

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 23, 2014

COMMISSIONERS PRESENT:

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

CASE 13-T-0515 - Petitions of New York Power Authority Relating to its Certificate of Environmental Compatibility and Public Need for the Marcy South 345 kV Transmission Facilities - Formerly Case 70126.

ORDER GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED

(Issued and Effective October 27, 2014)

BY THE COMMISSION:

BACKGROUND

On January 17, 2014, the New York Power Authority (NYPA) filed an application, pursuant to §121(3) of the Public Service Law (PSL), for an amendment to the Certificate of Environmental Compatibility and Public Need (Certificate) granted by the Commission in case 70126.¹ As originally filed, the amendment would have

¹ Case 70126, Power Authority of the State of New York, Opinion No. 85-2, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued January 30, 1985). In that Certificate, the Commission authorized the construction of a 345 kV transmission line from Marcy to Coopers Corners and a second line from Edic to Fraser. The Certificate authorized the construction of 207 miles of 345 kV transmission facilities and the expansion of six substations, which include: Marcy, Edic, Coopers Corners, Roseton and Rock Tavern and the construction of a new substation at East Fishkill.

authorized NYPA to construct series compensation (SC) equipment (two capacitor banks) at property owned by NYPA adjacent to the existing Marcy substation located in Marcy, New York and one capacitor bank on property owned by New York State Electric and Gas Corporation (NYSEG) adjacent to the existing Fraser substation located in Delhi, Delaware County.²

The project was developed as a part of a long-term transmission study that was performed by NYPA planners in 2011. Studies showed that the installation of these units would increase power transfer from upstate generators to the down state load. The transmission planning process of the New York Independent System Operator, Inc. (NYISO) was completed; the NYISO finalized a scope of work for the project. The System Impact Study (SIS) demonstrated a 444 MW increase across the Total Interface and a 258 MW increase across the UPNY/SENY (Upstate New York / Southeast New York) Interface. The SIS was approved by the NYISO's Operating Committee on May 20, 2013.

On May 7, 2014, NYPA amended its filing following discussions with NYSEG to consider possible relocation of the proposed facility. NYPA submitted the supplemental filing which addressed the relocation change and stated that there was no material increase in any environmental impact of the Marcy South 345 kV transmission facilities.

On June 27, 2014, NYPA supplemented its earlier filing. NYPA's supplement proposes to relocate the Marcy SC banks to the Fraser substation. NYPA stated that there are several possible advantages to relocation of the Marcy SC bank at Fraser relating to costs, engineering, efficiency, constructability, and avoidance of potential wetland impacts at the Marcy site. The banks would be located at the edge of a hay field and into a small forested area next to the Marcy – Coopers Corners 345 kV and the Edic – Fraser 345 kV lines.

² A 25 % compensation bank was to be connected in series with Edic to Fraser and a 40% compensation bank to the Marcy- Coopers Corners 345 kV transmission lines.

Tetra Tech, a consultant in environmental studies, was hired by NYPA to review the wetland impact and land use. The consultant performed a desktop survey of the area, using New York State Department of Environmental Conservation Article 24 wetlands maps and Federal National Wetland Inventory maps, followed by on-site wetland evaluations. The review concluded that there were no wetlands in the site area or streams in the area of the proposed SC banks. There are two Class C streams located 0.35 miles to the southeast and 0.18 miles to the north of the site. The streams could support fisheries and are regulated by the State. Neither stream will be adversely affected by the site development plan.

There are 4.37 acres of upland deciduous forest and 5.36 acres of active agricultural hay fields at the proposed site. Approximately two (2) acres of combined upland forest and agricultural land will be adversely affected by the SC bank construction at the Fraser substation site.

A Phase I cultural resource investigation for historic or archeological artifacts or structures was completed for most of the development site. Following design of the SC Banks, additional field investigation of the development area may be required. No cultural resources eligible for listing on either the State or National Registers of Historic Sites were found during the completed investigations.

NYPA completed a review of the federally listed threatened and endangered species and candidate species for the project area. That research did not identify any rare, threatened or endangered species; however, the Northern Long-Eared bat (*Myotis septentrionalis*) is a candidate species that may be listed in late 2014.

COMMENTS AND RESPONSES

The Department of Agriculture and Markets (“Ag & Markets”) filed comments on March 4, 2014, stating that a hearing was required on the amendment application as originally filed. Ag & Markets stated that the impact on agricultural lands could be reduced further if a small change were made to the proposed construction.

