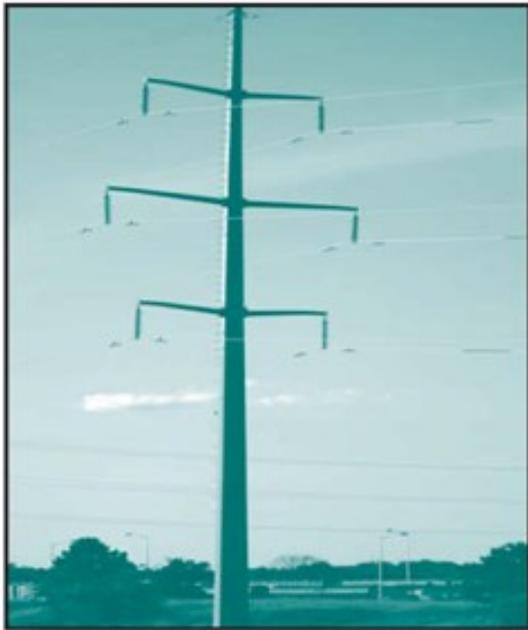


The Certification Review Process For Major Electric and Fuel Gas Transmission Facilities



Under Article VII of
The New York Public Service Law

A Guide from the
New York State
Public Service Commission

Index:

| | |
|---|-------------------|
| <i>Introduction</i> | 2 |
| <i>Article VII</i> | 3 |
| <i>The Public Service Commission</i> | 5 |
| <i>The Department of Public Service</i> | 5 |
| <i>Public Involvement</i> | 6 |
| <i>Pre-Application Process</i> | 9 |
| <i>Filing and Notice Requirements</i> | 9 |
| <i>Application</i> | 10 |
| <i>The Certification Process</i> | 11 |
| <i>Intervenor Fund</i> | 11 |
| <i>Party Status in the Certification Proceeding</i> | 13 |
| <i>Article VII Settlements</i> | 14 |
| <i>Commission Decision</i> | 14 |
| <i>Article VII Case Procedure</i> | 15 |
| <i>Case Specific Information</i> | 18 |
| <i>Article VII Process Flow Chart</i> | appendix |
| <i>Table 1-1: Review Process of Fuel Gas Transmission Lines</i> | appendix |
| <i>For Further Information</i> | inside back cover |

Introduction

This guide has been prepared to explain the special public review process for any application to construct and operate a major electric transmission facility (defined below) or fuel gas transmission facility in New York State. Article VII, “Siting of Major Utility Transmission Facilities,” is the section of the New York State Public Service Law that requires a full review of the need for and environmental impact of the siting, design, construction, and operation of major transmission facilities in New York State.

While the New York Public Service Commission (Commission) makes the final decision regarding all applications, Article VII establishes the forum in which community residents can participate with members of state and local agencies in the review process. Throughout the Article VII review process, applicants are strongly encouraged to follow a public information process designed to involve the public in a project’s review.

If, after you have read the guide, you have questions, please visit our Website, write or call our toll-free Office of Consumers Services Helpline:

■ **Website:**

www.dps.ny.gov/articlevii.htm or www.AskPSC.com

■ **Write:**

New York State Department of Public Service
Office of Consumer Services
Three Empire State Plaza • Albany, NY 12223-1350

■ **Call Toll-Free Helpline:**

1-800-342-3377

Article VII

Article VII of the New York Public Service Law sets forth a review process for the consideration of any application to construct and operate a major utility transmission facility.¹ The law defines major utility transmission facilities according to technical criteria.

- Major electric transmission facilities are lines with a design capacity of 100 kV² or more extending for at least 10 miles, or 125 kV and over, extending a distance of one mile or more. The law excludes underground transmission lines in a city with a population in excess of 125,000. The law also excludes transmission lines in connection with a hydroelectric facility that must be approved by the Federal Energy Regulatory Commission.
- Major fuel gas transmission facilities are natural gas pipelines extending a distance of at least 1,000 feet and operated at pressures of 125 PSIG³ or more, except where such natural fuel gas pipelines:
 - are located wholly underground in a city; or
 - are located wholly within the right-of-way of a state, county or town highway or village street; or
 - replace an existing transmission facility, and are less than one mile long.

The New York State Legislature enacted Article VII in 1970 to establish a single forum for reviewing the need for, and environmental impact of, certain major electric and gas transmission facilities. The law requires an applicant to apply for a Certificate of Environmental Compatibility and Public Need (Certificate) and meet the Article VII requirements before constructing any such facility.

