NYCRR §102, proposing to construct two new 115 kV transmission lines, each approximately one mile in length between the existing National Grid Line 14 115 kV transmission line in Stockport and the Falls Park Substation in Ghent. The new 115 kV tap lines would begin at two new structures (L730-12 and L731-12) located at their tap to National Grid Line 14 and would be positioned between Structures 146 and 147 on the existing National Grid right-of-way (ROW).

The petition included a detailed discussion of the environmental impacts associated with the Project, which are summarized in the Commission's Negative Declaration and Part 3 of the Environmental Assessment Form (EAF).

³ NYSEG also agreed to "toll" the 60-day notification period for the Part 102 Report pending the completion of the coordinated SEQRA review described below.

Briefly, the twenty-four new galvanized steel monopole structures will be installed with typical tangent structures being directly embedded approximately 11 feet below ground level and typical corner and dead-end structures will be installed on concrete foundations that will extend approximately 33 feet below ground level. The proposed conductor is expected to meet or exceed both current and potential upgraded design conditions at the National Grid tap location. As discussed, both Lines (730 and 731) will start at the existing National Grid 115 kV Line 14 in Stockport, and end at the Falls Park Substation adjoining the Falls Industrial Park west of the NYS Route 9H in Ghent. Here, the current will be stepped down to 34.5 kV and connected to NYSEG's distribution system via two upgraded circuits totaling approximately 7.2 miles in length serving the western portion of the Town of Ghent. Except for minor upgrades to an existing farm access lane, all distribution system work associated with the Project will be performed within existing ROW, including the designated access roads and laydown areas. The Project includes new interconnection facilities.

For the 115-kV lines, NYSEG proposes to utilize a new 150-foot wide ROW that is approximately one-mile in length. Easements have been secured. The two 115 kV Tap Lines (Line 730 and Line 731) will be spaced 50 feet apart and each will be located 50 feet from the nearest edge of the ROW. There will be a permanent conversion of approximately 8.7 acres of existing forested lands to clear the ROW.

PSL Section 68

On August 11, 2017, NYSEG also filed a petition requesting (i) a CPCN under PSL §68 and Section 21.1 of the Commission's Rules and Regulations (16 NYCRR § 21.1); (ii) expedited treatment of the Petition under Section 21.10(a) of the Commission's Rules and Regulations (16 NYCRR § 21.10(a));

and (iii) a request that the Commission begin a coordinated review under SEQRA, 6 NYCRR §617.4(b). This petition was filed in connection with the Joint Stipulation and the work proposed under the Part 102 report discussed above.

In this petition, NYSEG states that the Town of Stockport is outside of NYSEG's existing electric franchise service territory. NYSEG, therefore, submits this Petition to the Commission for a Section 68 Certificate to authorize construction of the western approximately one quarter mile of the 115 kV Tap Lines that would be located in the Town of Stockport.

The company states that it is well situated to build the proposed project by virtue of being a regulated electric utility in New York State; that the company's economic feasibility is demonstrated by its 2016 Annual Report, filed with the Commission in Matter No. 10-06662; that the Project itself is economically feasible as it will become part of NYSEG's regulated rate base; that the Project is needed to enhance safety and reliability of electricity service for approximately 9,900 NYSEG customers by bringing a new source of electricity into the Chatham area of NYSEG's Mechanicville Division; that NYSEG provides safe and reliable service at just and reasonable rates; and that the Project does not present any undue environmental impacts.

