

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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 Running Between National Grid's Edic Substation in the Town of Marcy, and Central Hudson Gas & Electric's Rock Tavern Substation Located in the Town of New Windsor.

PROCEDURAL RULING

(Issued August 27, 2008)

MICHELLE L. PHILLIPS, Administrative Law Judge and
JEFFREY E. STOCKHOLM, Administrative Law Judge:

The purpose of this ruling is to briefly review the process issues discussed and decided in our procedural rulings in this case beginning in July 2006,¹ and to identify the topics² that will be discussed at the prehearing conference scheduled on September 8, 2008.³

Prior Rulings

A brief description of our determinations is set forth below by topic:

Public Participation - In our July 26, 2006 Procedural Ruling, we explained the various options available for the public to participate in the proceeding, and explained our responsibility to oversee an efficient and timely administrative litigation process.

Active party status, as we noted, is intended for parties who are going to fully participate in the administrative

¹ A case-specific web site is maintained by the Department of Public Service (www.dps.state.ny.us/NYRI.htm) on which all prior rulings can be viewed, together with numerous other orders and filings in the proceeding.

² Issues beyond those discussed herein may be raised by the active parties at the conference, as appropriate.

³ See Notice of Prehearing Conference served herewith.

proceeding, i.e., parties who will present direct testimony, cross-examine witnesses, and file briefs. Active party status has been granted to those individuals and organizations now appearing on the Active Party List,⁴ subject to objections that may be made at the first prehearing conference.⁵

Service of Documents - We have approved using e-mail to serve documents throughout the litigation, unless an objection is received; documents that must be filed with the Secretary under the rules must be filed in hard copy.⁶

A difficulty regarding electronic service, as we have discussed in a number of rulings, is the absence of an e-mail address for a few of the individuals who have been granted active party status. Despite repeated requests,⁷ a number of active parties have not provided e-mail addresses. To date, we have advised parties that hard copy service should be provided to such parties.

As the institution of formal litigation will greatly increase the volume of documents that must be formally served, we will require all active parties either to provide an e-mail address for service or to establish just cause for imposing the added cost to all parties and to the environment of serving select parties by hard copy. Any active party not providing an e-mail address or not establishing just cause for it to be

⁴ See web page referenced at n. 1, supra.

⁵ Procedural Ruling (issued 7/26/06), p. 4, n. 11.

⁶ Procedural Ruling (August 14, 2006), pp. 3-4; Procedural Ruling (issued January 28, 2008), p. 1. Hard copies of documents, such as large maps, may also be requested if reasonably needed for a party's review (Procedural Ruling (issued December 15, 2006), pp. 2-3).

⁷ We have urged active parties to provide e-mail addresses for service beginning in July 2006 and in subsequent rulings through January 2008.

served by hard copy rather than electronic service may be removed as an Active Party.

Discovery - Among other matters, we have ruled that:

- Before a motion for additional information is filed (16 NYCRR 85-2.5) parties must first attempt to obtain the information under the Commission's general discovery rules (16 NYCRR Chapter 1, Subchapter A, Part 5).⁸
- Discovery responses that do not provide a substantive answer to the discovery request (e.g., due to privilege or confidentiality claims or objections to the request) must be served on the Administrative Law Judges.⁹
- NYRI discovery responses may be served by posting the responses on the internet.¹⁰

Motion Practice - In our Procedural Ruling issued May 22, 2008 (p. 4), we noted that the Commission's rules only permit responses to motions, and replies to responses are allowed only in extraordinary circumstances.

Any party desiring to file a reply to a response to a motion must demonstrate extraordinary circumstances. The failure to do so will result in such documents not being considered.

Prehearing Conference

In addition to the above matters, the pre-hearing conference will address: the schedule for the litigation phase, objections to active party status, changes to the Active Party List, the timing, need, and location for additional public

⁸ Ruling on CARI's Motion for Additional Information (issued May 22, 2008), p. 5.

⁹ Procedural Ruling (issued December 15, 2006), p. 3.

¹⁰ Id., p. 2.

statement hearings, and other issues that may be properly raised.

As we previously noted,¹¹ failure to complete this proceeding and present recommendations to the Commission within one year of the date NYRI files a complete application could result in the Federal Energy Regulatory Commission (FERC) preempting New York's decision on this transmission line.¹² Thus, the schedule to be established should be based on the assumption that this litigation phase, including recommendations to the Commission, would be completed for an August, 2009 session. Matters which must be scheduled include: hearings for cross-examination, a deadline for the identification of alternatives, pre-filing dates for testimony (responses to NYRI's application and rebuttal), on-site viewing dates, and due dates for briefs. Time must also be allowed for the issuance of a Recommended Decision and the filing of exceptions briefs prior to the Commission session. The active parties are strongly encouraged to discuss a schedule among themselves prior to the September 8, 2008 prehearing conference.¹³

Further, we have scheduled three public statement hearings (noticed herewith) and seek the parties' input on the need for additional such hearings and recommendations for their location and timing.

In addition, motions or other issues regarding party status and participation (e.g., consolidation of parties' presentations) will be considered at the prehearing conference.¹⁴ Again, the parties are encouraged to discuss such matters prior

¹¹ Procedural Ruling (issued August 6, 2006), pp. 4-5.

¹² Under the Secretary's August 27, 2008 letter, the NYRI filing is considered complete as of August 8, 2008.

¹³ The Staff of the Department of Public Service may be able to assist the parties.

¹⁴ Procedural Ruling (issued July 26, 2006), pp. 4-5.

to the conference, including the possibility of consolidating presentations with similar views.

Active parties who have not provided an e-mail address for service will be provided an opportunity at the conference to explain why they should continue to be served with a hard copy of documents. In the absence of such a showing, all future service (except on the Commission's Secretary or when hard copy is required to render the document useable) may be performed electronically.

Finally, active parties who cannot attend the conference may submit written comments on the issues herein. Those comments may be served electronically or by in-hand service of a hard copy on the Administrative Law Judges and by electronic service on the active parties no later than close-of-business (i.e., 4:45 p.m.) September 4, 2008, with service on all active parties.

(SIGNED)

JEFFREY E. STOCKHOLM

(SIGNED)

MICHELLE L. PHILLIPS