1 The term “major utility transmission facility” can be used to refer to either a “major electricity transmission line” or a “major natural gas transmission pipeline.”

2 “kV,” the abbreviation for “Kilovolt,” is equal to one thousand volts.

3 The abbreviation for “Pounds Per Square Inch Gauge” (PSIG) indicates the pounds of pressure on the walls of a pipe per square inch.

In 1981, the Legislature streamlined the Article VII procedure and application requirements in connection with natural gas transmission facilities that extend more than 1,000 feet, but less than ten miles. The streamlined requirements applicable to such natural gas facilities are set forth in the Public Service Law Section 121-a and in rules at 16 NYCRR Subpart 85-1. Table 1-1 located at the end of this guide provides a summary of the review process for these transmission facilities.

New transmission facilities are proposed because of the public need for reliable, economical utility services and because energy sources are usually located at a distance from the populations they serve. Transmission lines interconnect the various utility systems within the state with those in other states and Canada. They enable utilities and Energy Service Companies (ESCOs)⁴ to buy and sell energy, assist in emergencies and improve reliability. Thus, lines can affect the placement of power plants and can help to ensure that the most economical energy will be available to ratepayers throughout the state. A determination of the need for any particular project, however, depends on the circumstances of the case and is a major element in the review conducted under the Article VII Law.

You may obtain a copy of:

- Article VII, Siting of Major Utility Transmission Facilities, New York Public Service Law (**Sections 120 through 130**);
- Regulations for Electric Transmission and Gas Transmission Lines Ten Miles or Longer, Chapter 1, Subchapter G – Certificates of Environmental Compatibility and Public Need (**16 NYCRR Parts 85 through 88**); and
- Procedures With Respect To Gas Transmission Lines Less Than 10 Miles Long (**16 NYCRR Sections 85-1.0 through 85-1.7**)

by visiting our Website, www.dps.ny.gov/articlevii.htm or calling our consumer information toll-free number: 1-888-275-7721. You may also write to our Office of Consumer Services. Please see inside back cover, “For Further Information.”

4. “Energy Service Companies (ESCOs)” are electric or natural gas suppliers that compete with utility companies to sell energy supplies in a deregulated market.

The Public Service Commission

The Commission is the five member decision making body that regulates investor-owned electric, natural gas, steam, telecommunications, and water utilities in New York State. The Commission also oversees the cable industry. The Commission decides any application filed under Article VII. As established by state law, the Commission is made up of a Chair and four Commissioners. The Chair of the Commission, designated by the Governor, is also the chief executive officer of the Department. Staff members of the Department serve as the staff to the Public Service Commission.

The Department of Public Service

The Department is the state agency that serves to carry out the Commission's legal mandates. One of its responsibilities is to participate in all Article VII proceedings to represent the public interest. The Department employs a wide range of experts, including engineers, environmental specialists, legal counsel, consumer outreach specialists and economists who analyze environmental, engineering, and safety issues, as well as the need for a facility proposed under Article VII. These professionals take a broad, objective view of any proposal, and consider the project's effects on local residents, as well as the needs of the general public of New York State. It is important to recognize that the public interest is not necessarily the same as the interest of any particular individual, group or agency. In addition, public participation specialists monitor public involvement in all Article VII cases and are available for consultation with both applicants and stakeholders.⁵

5. The term "stakeholder" includes: state and local officials, agency representatives, municipalities, special interest and environmental groups, residents of communities or areas directly surrounding the proposed facility and residents in other communities or areas that are adjacent to the proposed facility who may see themselves as affected by the project.

Public Involvement

The Commission strongly encourages applicants to voluntarily communicate with the public early in the project's planning phase, as well as during all subsequent phases of the Article VII process. A public involvement program is made up of a variety of public activities to achieve different objectives during the course of the Article VII process.

- To first alert the public to its proposal, an applicant may choose to conduct an awareness campaign using fliers, print and broadcast media, information kiosks, bill stuffers, brochures, videos or displays.
- To explain its proposal to the public, an applicant may choose to hold open public forums, tours, or one-on-one discussions or to offer speakers to established groups that meet regularly.
- To collect input and provide feedback, an applicant may choose to hold focus groups or public meetings, or use surveys, questionnaires, public comment cards, direct mailings or an Internet Website.
- To establish a presence in the community, an applicant may choose to open a field office, establish a toll-free telephone line or a community advisory group.
- To keep the public informed and provide information and updates, an applicant may choose to use a pre-recorded telephone line, a newsletter, or local radio or public access television, or to hold briefings or issue technical reports or fact sheets.