On March 7, 2014, Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 2 LLC, Entergy Nuclear Indian Point 3 LLC and Entergy Nuclear Operations, Inc (collectively, “Entergy”) filed comments. Entergy claimed that the application filed by NYPA is flawed both procedurally and substantively. Entergy alleged that the application is procedurally deficient because NYPA did not file the amendment in Case 12-E-0503 and did not serve parties to that proceeding with a copy of the amendment application.³ Concerning NYPA’s reliance on a field investigation and desktop study of the wetlands impacted by the project, Entergy stated that NYPA should have had an actual wetland delineation prepared and certified. Entergy also commented that a noise plan should be developed now for the SC banks. Entergy further opined that the amendment contains insufficient detail regarding the state of available technology and nature and economics of various alternatives as required by the PSL. In addition to filing comments, Entergy requested party status pursuant to 16 NYCRR §4.3(c)(1).

In response to Entergy’s comments, NYPA stated that it fully complied with the publication and service requirements of PSL §122(2). NYPA pointed out that it hired an environmental consultant to perform the required environmental studies. NYPA stated its willingness to work with the manufacturer and the contractor of the SC banks to determine whether they produce noise and to develop a plan to correct any noise from the banks. If noise should develop, NYPA agreed to have the engineering procurement contractor estimate the noise and develop mitigation methods for inclusion in its proposed Environmental Management and Construction Plan (EM&CP). NYPA explained that it is seeking an amendment to its certificate so that it can install two SC banks of capacitors in series with its existing transmission lines. NYPA opposed Entergy’s request for party status, contending that Entergy had not raised any new issues or provided a good reason in support of its request.

A public statement hearing on the amendment application (as supplemented) was held on September 15, 2014, in the Delhi Town Hall in Delhi, New York. Only one member of the public asked questions about the project during the time

³ Case 12-E-0503, Generation Contingency Retirement Plans.

preceding the hearing that had been set aside for an informational forum. Moreover, no members of the public made statements at the hearing.

A procedural conference was held by Administrative Law Judge Van Ort on October 2, 2014, in Albany to consider any issues in the case. Administrative Law Judge Van Ort ruled from the bench that there was no need for an evidentiary hearing because no material factual issues were in dispute.

DISCUSSION AND CONCLUSION

Party status is not necessary for the submission of comments; therefore there is no need for us to act on any request for party status. This is particularly so given that no evidentiary hearing will be held. The substantive comments of Ag & Markets and Entergy related to the original application, rather than to the application as supplemented, so the issues raised in them are moot and we will not discuss them further.

The installation of the SC banks will reduce reactive power flows in the transmission lines. Such installation is a cost effective solution to increase the transfer of capacity. The project has a lower cost than installing a new transmission line and is controllable.

The Town of Delhi approved its first Zoning and Land Use Plan in 1990, after the certificate was granted to NYPA in Case 70126, supra. Therefore, the Commission's refusal to apply local legal requirements in the Certificate authorizing the Marcy South 345 kV transmission line is not applicable to this project. NYPA has requested that we recognize the preemptive effect of PSL §130 regarding: Article IV District Regulation §406-E Rural III-V(R-3/5/) District; Article VI Special Permits §§601-605; and Article VII Site Plan Review §§701-707. These local legal provisions are procedural in character and so are supplanted by PSL §130, which prohibits state and local agencies from requiring approvals and conditions with respect to a transmission facility authorized under PSL Article VII.

NYPA requested that we refuse to apply two sections of the Town of Delhi Zoning Ordinance 1990 with amendments 2002 in their entirety as unreasonably

restrictive in view of the existing technology. The first is Article V §513 Off-Street Parking. According to NYPA, the station is automated and personnel will not work at this site on a daily basis, therefore parking is not necessary. Given the character of the substation, we will refuse to apply this requirement that specifies the amount of off-street parking that must be provided. The second is Article V §537-C: Prohibition on visibility of equipment. NYPA explained that the SC banks may be visible from adjacent property, as are the other components of the operating substation. The height of the SC banks is determined by the technology and the separations required to meet the National Electrical Safety Code. Given the size of the SC banks, we will refuse to apply this requirement as unreasonably restrictive in view of the existing technology.