LEGAL AUTHORITY

Part 102

The Commission has general supervision over the proposed action pursuant to PSL §66(1) as implemented by Part 16 NYCRR §102. NYSEG submitted a report under 16 NYCRR §102 because the proposed Project involves the construction of an electric transmission line at 65 kV or greater, for an

approximate one-mile distance, and it requires a new ROW. The Project is not subject to Article VII of the PSL. The regulations require any utility proposing to construct a non-Article VII overhead transmission facility, as defined in 16 NYCRR §102.1(c), to submit a report to the Commission unless they qualify for an exemption under 16 NYCRR §102.2(a)(2). The regulations state:

[T]he commission after reviewing the utility's report ...may order a formal investigation if the commission finds that overhead construction of the proposed transmission facilities may not be in the public interest or may not be required for the performance of the utility's public service responsibilities with economy, efficiency and care for the public safety, the preservation of environmental values, and the conservation of natural resources.⁴

If no such formal investigation is ordered by the Commission within 60 days of receipt of the report, the utility may proceed with the construction as proposed.

PSL Section 68

According to PSL §68(1), no gas corporation or electric corporation may exercise any right, privilege or franchise or begin construction of gas plant or electric plant without first obtaining a CPCN from the Commission. Before the Commission may grant such CPCN, the gas or electric corporation must have filed a certified copy of its charter and a verified statement of the president and secretary of the corporation,

⁴ 16 NYCRR 102.2(b).

showing that it has received the required consent of the proper municipal authorities.⁵

The statute authorizes the Commission to grant a CPCN:

[W]henever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is convenient and necessary for the public service. In making such a determination, the commission shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.⁶

STATE ENVIRONMENTAL QUALITY REVIEW ACT

The Commission is being asked to make a SEQRA determination and allow for the construction of the Project in the Towns of Stockport and Ghent. The Commission's approval would authorize NYSEG to begin construction upon receiving all local permits. Such exercise would result in the Petitioner constructing and deploying electric transmission and distribution facilities to enhance its delivery of electric service in Columbia County to residential and business customers.

Under the State Environmental Quality Review Act (SEQRA) (ECL Article 8), state agencies are required to determine whether the actions they are requested to approve

⁵ If the gas or electric corporation has no president and secretary, 16 NYCRR §21.2(b) provides that a responsible official of the petitioner may provide such verified statement.

⁶ PSL §68 was amended in 2013 to explicitly require consideration of the listed factors; however, similar consideration has been required, pursuant to 16 NYCRR §§21.2 and 21.3, for over 40 years.

would result in a significant impact on the environment. Actions are classified as either "Type I", "Type II" or "Unlisted." Type I actions are those that exceed certain thresholds applicable statewide set forth in a list in the SEQRA regulations or in regulations promulgated by the individual agency making the decision. If an action is a Type I action, there is a rebuttable presumption that the action will likely cause a significant environmental impact. Type II actions are those that are predefined as Type II in a list in the SEQRA regulations applicable statewide or in regulations promulgated by the individual agency making the decision and require no further review under SEQRA. Unlisted actions are those that are not included in statewide or individual agency lists of Type I or Type II actions. The Project as described has been determined to be a Type I action as defined by the SEQRA regulations at 6 NYCRR §617.2(ai) and 6 NYCRR §617.4(b)(6)(i), therefore, a coordinated review is required. Pursuant to SEQRA regulations at 6 NYCRR §617.6(b)(2)(i), a Lead Agency must be established for review of the Project.

On September 1, 2017, the Commission issued a notice in accordance with the SEQRA regulations at 6 NYCRR §617.6 to a series of involved or interested agencies, including Ag&Mkts, DEC, the New York State Department of Transportation, the New York State Office of Parks, Recreation and Historic Preservation, the Columbia County Highway Department, the Town of Ghent and the Town of Stockport indicating that the Commission intended to act as Lead Agency for the Project. No agency registered an objection to this proposal; and no agency identified any concerns or specific impacts reported in the Full EAF and attachments. Accordingly, the Commission assumes Lead Agency responsibilities for the environmental review of the Project under SEQRA.

In making a determination of significance, a Lead Agency causes an EAF to be prepared, considers the proposed action and reviews the EAF and any other supporting information to identify the relevant areas of environmental concern, thoroughly analyzes the identified relevant areas of environmental concern to determine whether the action may have a significant adverse impact on the environment, and sets forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation. If the Lead Agency determines that the proposed action will not have an adverse effect on the environment or that any adverse effect identified would not be significant, SEQRA review ends upon the adoption of a "Notice of Negative Declaration."