Regardless of which tools are used, an applicant should identify its stakeholders and develop a public involvement plan with techniques and tools to communicate with the community.

Article VII provides opportunities for individual and group stakeholders having an interest in the project to participate in the review of an application. The primary proposed location and alternative locations listed, appearance, cost, and construction and maintenance practices, as well as the need for the facility, are all subject to review. The law provides the public several ways to participate in the review of an Article VII application:

- An applicant has to give advance notice of its proposal to each municipality and each state legislator in the proposed project area, as well as those municipalities and state legislators representing the areas traversed by the alternative routes listed in the application. In this way, municipal officials and state legislators in the affected regions are given the opportunity to represent their constituents in the proceedings.
- Proceedings are open to participation by New York State agencies (such as the Departments of Environmental Conservation, Transportation, Agriculture and Markets, and Empire State Development), municipalities, and local environmental, commercial, planning and community/public interest groups and individuals that have an interest in the project. Generally, it is more effective for individuals to join with other members of a community who have similar interests and concerns. Individuals or representatives of such groups or organizations can act on behalf of their members to request “party status” and actively participate in the case (see page 13 for more information). Such involvement often includes participation in scoping conferences, technical sessions and settlement conferences.

When one or more issues are controversial, a case may require formal evidentiary hearings, at which evidence and testimony are presented. If so, participation can include presenting sworn evidentiary testimony, cross-examining witnesses, and submitting written summaries (called briefs) of the group’s positions and arguments at the close of the hearings.

While it may be helpful for parties to be represented by an attorney, one is not required. If an individual or group would like to have certain views considered fully, the most important consideration is that those views be presented clearly, with as much supporting factual information as is available.

- Interested parties who wish to monitor the proceedings of a particular case without the formal commitment of becoming a party to the proceeding can subscribe to the “service list” for the case. Subscribers to a case will receive e-mail notification when a filing and/or issuance (e.g., order, notice and ruling) is entered into the case. Persons unable or unwilling to receive electronic notification will receive hard copies of Commission-issued documents by mail. Interested parties may subscribe to a service list by selecting the appropriate case from the list of current Article VII cases found at www.dps.ny.gov/articlevii.htm, clicking on case number link and then selecting the “Subscribe to Service List”

button in the upper right corner of the page. Persons who do not wish to use the online feature may request a copy of the “Service List and Mail Service List Request Form” by contacting the Secretary at secretary@dps.ny.gov or NYS Public Service Commission, Three Empire State Plaza, Albany, NY 12223-1350 or by calling 518-474-2500.

- Individuals can also provide comments for consideration by the Commission during the review of an Article VII case through:

Public Statement Hearings:

Individuals can deliver an oral or written statement of personal views and concerns at any designated “public statement hearing.” These statements are included in the hearing record with all other information to be evaluated in determining the outcome of the proceeding, but they are not subject to cross-examination. In addition, participants in public statement hearings are welcome to attend all of the evidentiary hearings and to confer informally with the parties or Department staff. Information about a public statement hearing may be found at the Commission’s Consumer Website, www.AskPSC.com.

Written Comment (via Mail or Internet):

Persons not wishing to speak at a public statement hearing or who are unable to attend the hearing, may comment on a proposed case (in English or Spanish) by submitting comments electronically, to the PSC Secretary at secretary@dps.ny.gov, or by mailing their written statements to the Secretary at the New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350. These comments should reference the Article VII case number assigned to the application.

Written comments can also be submitted through the Department’s Website. Go to www.dps.ny.gov, click “Search,” enter the Case Number in the box labeled “Search by Case Number,” click again, and then click on “Post Comments” at the top of the page. Many libraries offer free Internet access.

Toll-Free Opinion Line:

Interested persons may call the Commission’s toll-free Opinion Line at **1-800-335-2120** to voice their opinion. This phone line is set up to receive comments about proceedings from in-state callers, 24 hours a day. The comments are not transcribed verbatim, but a summary is provided to the Commission.

Pre-Application Process

Early in the planning phase of a project, the prospective Article VII applicant is encouraged to consult informally with stakeholders. Once an application for a certificate is filed with the Commission, no local municipality or other state agency may require any hearings or permits concerning the proposed facility.

Filing and Notice Requirements

Article VII requires that a copy of the application be provided by the applicant to the Department of Environmental Conservation, the Department of Economic Development, the Secretary of State, the Department of Agriculture and Markets and the Office of Parks, Recreation and Historic Preservation, and each municipality in which any portion of the facility is proposed to be located. This should be done for both the primary route proposed and any alternative locations listed. A copy of the application must also be provided to the state legislators through, or adjacent to, whose districts the proposed primary facility or any alternative routes listed would pass.

The filing of an Article VII application must be accompanied by proof that notice was published in a newspaper(s) of general circulation in all areas through which the facility is proposed to pass, for both its primary and alternate routes. The notice must contain a brief description of the proposed facility and its proposed location, along with a discussion of reasonable alternative locations. At least once a week for two weeks prior to the filing of an Article VII application, the notice must appear in all areas where the facility is proposed to be located.

Though not required, an Article VII applicant is encouraged to make a copy of its application available at one or more public libraries or other central locations for public review. This usually includes its placement in the library(ies) in the municipality(ies) through which the primary transmission line or any alternative routes listed would pass.

An applicant is required to provide notice of the filing of the application to individual property owners of land on which any portion of the facility is proposed to be located for the proposed primary route.

Application

An Article VII application must contain the following information:

- the location of the line and right-of-way;
- a description of the transmission facility being proposed;
- a summary of any studies made of the environmental impact of the facility, and a description of such studies;
- a statement explaining the need for the facility;
- a description of any reasonable alternate route(s), including a description of the merits and detriments of each route submitted, and the reasons why the primary proposed route is best suited for the facility; and,
- such other information as the applicant may consider relevant or the Commission may require.

The applicant is also encouraged to include in its application a complete report of its public involvement activities and its plans to encourage public participation. The Secretary to the Commission generally takes about 30 days after an application is submitted to determine whether the application is in compliance with Article VII filing requirements. If an application lacks required information, the applicant is informed of the deficiencies. The applicant must then submit supplemental information. If the applicant chooses to submit the supplemental information, the application is again reviewed by the Secretary to the Commission for a compliance determination.

The Certification Process

Once application materials are submitted and the application is determined to comply with the applicable legal requirements, the review of the application begins. In a case where hearings are held, the Commission's Office of Hearings and Alternative Dispute Resolution provides an Administrative Law Judge to preside in the case. The Administrative Law Judge, who is independent of Department staff and other parties, conducts public statement and evidentiary hearings (see Pages 15-16, D and E) and rules on procedural matters.

Hearings help the Commission decide whether the construction and operation of new transmission facilities will fulfill public needs, be compatible with environmental values and the public interest, and comply with legal requirements. After considering all the evidence presented in a case, the Administrative Law Judge makes a recommendation for the Commission's consideration. The document containing this recommendation may, but is not required to, be issued for the parties to provide further briefs.

Intervenor Fund

Effective June 17, 2010, a new procedure requiring a fund for municipal and other parties for "Intervenor Funding" now applies to Article VII applications that propose Electric Transmission facilities of 125 kV or more and that are ten or more miles in length. In applicable cases, a fee must accompany the Article VII application. Intervenor funds are distributed by the presiding examiner. The funds are used to help defray the expenses of hiring expert witnesses and consultants, and administrative and legal fees (excluding use for judicial review). Half of the intervenor funding is designated for the use of municipal parties (e.g., cities, towns, etc.), and up to half of the funding for the use of other parties.

The amount of the fee is based on the voltage and length of the proposed electric transmission line. Each Article VII application proposing a line of 125 kV or more, at the time it is filed with the Secretary, must be accompanied by a fee in the amount specified as follows:

- (1) *The Intervenor fund fee would be:* **\$450,000** if the proposed route for the transmission line is greater than 100 miles in length;
- (2) *The Intervenor fund fee would be:* **\$350,000** if the proposed route for the transmission line is greater than 50 miles and up to 100 miles in length;
- (3) *The Intervenor fund fee would be:* **\$100,000** if the proposed route for the transmission line would require a new right-of-way for 10% or more of its length and is between 10 and 50 miles in length; and
- (4) *The Intervenor fund fee would be:* **\$50,000** if the proposed route for the transmission line would use an existing right-of-way for more than 90% of its length and is between 10 and 50 miles in length.

