

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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March 24, 2008

Leonard H. Singer, Esq.
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222

Chris Thompson, President
New York Regional Interconnect Inc.
100 State Street, Suite 1033
Albany, New York 12207

Re: Case 06-T-0650 – Application of New York Regional Interconnect Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for a high voltage direct current electric transmission line approximately 190 miles in length running between a converter station with an AC interconnection to National Grid's Edic Substation in the Town of Marcy and a converter station with an AC interconnection to Central Hudson Gas & Electric's Rock Tavern Substation in the Town of New Windsor.

Dear Messrs. Singer and Thompson:

Public Service Law (PSL) §123(1) prohibits the setting of a date for the commencement of a public hearing on an Article VII application until the application complies with PSL §122. PSL §122 establishes requirements for the content, filing, and service of applications. Upon review of the application documents submitted by New York Regional Interconnect Inc. (NYRI) on May 31, 2006, a number of deficiencies were found. The deficiencies were described in a letter dated July 26, 2006, which letter also noted that NYRI had filed a motion for waiver for certain filing requirements.

The Commission considered the waiver motion as well as other pleadings.¹ The Commission also adopted regulations regarding, *inter alia*, the filing requirements for applications proposing electric transmission lines in national interest electric transmission

¹ Case 06-T-0650, New York Regional Interconnect Inc., Order on Waiver Motion and Directing the Filing of Supplemental Information (issued November 10, 2006).

corridors.² The regulations specifying such filing requirements are contained in 16 NYCRR 85-2.9.

As contemplated in the November 10, 2006 Order, certain issues were the subject of a mediation process. That process resulted in the signing by NYRI and other parties of four stipulations, which were filed with the Commission on March 15, 2007. On February 21, 2008, NYRI filed a supplement to its application, stating: "All of the information required by the July 26 letter, the November 10, 2006 Order and the Stipulations is included in the Supplement."³

Upon review of the application supplement documents submitted by NYRI on February 21, 2008, a number of deficiencies were found.⁴ The application, as submitted, is not filed or otherwise in compliance with Section 122 of the PSL. The deficiencies must be remedied or otherwise cured before the application can be deemed to comply with 16 NYCRR 85-2.9(a) or PSL §122. They are described as follows:⁵

PSL §122(2) and 16 NYCRR 85-2.10 Notice of Application

1. Service of the application supplement is deficient because the following municipalities in which portions of the proposed route or the route of a listed alternative are located, were not served, according to the service list provided, as required by PSL §122(2)(a)(i) and 16 85-2.10(a)(1):

Village of Yorkville, Oneida County
Town of Callicoon, Sullivan County

The boundary of the following municipality is very close to the facility location. Courtesy service should be provided with notice that the location of the proposed route is near the following municipality:

Town of Tompkins, Delaware County

The applicant is required to file with the Secretary to the Commission proof of service of a copy of the application on the above municipalities.

16 NYCRR 86.3 Location of Facilities

² Case 06-M-1019, Rules and Regulations, Memorandum and Resolution Adopting Amendments to 16 NYCRR subpart 85-2 and parts 86 and 88 (issued December 14, 2006).

³ Case 06-T-0650, supra, Application Supplement, p. 2

⁴ NYRI did not request waiver of any applicable filing requirements.

⁵ In addition to the specific requirements of PSL §122, §122(1)(f) provides that the application must contain "such other information as the applicant may consider relevant or the commission may by regulation require."

2. The coverage of the aerial photographs in the application supplement indicates the proposed centerline and right-of-way (ROW), but does not show at least 1,200 feet on each side of the proposed ROW or identify all cultural features, as required by §86.3(b)(1). For example, coverage of the 1,200 feet corridor along the proposed ROW is incomplete at the following representative locations:

Figures: 5 and 6 +/- Milepost (MP) 3.5, northerly area; Barge Canal, I-90
6-7 +/- MP 4.6 west side; residential area Ellis St. and railroad
10-11 +/- MP 8.1 north side; mixed use area; North and South of Arterial Highway corridor
28-29 +/- MP 23 north side; farmlands and rural residential area
49-50 +/- MP 39.4 east side; and west side (mining, wetlands and streams)
56-57 +/- MP 44.8 west side; rural and undeveloped area
57-58 +/- MP 45.8 east side; residential and mixed uses along New York State Route 12B
58-59 +/- MP 46.8 east side; residential and mixed uses, Sherburne
62-63 +/- MP 50.1 west side; rural residential-agriculture lands and forest
72-73 +/- MP 57.3 west side; Chenango River, forest and commercial area
73-74 +/- MP 58.5 east side; Lewis Road area
86-87 +/- MP 68.3 northerly side, east of Keach Road
99-100 +/- MP 78.4 westerly side; at I-88 and area of New York State Finger Lakes Trail
104-105 +/- MP 82.5 east side; at Tributaries of Susquehanna River
105-106 +/- MP 83.7 west side; at I-88 and Susquehanna River

Furthermore, limited areas of the facility location and centerline are incompletely represented, where separate pages in the 221-page coverage do not completely adjoin. Incomplete coverage at facility centerline and ROW was observed at the following representative locations:

Figures: 66-67 +/- MP 53.3 sheet join: stream crossing at centerline; residential area at west
72-73 +/- MP 57.3 sheet join; mixed use area and Chenango River
88-89 +/- MP 69.9 sheet join; angle structure east of Phillips-Odell Road.

16 NYCRR 86.6 Design Drawings

3. The application supplement does not contain certain profile information and legible architectural drawings for the switchyard/substation facilities or converter stations, as required by the lead-in language of §86.6. Several figures provided are not legible, and must be replaced with larger format legible figures.

Figures: E-2.2.1-7 Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) Expanded Edic Substation Plan
E-2.2.1.8 National Grid Expanded Edic Substation Profile

E-2.2.2-4 Rock Tavern Substation Plan
E-2.2.2-5 Central Hudson Gas & Electric Corporation Rock Tavern
Substation Profile

Also, figures E-3.7-1 and -2 – Transition structure elevation and plan drawings must be supplemented to provide front views in addition to the side view depictions.

16 NYCRR 86.7 Local Ordinances

4. The application supplement does not contain a list of all local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the proposed facility, together with a statement that the location of the facility as proposed conforms to all such local legal provisions, except any that the applicant requests that the Commission refuse to apply, as required by 16 NYCRR 86.7(a).
5. The application supplement does not contain a showing that the request that the commission refuse to apply a local legal requirement is the minimum necessary, as required by 16 NYCRR 86.8(b), in that a copy of the following municipalities' applicable local legal requirements (or of maps referenced therein) was not provided:
 - a. in Oneida County:
 - i. Town of Marshall (No local ordinances provided).
 - ii. Town of Sangerfield (Note on Zoning District map provided indicates "...all areas are not labeled").
 - iii. Village of Yorkville (Analysis of codes and requirements not provided).
 - iv. Village of Whitesboro (No zoning district map provided).
 - v. Village of Clayville (Not all local laws provided).
 - b. in Chenango County: Town of North Norwich (No maps provided to delineate special flood hazard areas).
 - c. in Orange County:
 - i. Town of Hamptonburgh. (No zoning district map provided).
 - ii. Town of New Windsor. (No zoning district map provided).
 - iii. Town of Wallkill. (No zoning district map provided).
 - d. in Sullivan County:
 - i. Town of Delaware. (No zoning district map provided. The zoning ordinance is incomplete).
 - ii. Town of Forestburgh. (No zoning district map provided).
 - iii. Town of Lumberland. (No zoning district map provided).
 - iv. Town of Tusten. (No zoning district map provided).

16 NYCRR 88.4 Engineering Justification

6. The application supplement does not contain the system reliability impact study (SRIS) forwarded by the Transmission Planning Advisory Subcommittee (TPAS) for approval by the Operating Committee of the New York Independent System Operator, as required by 16 NYCRR 88.4(a)(4), in that “there was no consensus either for or against a recommendation for approval,” with the result that the SRIS was forwarded by TPAS “to the Operating Committee for action.”⁶

PSL §122(1)(f) and Stipulation on Supplemental Visual Impact Assessment

7. The application supplement does not contain the following information the applicant considers relevant (as indicated by its signature on the stipulation):⁷
 - a. a description of structure types and density along the proposed route and a description of historic character, historic structures and historic landscapes as listed or eligible for listing on the National Register of Historic Places along the proposed route. (Stipulation II.D.2.b, p. 5)
 - b. a description of water resources “in terms of contribution to visual components of the landscape” along the route (Stipulation II.D.2.b, p. 5);
 - c. a quantification of “potential viewer numbers where possible based on traffic counts at roadways; visitor numbers at parks and recreation sites; and population densities within distance zones.” (Stipulation II.D.2.d., p.5);
 - d. an assessment of “State Open Space Plan Priority Areas to the extent the boundaries of such areas can be identified,” as listed (Stipulation II.D.f, p. 6); and
 - e. a representation of leaf-off conditions as a worst case condition and a representation of seasonal high contrast conditions (Stipulation Attachment 1, item 2, p. 12).