Having considered the proposed action and upon review of the information contained in the Petitioner's Full EAF, the supporting information provided and our review of the record, the Commission determines that there will be no significant environmental impacts and an Environmental Impact Statement is not required. The proposed action will induce construction activities in certain instances. The types of construction activities proposed by NYSEG are not expected to cause significant environmental impacts or changes to natural resources beyond the ordinary construction that is typical of the modern environment. The Full EAF addresses among other things the Project's impact to natural resources; rare, threatened and endangered species; and nearby buildings, including a review of potential effects on historic properties. NYSEG states in the EAF that the following actions are required in addition to Commission approval, note that Town of Stockport Approval is related only to the placement of transmission facilities on agricultural land:

1. Approval of the Town of Ghent and Town of Stockport Planning Boards.
2. Approval of the Town of Ghent Zoning Board of Appeals.
3. Town of Ghent Highway Department Road Work Permit
4. Columbia County Highway Work Permit - Use and Occupancy
5. DEC, SHPO and DOT Approvals
6. USACE and USFWS Approvals

While the action at issue is a Type I action, because it will result in the disturbance of more than 10 acres of land, NYSEG has demonstrated that it will take reasonable measures to avoid significant adverse impacts with respect to the Project's location and design, and that typical impacts of facilities construction will be minimized by applying best management practices and stormwater and sedimentation control practices. Other impact minimization and mitigation will result from project scheduling to avoid impacts to the extent practicable. The Commission is satisfied that, while this is a Type I action, the mitigation and avoidance measures proposed by NYSEG will result in no undue environmental impact, and will ensure that NYSEG follows these standards and practices through the normal course of supervising its operations.

The Commission, therefore, adopts a Negative Declaration for the proposed action, and will issue a Notice of Negative Declaration. The Full EAF (Parts 1-3 and attachments) will be retained in the Commission's files. A Notice of Determination of Significance will be prepared. This Negative Declaration will be sent to all involved agencies simultaneously with this Order. It will also be published in the Department of Environmental Conservation's Environmental News Bulletin.

DISCUSSION

For the reasons stated below, the Commission determines that NYSEG should be allowed to proceed with construction (as soon as it has received all required local permits) under Part 102; and that NYSEG's request for a CPCN pursuant to PSL §68 should be dismissed as unnecessary.

As an initial matter, the Commission notes that the process associated with the petitions in the instant case are unique. These petitions come before the Commission as a result of a Joint Stipulation reached between the parties in Article VII Case 12-T-0248.⁷ This Joint Stipulation was not a formal Joint Proposal as the solution contemplated took the Project out of the Commission's jurisdiction under Article VII of the PSL and placed it under a non-Article VII alternative subject to SEQRA requirements and other state and local permitting reviews. Based upon our review of the environmental impacts associated with the Project discussed above and, as discussed more fully in the Negative Declaration issued simultaneously with this Order, the Project represents a minimal environmental impact.

Part 102 Review

With respect to NYSEG's filing under 16 NYCRR Part 102, the Commission and Staff have reviewed the report and supplemental information filed pursuant to 16 NYCRR §102.2(b) and the Commission accepts the filing and determines that that no formal investigation need be ordered in this matter.⁸ NYSEG

⁷ Article VII proceedings do not require conformance with SEQRA provisions since Article VII is classified as a Type II action.

⁸ Full details regarding DPS Staff's environmental review can be found in the Negative Declaration adopted simultaneously with this Order as well as Part 3 of the EAF, which was filed on August 11, 2017, and supplemented on October 13, 2017, in Case 17-T-0512.

is therefore free to commence with construction once it deems itself ready and receives all necessary local permits.