Prospective intervenors are encouraged to contact Department of Public Service staff during the pre-application phase of an Article VII case for additional information regarding the preparation of a funding award application letter. Detailed requests for intervenor funds must be submitted in writing to the Administrative Law Judge no later than 15 days after the date on which the notice of the initial prehearing conference is issued, unless otherwise specified by the Administrative Law Judge. The Administrative Law Judge considers such requests at the initial pre-hearing conference. Subsequent requests may also be entertained depending on the extent of funds remaining.

For detailed information regarding the preparation of an intervenor fund application go to the Public Service Commission Website at www.dps.ny.gov/articlevii.htm.

You can also find information on intervenor funds by searching the Website for files pertaining to “Case 10-M-0082.” Go to www.dps.ny.gov, click “Search,” enter the Case Number in the box labeled “Search by Case Number,” and click again.

See: Chapter I RULES AND PROCEDURES, 16 NYCRR Part 85 General Procedures, and Section 85-2.4 Fund for municipal and other parties.

Party Status in the Certification Proceeding

Article VII specifies that the applicant and certain state and municipal agencies are statutory parties in any case. Department staff participate in Article VII cases as a party. The Department of Environmental Conservation and the Department of Agriculture & Markets normally participate actively in the proceedings. Any municipality through which a portion of the proposed facility would pass, or any resident of such municipality, may also become a party to the proceeding. This can be done by sending written notice to the Secretary within 30 days of public notice of an application filing, or if such deadline has passed, by filing a petition to intervene.

Obtaining party status enables a person or group to contribute to the development of a complete record by conducting discovery, submitting testimony, briefs and other formal written comment, and participating in evidentiary hearings, procedural conferences and other formal events conducted in the case. Being a party also entails the responsibility to send all other parties in the case copies of all materials filed in the case by such party.

Interested individuals or groups may apply for party status by selecting the appropriate case from the list of current Article VII cases found at www.dps.ny.gov/articlevii.htm, clicking on case number link and then selecting the “Request for Party Status” button in the upper right corner of the page. Once a request has been submitted, the requester will be provisionally added to the party list, subject to the right of other parties to object and subject to the final determination of the Administrative Law Judge. The requester will be required to mail the party status request to anyone on the party list who cannot receive email service.

Those persons that do not wish to register online can obtain a “Request for Party Status” form by calling the Commission at (518) 474-4520 or writing to the Administrative Law Judge at NYS Public Service Commission, Three Empire State Plaza, Albany, NY 12223-1350. All requests should include the number assigned to the Article VII case.

Article VII Settlements

Parties to Article VII cases can resolve their concerns and issues through stipulations and settlements in accordance with the Commission's Settlement regulations⁶ and guidelines adopted in Case 90-M-0255.⁷ Parties are notified of negotiation conferences. Parties that sign joint proposals which resolve matters through settlement may also prepare written statements in support of such joint proposals.

Commission Decision

Once the Administrative Law Judge makes a recommendation about an application, the Commission reviews the recommendation and considers the views of parties including the applicant, Department staff, other Governmental agencies, and organizations; as well as those members of the general public who submitted comments electronically, orally, or in writing. To grant a Certificate, either as proposed or modified, the Commission must determine all of the following:

1. the basis of the need for the facility;
2. the nature of the probable environmental impact;
3. the extent to which the facility minimizes adverse environmental impact, given environmental and other pertinent considerations;
4. the extent to which the facility minimizes adverse impacts on active farming operations, considering available technology and other pertinent considerations;
5. in the case of an electric transmission line,
 - what part, if any, of the line shall be constructed underground;
 - the extent to which the facility conforms to the long-range plan for the electric power grid and interconnected utility systems to serve the electric system with economy and reliability;
6. in the case of a gas transmission pipeline, that the facility location will not pose an undue hazard to persons or property along the line;
7. that the location conforms with applicable state and local laws, except that the Commission may refuse to apply local laws determined to be unreasonably restrictive in view of the existing technology, cost, economics or needs of the consumers; and
8. that the construction and operation of the facility is in the public interest.

6. Information on the rules and regulations of the Public Service Commission can be found in 16 NYCRR Section 3.9.

7. Information on the case can be found in the Commission's Order & Opinion No. 92-2, issued March 24, 1992.

Article VII Case Procedure

The Article VII process provides stakeholders in a case an opportunity to obtain needed information and to present their arguments. The steps listed below are often followed in the given order. However, some steps may be omitted, changed or combined depending upon the circumstances presented in specific cases.

A. Public Information Meetings

These are informal meetings initially held before an application is filed to inform the public of the applicant's proposals, explain the Article VII process, answer general questions, and gain input from the public. Public information meetings may also be held on an ongoing basis to keep stakeholders informed of activities in the case.

B. Public Comments

At any time during a proceeding, as previously stated, an individual may comment on a proposed case. This can be done by sending a written statement (electronically or via mail) to the Secretary to the Commission, filling out a "Comment Form" on the Commission's Website or calling the Commission's Opinion Line. Please see inside back cover "For Further Information" on how to comment.

C. Prehearing Conference

This is a meeting scheduled in most cases by the Administrative Law Judge with those who wish to become parties to the proceeding. Procedural matters are discussed, schedules may be set and the issues to be explored in the hearings are often defined.

D. Public Statement Hearings

These are formal hearings held in the project vicinity to receive statements of position or concern from local residents affected by an applicant's proposal. The first formal hearing in electric cases must be held between 60 and 90 days and, in gas cases, between 20 and 60 days after an application's compliance date. Statements, which may be in writing or given orally before the Administrative Law Judge, are entered into the official record upon which the decisions in the case are based. In addition, such public statements might identify concerns that should be addressed in the evidentiary hearings.

E. Evidentiary Hearings

These are hearings over which the Administrative Law Judge presides and during which evidence is presented. The usual sequence for these hearings is the presentation of an applicant's direct case, cross-examination of an applicant's witnesses by the parties, the presentation of the Department staff's and other parties' testimony on issues in the case, and the cross-examination of rebuttal testimony by the parties. Usually, several weeks are allowed between the three presentations (i.e., an applicant's direct case, all other parties' direct cases and rebuttal cases). The Administrative Law Judge may also schedule an official inspection of the project area during this period.

F. Briefs to the Administrative Law Judge

At the close of the hearings, all parties may support their positions in written legal "briefs," citing record evidence, legal precedents, and other pertinent information. Initial briefs to the Administrative Law Judge are the first briefs setting out the particulars as parties see them and are usually filed 20 to 30 days after the final evidentiary hearing.

G. Reply Briefs to the Administrative Law Judge

"Reply Briefs" provide parties the opportunity to refute the arguments of other parties that are contrary to the arguments they are trying to establish. Reply briefs are usually submitted two weeks after the filing of the initial briefs. New arguments are not normally permitted at this time.

H. Recommended Decision by the Administrative Law Judge

Based on the information in the record and the arguments in the briefs, the Administrative Law Judge prepares an analysis of the issues and may issue a "Recommended Decision" proposing the disposition of the case.

I. Briefs on Exceptions

If a Recommended Decision is issued, parties may dispute the Administrative Law Judge's analysis and recommendations in "Briefs on Exceptions."

J. Briefs Opposing Exceptions

Parties are usually given an opportunity to dispute the conclusions of other parties in subsequent "Briefs Opposing Exceptions."

K. Commission Decision

The Commission considers all of the foregoing and issues an order explaining its decision and implementing its conclusions. If the Commission is satisfied that the findings have been made such as the need for a facility, its environmental compatibility and its compliance with law, it will issue a Certificate subject to whatever conditions are deemed appropriate.

L. Rehearing and Judicial Review

Any party not satisfied with the Commission's decision may apply for a rehearing within 30 days after a written decision is issued. Thereafter, judicial review may be obtained in the Appellate Division of the New York State Supreme Court and then at the New York State Court of Appeals. Sections 129 and 130 of the Public Service Law generally preclude any other state court, agency or municipality from reviewing the facility outside the Article VII context.

M. Post-Certification Requirements and Activities

Following certification, the Commission typically requires an Article VII applicant to submit various additional documents to verify its compliance with the certification order. The most important of these, an "Environmental Management and Construction Plan" (EM&CP), if required, must be approved by the Commission before construction may begin. The EM&CP details the precise "field" location of the facility and the special precautions that will be taken during construction to ensure environmental compatibility.

Deviations in either direction from the certified centerline are sometimes allowed to accommodate design refinements, property lines, soil conditions, new structures, and other concerns identified during final facility design. The EM&CP must also indicate the practices to be followed to ensure that the facility is constructed in compliance with applicable safety codes and the measures to be employed in maintaining and operating the facility once it is constructed.

Notices of the filing of the EM&CP and where it can be inspected are mailed to each property owner who could be affected and the parties in the case, so that they may send the Commission any comments or suggestions they have concerning the site-specific proposals. At this stage of the proceeding, the Commission does not adopt suggestions inconsistent with the Certificate. Once the Commission is satisfied that the detailed plans are consistent with its decision and are appropriate to the circumstances, it will authorize commencement of construction. Department staff is then responsible for checking the applicant's practices in the field.

Following the granting of the Certificate or the approval of any required EM&CP, the certificate holder – if it is a transportation corporation – may acquire any necessary rights-of-way not already obtained through a negotiated transaction. While condemnation is usually a last resort, the laws of New York State give transportation companies the authority to pursue such rights through the courts, but require that “just compensation” be paid. Neither Department staff nor the Commission has any role or jurisdiction in condemnation proceedings.

Case Specific Information

Before an application is filed, stakeholders may obtain information about a specific project by contacting the applicant directly and asking the applicant to put their names and addresses on the applicant’s mailing list to receive notices of public information meetings, along with project updates.

Once an application is filed, Article VII provides opportunities for individuals and group stakeholders to participate in the review process. As noted on page 7, stakeholders may request their names and addresses to be included on a project “service list” which is maintained by the Department. Appearance on the service list for a case will allow stakeholders to receive copies of orders, notices and rulings in the case. Stakeholders may also request “party status” as described on page 13.

Information concerning each Article VII case is also available at the Commission’s Websites: www.dps.ny.gov/articlevii.htm. All documents filed by the parties, correspondence, hearing transcripts, and documents issued by the Commission in a given case are posted on the Website under the case number assigned to the project. In addition, all comments submitted by the public are posted under the “public comments” tab for the case.

Article VII cases can be accessed and printed at the following location:

New York State Department of Public Service

Central Files Unit – 14th Floor

Three Empire State Plaza

Albany, NY 12223-1350

(518) 474-2500

Visitors to the Central Files Unit should be prepared to show valid photo identification.

In addition, the application in each case is usually available for public inspection at libraries in the proposed project area. Stakeholders can consult the applicant's Website or office for a specific list of locations where its application is available to the public for inspection.

Major Transmission Facility Siting in New York State

Article VII Process Flow Chart

PRE-APPLICATION PHASE

Applicant may meet and consult with various state agencies to introduce a project and gather information on certification requirements.

Applicant may publicly announce its project and launch a public involvement program.

APPLICATION PHASE

The applicant publishes newspaper notice of its intent to file an Article VII application at least once a week for the two weeks prior to the filing in all areas through which the facility would pass.

Applicant files the Article VII application with the PSC and serves copies on officials of local municipalities and on the area's State legislators. The public can file for party status and take an active role in the evidentiary process.

PSC/DPS may hold public meeting(s) to explain the Article VII Process and encourage public involvement.

HEARING AND DECISION PHASE

Once the application is deemed to be complete, the assigned Administrative Law Judge will set dates for:

- a Pre-hearing Conference to determine the issues, if any, and to set the schedule for the evidentiary hearings and
- a Public Statement Hearing to receive public comments.

Active parties participate in Evidentiary Hearings before hearing examiners.

Initial Briefs to the Administrative Law Judge.

Reply Briefs to the Administrative Law Judge.

The examiner makes a recommended decision based on the record of the hearings.

Initial Briefs on Exceptions may be filed.

Reply Briefs on Exceptions may be filed.

PSC makes the final decision as to Certificate.

POST - CERTIFICATION PHASE

If a Certificate is issued, the applicant submits environmental management and construction and other post-certification filings.

Final right-of-way acquisitions completed. The construction phase begins.