NYPA requested that we refuse to apply requirements of the Town of Delhi Zoning Ordinance 1990 with Amendments 2002 based on PSL §126(1)(f) contained in §406-F: Maximum structure height in the R-3/5 zone. According to NYPA, the SC banks may be taller than 35 feet based on the available technologies. While the height restriction does not apply to the transmission tower (§511 Height Exceptions), we will refuse to apply the height restriction to the SC banks as unreasonably restrictive in view of the existing technology.

The site plans, as proposed, will meet the local setback requirements and the minimum lot size for development of a public utility property found in §406-F of the Town of Delhi Zoning Ordinance 1990 with Amendments 2002. The project site is over five acres and the SC banks will meet the front setback of 15 feet as well as side and rear setbacks. As indicated above, NYPA will preserve or install and maintain a landscape buffer within the project site and outside of the setbacks. NYPA will also comply with Article V §506 A and B Landscaping and Article V §537 A and B Fencing and Landscaping of the Town of Delhi Zoning Ordinance 1990 with Amendments 2002.

In granting this Certificate amendment, we will impose on NYPA appropriate Certificate conditions, including conditions regarding the preparation and filing of its proposed EM&CP.

The Commission orders:

1. The application for an amendment of the Certificate of Environmental Compatibility and Public Need granted in Case 70126, filed by the New York Power Authority (NYPA) on January 17, 2014 (as supplemented) is granted.

2. NYPA shall submit four (4) copies of the environmental management and construction plan (EM&CP) to the Commission, serve two copies on the staff of the NYS Department of Environmental Conservation (one copy to the Central Office in Albany, NY and another copy to the Regional Permit Administrator, Region 3 Office, New Paltz, NY), two copies on the NYS Department of Agriculture and Markets, a copy on the New York City Department of Environmental Protection, Kingston NY, and at least one copy on any other New York State agency (and its relevant regional offices) that requests the document, serve one copy on those who request the document, and place copies for public inspection in at least one public library or other convenient location in the municipality where the construction will take place. Contemporaneously with the filing and service of the EM&CP, NYPA shall provide notice, in the manner specified below, that the EM&CP has been filed.

3. NYPA shall serve written notice(s), in language reasonably understandable to the average person, of the filing of the proposed EM&CP on each person on the Commission's service list considered potentially affected by the project siting and construction, and on each person from whom property rights are required, and shall attach a copy of the notice to each copy of the proposed EM&CP. Further, NYPA shall publish the notice in a newspaper or newspapers of general circulation in the vicinity of the project site. The written notice(s) and the newspaper notice(s) of the filing of the proposed EM&CP shall contain, at a minimum, the following:

- (a) A statement that the proposed EM&CP has been filed;
- (b) A general description of the project, its need and the availability for review of the proposed EM&CP;

- (c) With respect to the written notice(s) for identified persons with a record interest in property to be acquired, a description of the property to be acquired for the project;
- (d) A listing of the locations where the EM&CP is available for public inspection;
- (e) A statement that any person desiring additional information about a Specific location or subject may request it from NYPA;
- (f) The name, postal and e-mail addresses and toll-free and local telephone numbers of appropriate NYPA representatives;
- (g) The e-mail and postal address of the Secretary of the Commission; and
- (h) A statement that any person may be heard by the Commission on any matter or objection regarding the proposed EM&CP by filing written comments with the Secretary and NYPA within 30 days of the date the EM&CP was filed with the Commission (or within 30 days after the date of the newspaper notice, whichever is later).

4. A certificate of service indicating the persons upon whom all EM&CP notices and documents regarding the proposed EM&CP were served and a copy of the written notice shall be filed with the Secretary within three (3) business days after the time the proposed EM&CP is filed, and shall be a condition precedent to approval of the EM&CP. When available, proof of publication of the newspaper notice(s) of the filing of the proposed EM&CP, including a copy of such notice, shall be filed with the Secretary.

5. The EM&CP shall include a Stormwater Pollution Prevention Plan (SWPPP), supported by site plans.

6. NYPA shall file a noise mitigation plan with the EM&CP for the SC banks.

7. NYPA shall provide the name and qualification of a full time supervisor with stop-work authority over all aspects of the project; the supervisor shall be on site during all phases of the construction.

8. NYPA shall submit the SWPPP to the New York City Department of Environmental Protection.

9. This proceeding is continued.

By the Commission,

Kathleen H. Burgess

Digitally Signed by Secretary
New York Public Service Commission

KATHLEEN H. BURGESS
Secretary