With respect to the environmental impact of the Project, most of the Project is located in a sparsely developed, rural setting. The surrounding land use consists of agricultural and residential areas. A short portion (approximately 225 feet) of the ROW where the 115 kV Tap Lines enter the Falls Park Substation is located in an undeveloped area zoned as a commercial district. Some forestland along the proposed ROW will be cleared and may support agricultural uses in the future.

The 115-kV Tap Lines would be located within the Columbia County Agricultural District 10. The 115 kV Tap Lines ROW traverses 8.81 acres of active agricultural lands. Approximately 20.6 acres of land are estimated to be disturbed (including tree clearing) along the 150-foot wide ROW and for off-ROW access roads to construct the 115 kV Tap Lines. All cleared areas will be converted to access roads or meadow. Best Management Practices (BMPs) will be used, as well as erosion and sediment controls to minimize the disturbance. Access and construction in agricultural fields will occur on timber mats which will prevent permanent impacts to vulnerable soils. All areas will be restored to pre-construction conditions.

The visual impact of the proposed facilities will be minimal. A one-mile study area around the 115 kV Tap Lines was evaluated to determine the visibility and potential visual impact on the viewshed and visual resources. The State Historic Preservation Office (SHPO) requested a viewshed analysis to define the extent of visibility of the new transmission lines from historic resources during leaf-off conditions. To accommodate the request, the United Research Service (URS) on

behalf of NYSEG, submitted a visual effects study to the Historic Site Restoration Coordinator. It is the opinion of URS architectural historians that the 115 kV Tap Lines will have no adverse effect to the historic architectural resources within the visual effects study area. SHPO concurred with this finding and confirmed that no archaeological impacts will result from the proposed Project. Staff from the Environment Certification and Compliance Section reviewed the Project area and determined that tree clearing and the placement of the new 115 kV Tap Lines and associated substation will have minimal visual impacts on the area, due to the distance from public vantage points, extent of forest cover, and low topographic relief.⁹

The company contacted the United States Fish and Wildlife Service, the New York Natural Heritage Program and DEC regarding significant natural communities, habitats, and rare, threatened and endangered species in relation to the Project area. From the review, it was determined that several state and federally-listed species occur in the vicinity of the Project.

Potential bat roosting habitat was found within the 115 kV Tap Lines ROW. To avoid impacts to the state and federally-listed threatened Northern Long-Eared Bat and state and federally-listed endangered Indiana Bat, tree clearing will occur between October 1st and March 31st starting this fall when the bats are hibernating elsewhere. Site surveys determined that no suitable habitat was found for the federally-listed threatened and state-listed endangered Bog Turtle in the Project area and this species would not be impacted. Thus, construction

⁹ The Project area has previously been studied for visual resource impacts associated with the NYSEG Columbia County Transmission Project, subject to PSL Article VII under Case 12-T-0248.

and operation of the Tap Lines is not likely to have adverse effects on these listed species.

There are three streams located in the 115-kV ROW portion of the Project Area. One stream which crosses the ROW is a Class C stream but is not considered a "protected stream" under Article 15 of the Environmental Conservation Law (ECL). The other two streams are not mapped or classified by the NYSDEC and therefore are not subject to regulation or permitting under Article 15 of the ECL. During construction, appropriate erosion and sediment control measures will be used to protect the delineated streams.

There are three wetlands located within the 115-kV portion of the Project Area, but none are classified as state-mapped wetlands or National Wetland Inventory wetlands. Some of the delineated wetland area is forested and 0.26 acres of wetland will need to be cleared for the 115-kV ROW. However, during construction, appropriate erosion and sediment control measures will be used to protect the delineated wetlands. No significant impacts or soil disturbances are anticipated. NYSEG will submit a Notice of Intent (NOI) to the United States Army Corps of Engineers (USACE) certifying that the Company will comply with the conditions in the Nationwide Permit. Prior to construction, the NOIs and associated Stormwater Pollution Prevention Plan (SWPPP) will be forwarded to the NYSDEC to secure coverage under the State Pollution Discharge Elimination System (SPDES) General Permit (GP-0-10-001).