Table 1-1: Article VII Review of Fuel Gas Transmission Lines

| PROJECT TYPE | Less than 5 miles in length and 6” or less in diameter | Less than 10 miles, and if less than 5 miles, greater than 6” in diameter | Over 10 miles in length of any diameter |
|--------------------------|--|--|--|
| TIMING | The Commission must make a determination within 30 days of receipt of an application complying with the Public Service Law and regulations. This time may be extended to 60 days where the Commission has found there is substantial public interest. | The Commission must make a determination within 60 days of receipt of an application complying with the Public Service Law and regulations. This time may be extended where the Commission has required a hearing. | No timing constraints for the Commission to make a final determination. Public hearings are required to be held within 20 to 60 days from the receipt of an application complying with the Public Service Law and regulations. |
| REQUIRED FINDINGS | That the project poses no substantial public interest <u>OR</u> That construction of a fuel gas transmission line will minimize or avoid adverse environmental impacts to the maximum extent practicable. | <ul style="list-style-type: none"> • The basis of the need for the facility; • The nature of the probable environmental impact; • That the location of the line will not pose an undue hazard to persons or property along the area traversed by the line; • The facility conforms with applicable state and local laws; and • The construction and operation of the facility is in the public interest. | <ul style="list-style-type: none"> • The basis of the need for the facility; • The nature of the probable environmental impact; • The extent to which the facility represents minimum adverse environmental impacts; • The extent to which the facility minimizes adverse impacts on active farming; • That the facility of the line will not pose an undue hazard to persons or property along the area traversed by the line; • The facility conforms with applicable state and local laws; and • The construction and operation of the facility is in the public interest. |
| COMMENTS | Any person may file comments with the Commission; comments should be filed within 15 days of the date of service of the application . Comments may be submitted by mail to the Commission’s Office of the Secretary; via the PSC’s toll-free number (800-335-2120), or electronically by e-mail at: Secretary@dps.ny.gov or at the Department’s website. Go to www.dps.ny.gov , click on “Search,” enter the case number in the “Search by Case Number” field and then select “Post Comments” at the top of the case-specific page. | Any person may file comments with the Commission; comments should be filed within 15 days of the date of service of the application . Comments may be submitted by mail to the Commission’s Office of the Secretary; via the PSC’s toll-free number (800-335-2120), or electronically by e-mail at: Secretary@dps.ny.gov or at the Department’s website. Go to www.dps.ny.gov , click on “Search,” enter the case number in the “Search by Case Number” field and then select “Post Comments” at the top of the case-specific page. | Any person may file comments with the Commission; comments should be filed within 15 days of the date of service of the application . Comments may be submitted by mail to the Commission’s Office of the Secretary; via the PSC’s toll-free number (800-335-2120), or electronically by e-mail at: Secretary@dps.ny.gov or at the Department’s website. Go to www.dps.ny.gov , click on “Search,” enter the case number in the “Search by Case Number” field and then select “Post Comments” at the top of the case-specific page. |

For Further Information

The public's involvement and input are important to the Commission in all Article VII cases. Department staff is available if assistance is needed.

■ Obtain information about the Article VII process, specific Article VII cases and how to participate in the review of projects:

- View the Commission's Website:
www.dps.ny.gov/articlevii.htm or www.AskPSC.com

- Call or write to the following:
Office of Consumer Services at:
NYS Department of Public Service
Three Empire State Plaza, Albany, NY 12223-1350
518-474-1680

Environmental Certification & Compliance Section at:
NYS Department of Public Service
Three Empire State Plaza, Albany, NY 12223-1350
518-474-8702

■ Request party status for an Article VII project:

- Register online at www.dps.ny.gov/articlevii.htm. Select the appropriate case number, click on the link and then select the button for "Request Party Status" in the upper right hand corner of the page.
- Contact the Office of General Counsel at:
NYS Department of Public Service
Three Empire State Plaza, Albany, NY 12223-1350
518-474-2510

■ Request addition to an Article VII project service list:

- Register online at www.dps.ny.gov/articlevii.htm. Select the appropriate case number, click on the link and then select the button for "Subscribe to Service List" in the upper right hand corner of the page.
- Contact the Office of the Secretary at:
NYS Department of Public Service
Three Empire State Plaza, Albany, NY 12223-1350
secretary@dps.ny.gov • **518-474-2500**

■ Submit a comment on an Article VII case:

- Write the Office of the Secretary using the contact information listed above.
- Via the Internet: Go to www.dps.ny.gov, click "Search," enter the Case Number in the box labeled "Search by Case Number," click again, and then click on "Post Comments" at the top of the page. Many libraries offer free Internet access.
- Via the Commission's Toll Free Opinion Line: Interested persons may call **1-800-335-2120** to voice their opinion. This phone line is set up to receive comments about proceedings 24 hours a day. These comments are not transcribed verbatim, but a summary is provided to the Commission. Comments should reference the Article VII case number assigned to the application.



Three Empire State Plaza
Albany, NY 12223-1350