To remedy the deficiencies described in this letter, NYRI is required to serve a copy of the information it files as an additional supplement to its Application on those entitled to be

⁶ TPAS Minutes December 20, 2007

⁷ It is also troubling that NYRI did not comply with the consultation requirements contained in the stipulation, in that consultation with Department of Public Service (DPS) Staff and solicitation of viewpoints for simulation and assessment was only completed on February 20, 2008, one day before the Application Supplement was filed. Following receipt of NYRI’s analysis and documentation, DPS Staff identified a number of resources of interest to the State that are appropriate for specific assessment and analysis, according to the terms of the visual stipulation. (See attached correspondence “NYRI Visual Assessment – background information review meeting 2/20/08” conveyed to NYRI on February 21, 2008). Those resources must be addressed in an additional supplemental analysis, which must be provided in compliance with the visual stipulation. NYRI is expected to continue consultation with DPS Staff in completing its supplemental visual impact assessment, as described in the visual impact stipulation.

Leonard H. Singer, Esq.
Chris Thompson, President
Page 6 of 6

served pursuant to PSL§ 122(2)(a) and 16 NYCRR 85-2.10(a) and on all active parties to this proceeding. It is required to file with the Commission an original and ten copies of the additional supplement, together with proof of service on the parties receiving service of the supplement. In addition, in consideration of the consultation and coordination required by Parks, Recreation and Historic Preservation Law §35.07(3), NYRI shall serve a copy of the application and supplemental information on:

Fred Miller, Executive Director
Mohawk Valley Heritage Corridor Commission
66 Montgomery St.
Canajoharie, NY 13317

If you have any questions concerning matters discussed in this letter, please contact James Austin, Chief, Energy Resources and the Environment, in the Office of Energy Efficiency and the Environment, at (518) 474-5368.

Very truly yours,

JACLYN A. BRILLING
Secretary

cc: Service List w/encl.

From: A.C. Davis, NYS DPS -- OEEE
To: Steve Wood, ESS; and Diane Enders, EDR
Re: NYRI Visual Assessment – background information review meeting 2/20/08

In summary of our discussion yesterday, please note the following general and specific observations and recommendation. In preparation for the 2/20/08 meeting, various figures including viewshed mapping, line-of-sight figures, similarity zone mapping, resource and photographic inventories and photo-simulations were provided to DPS Staff on January 19 and February 1, 2008.

General Observations

The various hamlets and villages along the route of the proposed line are likely to include a variety of local visual conditions and issues which may not necessarily be fully represented in the simulations provided.

The Management Plan for the Mohawk Valley Heritage Corridor should be reviewed for any specific locations, resources, or issues related to scenic qualities which may influence an analysis of project consistency with the objectives, goals and priorities of that plan. Several specific resource locations have been addressed, and others were noted and discussed at the meeting (and further discussed below individually).

The inventory of cultural resources within the study corridor which was provided by NYRI is a listing of known resources as previously listed or determined eligible by the OPRHP Historic Preservation Bureau. There does not appear to be a related corridor study of potentially eligible historic structures or places: those resources will likely need to be reviewed for project visual effects to address effects pursuant to State Historic Preservation Law §14.09.

The visual study should provide representations of the variety of electric transmission facility structure types proposed, as well as the contrasts with the variety of different existing electric line structures co-located in close proximity to the proposed facilities along the route as proposed and in locations where reasonable alternative locations may be identified.

The photographic inventory of locations studied includes in excess of 5000 photographs which were taken during the growing season of 2007. These photographs were the basis of the viewpoint selection and photo-simulations developed for representing the appearance of the proposed transmission facilities. Representations of the appearance of the proposed facilities in the dormant or “leaf-off” conditions, including high-contrast conditions expected where snow-covered right-of-way conditions on steep slopes occur, will be appropriate additions to the project visual assessment. Some potential locations were discussed, but a follow-up consultation step to select specific viewpoints for photo-simulation is appropriate as per the stipulation regarding visual assessment protocol.

Line-of-sight analysis locations were reportedly chosen to address predominantly forested regions of the project study corridor, where potential project visibility may be limited due to extensive forest cover, and viewpoint locations may be limited to roadfront locations at the facility route. Additional line-of-sight figures may be appropriate to document potential visibility, including at locations extending outside of the 3-mile study corridor, such as Brookfield State Forest and trail system, at Oquaga Creek State Park - open public use areas in

particular, and at the Upper Delaware National Scenic and Recreational River. Viewshed details from these and similar resource locations may be appropriate representations or accompaniments to line-of-sight representations.

Specific Locations

Marcy Converter Station: the information provided does not include a simulated representation of the Marcy Converter Station. A range of potential viewpoints was reviewed, with terrain and vegetation generally limiting foreground viewing opportunities. Explore whether any viewpoints are appropriate, or if viewpoints of greater distance are useful in representing appearance and cumulative addition at this area of extensive electric substation infrastructure.

SUNY Institute of Technology campus site proposal: area proposed for campus development may warrant additional consideration in terms of project visibility, location (and land use effect).

NYS Thruway crossing: a heavy traffic area which warrants representation as viewed by approaching travelers. Expect to demonstrate design contrast with existing structures; this area may warrant representation of low-altitude aviation warning markers as on existing transmission lines crossing.

Erie Canal and Canalway Trail: the proposed line location crossing and running parallel to the trail and canal for approximately one mile presents other potential viewpoints which should be represented. Open area to the west of the parking lot area (simulation view 1-16), and potential views from the canal itself (at inferior viewer position) should be explored for identification of viewpoints representative of recreational trail and waterway users. An assessment of project visibility and potential impacts for users of these heritage resources should be documented.

Adirondack Scenic Railway: the route of this scenic touring carrier runs parallel to the proposed transmission facility route for approximately ½ mile near the Utica Marsh, Erie Canal, NYS Thruway and within the Erie Canalway National Heritage Corridor. (This area is also entirely within the Mohawk Valley Heritage Corridor.) The specific route of the Scenic Railway should be noted, and an assessment of project visibility and impact for users of this scenic touring route should be documented.

Village of Waterville: consideration of additional viewpoints, such as axial views down the railroad corridor from cross-street locations, may be appropriate leaf-off viewpoints for photo-documentation and photo-simulation of proposed facilities.

Sangerfield River-Chenango River-Unadilla River-Susquehanna River corridor: recreational corridor interest in this region is significant, including river and railroad corridor uses as recreational resources linking many communities and other recreational trails and corridors. Areas with potential open views from the river to the proposed transmission facility route should be identified, photo-documented, and impact assessments made.

Finger Lakes Trail: the NYS-designated Finger Lakes Trail location within the study corridor has not been represented in resource mapping or analysis. Location identified on mapping during the 2/20/08 meeting indicates co-incidence of the trail with the proposed transmission facility route on high terrain (Camels Hump) south of I-88 crossing east of Bainbridge, with potential open northerly vista including a significant length of the proposed transmission

facilities. Photo-documentation of views at this area should be developed, and photo-simulation and impact assessment provided.

Delaware River National Scenic and Recreational River corridor: project visibility potential was reviewed during the 2/20/08 meeting, and potential views from river area (e.g. vicinity of Cohecton, Fig. D3. Sheet 23 of 30) to proposed facility route were identified. Additional analysis and representation of views, line-of-sight demonstration, photo-simulations and analysis of impact should be developed for this important scenic resource area.

D&H Canal Park: Location of the D&H Canal Park, a historic and recreational resource area, was reviewed during the 2/20/08 meeting. Boundaries of the park should be noted on map rather than a point location (see Fig. D3, Sheet 27 of 30), and a determination of the facilities' proposed occupancy of park area should be demonstrated. Additional consideration of recreational uses, viewpoints, and location of proposed transmission facilities in relation to park and historic features should be developed. This is a good potential candidate location for winter condition photo simulation, representing winter recreational uses, leaf-off conditions. Potential views of proposed facilities locations from Cuddebackville area, including D&H Canal corridor trail, should be documented and considered for photo-simulation and impact assessment.

Shawangunk Trail corridor: location of this designated trail was reviewed during 2/20/08 meeting, with general conclusion that mapped location is schematic; and topographic conditions were concluded to differ from digital elevation information as represented in landform modeling. Relation of the trail to the proposed facilities location, transition structure location (from overhead to underground design) and uncertainty regarding representative modeling signifies this location as warranting additional analysis and representation in visual assessment.

Shawangunk Kill: this river is a listed recreational resource, and additional consideration of water-user viewpoints, or surrogate locations, should be developed. Leaf-off condition should be explored and photo-documentation developed. Simulation selection may be warranted.

Highland Lakes State Park: documentation of cover conditions, and vegetative viewshed or line-of-sight analysis is appropriate to model potential project visibility from this undeveloped NYS Park.

Line segment south of Rock Tavern converter station site: depiction of double-circuit facility proposed should be presented in a more representative view simulation.

Corrections

Several corrections were discussed, including municipal names and locations, and one viewpoint number designation, on the various simulations within Figure G2, Visual Simulations.