The Town of Stockport has a Comprehensive Plan with guidelines to "prevent impairment of scenic resources of statewide significance." The proposed site of the 115 kV Tap Lines complies with these guidelines. The Town of Ghent has a Comprehensive Plan which includes a goal to, "[f]oster improved

telecommunications and utility infrastructure..." which is supported by the construction of the 115 kV Tap Lines.

The 115-kV line location does not cross any state or national park lands, designated historic sites, central business districts, or 20 or more acres of residential property that maybe developed at greater than one unit per acre as described in Part 102.3(a). Therefore, an advantage and disadvantage analysis is not required.

PSL Section 68

Finally, the Commission determines that no CPCN pursuant to PSL §68 is necessary for NYSEG to construct the Project. As stated above, according to PSL §68(1), no electric corporation may begin construction of electric plant without first obtaining a CPCN from the Commission. In conducting a review under this Section, the Petitioner must have provided to the Commission a certified copy of its charter and a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities. The purpose of PSL §68 is for the Commission to determine whether, in the first instance, a corporation is capable of operating electric plant in a safe and adequate manner at just and reasonable rates. In the second instance, this Section acts as a means for the Commission to allow a utility to serve new retails customers in a new municipality or franchise area. Moreover, where municipal consents are required for construction (i.e., where local roadways are being crossed or ROW occupied), the Commission must ensure that such consents have been received.

In this case however, none of the prongs of PSL §68 are triggered. NYSEG is a regulated electric transmission and distribution utility in New York State and under the jurisdiction of the Commission, it is therefore authorized to

construct electric plant as needed (subject to any other local or state review, including, but not limited to PSL Article VII, SEQ, DEC water quality permits, and local permits). In short, NYSEG does not require a new CPCN before constructing distribution or minor transmission infrastructure, absent any other legal requirement to obtain such. Second, no new retail customers in the Town of Stockport and outside of existing NYSEG service territory (in the Town of Ghent) will receive service as a result of the Project. The only portion of the Project to be built outside NYSEG's existing service territory are a small portion of the 115-kV tap lines in the Town of Stockport. Third, no roads will be crossed, nor municipal ROW occupied by the 115-kV taps in the Town of Stockport, meaning no municipal consents for use of municipal property are required. Therefore, none of the prongs of PSL §68 are triggered by the Project and the request is unnecessary and is dismissed.

CONCLUSION

For the reasons stated here, the Commission issues a Negative Declaration with respect to the environmental impacts associated with NYSEG's proposal to construct two one-mile long 115-kilovolt (kV) tap lines in the Towns of Stockport and Ghent, a new 115/34.5-kV substation in the Town of Ghent; and two 34.5-kV feeder lines in the Town of Ghent. No further review of the Project is necessary under Part 102 and NYSEG may begin construction once it receives all required local permits. The Commission also dismisses NYSEG's request for a CPCN under PSL §68 as being unnecessary because the proposed 115-kV taps will not provision service to any new retail customers outside of NYSEG's existing service territory, nor does the construction thereof require any new municipal consents.

The Commission orders:

1. New York State Electric & Gas Corporation is authorized, pursuant to 16 NYCRR Part 102 to begin construction of two 115-kilovolt (kV) tap lines in the Town of Stockport, a new 115/34.5-kV substation in the Town of Ghent; and two 34.5-kV feeder lines in the Town of Ghent, upon the receipt of all required local permits.

2. New York State Electric & Gas Corporation shall submit notice to the Secretary to the Commission 10 days before it intends to begin construction, including a statement that it has received all necessary permits.

3. New York State Electric & Gas Corporation's request for Certificate of Public Convenience and Necessity pursuant to Public Service Law §68 is dismissed.

4. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

5. These proceedings are closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary