

Fraser to Coopers Corners 345 kV Reconductoring

**Non-Article VII Filing Requirements
Attachments**

**Attachment C
Petition for Declaratory Ruling
(Case 13-M-0418)**

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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Petition of New York State Electric & Gas :
Corporation for a Declaratory Ruling that :
the Proposed Reconductoring of the Fraser- :
Coopers Corners 345 kV Line Portion of :
the Marcy South Series Compensation : Case 13-T-_____
Project is a “Like Kind Replacement” Not :
Subject to the Reporting Requirements of :
16 NYCRR Part 102 or the Certification :
Requirements of Public Service Law :
Section 121 :
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**NEW YORK STATE ELECTRIC & GAS CORPORATION
PETITION FOR A DECLARATORY RULING**

INTRODUCTION

New York State Electric & Gas Corporation (“NYSEG”) respectfully submits this Petition pursuant to 16 NYCRR § 8.1 of the New York Public Service Commission’s (“Commission”) Rules of Procedure for a declaratory ruling that the proposed reconductoring of a portion of its existing Fraser-Coopers Corners 345 kV line (“FCC-33”) is both: (i) the replacement of existing with like facilities not constituting the construction of a major utility transmission facility under Article VII of the Public Service Law (“PSL”); and (ii) exempt from the reporting requirements of Part 102 of the Commission Regulations (16 NYCRR Part 102).

BACKGROUND

As part of a long-term transmission planning study it performed in 2011, the New York Power Authority (“NYPA”) identified the overall Marcy South Series Compensation and Fraser to Coopers Corners Reconductoring (“MSSC”) project¹ as a means to increase power transfer from upstate generators to downstate load in a cost-effective manner. The MSSC project is comprised of three new switchable Series Capacitor (“SC”) banks (one to be added to the NYPA-owned Marcy Substation; the other two to be added to NYSEG’s Fraser Substation) and the reconductoring of NYSEG’s FCC-33 line.

The switchable SC banks will increase power transfer by reducing series impedance over the existing 345 kV Marcy South lines owned by NYSEG and NYPA. The MSSC project will improve power flow over these existing assets by installing this relatively sophisticated technology with minimal construction and disruption. Controlled by the New York Independent System Operator (“NYISO”), the switchable SCs will allow the NYISO to vary the power flows across the bulk power transmission system to better respond to changing system conditions. The SCs will add 40% compensation to the Marcy-Coopers Corners 345 kV line, 25% compensation to the Edic-Fraser 345 kV

¹ The MSSC project is one of a number of components being proposed by NYPA, NYSEG, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), Consolidated Edison Company of New York, Inc. (“Con Edison”), and Central Hudson Gas & Electric Corporation (“Central Hudson” and collectively with NYPA, NYSEG, National Grid and Con Edison, the “NY TOs”) as part of the New York Transmission Company (“Transco”) project portfolio they are supporting in the 12-T-0502, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades* (“AC Upgrade Proceeding”). The MSSC project is also an element of the Transmission Owner Transmission Solutions (“TOTS”) plan proposed as part of the larger Reliability Contingency Plan in Case 12-E-0503, *Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans* (“Generation Retirement Contingency Proceeding”).

line, and 25% compensation to the Fraser-Coopers Corners 345 kV line. The project also will include upgrades at the Marcy and Fraser 345 kV substations.

Finally and most relevant to this Petition, the reconductoring portion of the MSSC project will be performed on approximately 21.8 miles of NYSEG's existing FCC-33 line in the Towns of Delhi, Hamden, Colchester and Rockland. *See* MSSC project site location map attached as *Exhibit 1* to this Petition. This Petition relates only to the approximately 21.8 mile portion of NYSEG's FCC-33 line proposed to be reconducted as part of the overall MSSC project. The total length of the NYSEG FCC-33 line is approximately 46.64 miles; it predates the 1970 enactment of PSL Article VII and thus does not have an Article VII Certificate.²

The MSSC project does not involve any changes to the existing electric transmission lines owned by NYPA, which were constructed pursuant to a PSL Article VII Certificate issued by the Commission in 1985.³

² In anticipation of a favorable Commission determination on this Petition and because the existing FCC-33 line is not certificated under PSL Article VII, the NY TOs will include in their Part A filing with the Commission in Case 12-T-0502 a "Notice of Intent to Participate and Seek Funding," as well as copies of pending permit applications and other documents required in that case from non-Article VII projects for the addition of one SC bank at the Fraser substation and the reconductoring of a section of the FCC-33 line, all in accordance with the Commission's May 29, 2013 proposed rules for non-Article VII projects desirous of participating in the AC Transmission Upgrades Proceeding. See footnote 8, *infra*, for a discussion of the permit applications to be filed by NYSEG for its Fraser substation SC bank installation and for the FCC-33 line reconductoring.

³ See Power Authority of the State of New York, *Opinion and Order Granting Certificate of Environmental Compatibility and Public Need*, Opinion No. 85-2, Case 70126, 25 NYPSC 205 (issued January 30, 1985).

DISCUSSION

Details and Environmental Impact of the Reconductoring

The proposed reconductoring involves the installation of a new conductor with a higher thermal rating. The new conductor will be installed primarily on existing wood pole and steel tower structures. Although existing structures will be utilized, all or a part of thirteen (13) individual structures on the reconducted portion of the route will be replaced with like replacements. These replacements are required primarily due to asset condition and therefore would be necessary as preventative maintenance, regardless of whether the MSSC project is constructed.⁴ In addition, three structures may need to be replaced or raised slightly, but in either event the replacement or raised structure would not exceed the height of the original structure by more than ten feet.

Thus, the overall number of structures on the section of the FCC-33 line to be reconducted will not be increased, and none of the replacement structures will exceed the height of the replaced structure by more than ten feet. In addition, the reconductoring will not increase the number of circuits on the structures; after reconductoring, the FCC-33 will remain a single circuit line.

Based on NYSEG's engineering studies, the entire reconductoring portion of the MSSC project will be located within existing NYSEG rights-of-way ("ROW"); acquisition of additional ROW will not be required. The existing ROW is approximately 150 feet wide and project construction as well as access will occur primarily in existing

⁴ The land underlying two of these structures will require grading as part of the structure replacement work.

ROW and along existing access roads⁵. No major improvements to access roads are anticipated⁶ nor will the reconductoring work require any significant modification to the vegetative cover on the existing ROW since no substantial clearing is anticipated beyond standard ROW management practices.

For the MSSC project, NYSEG and NYPA have held technical meetings with the New York State Department of Environmental Conservation (“DEC”) and have conducted a DEC stream crossing assessment for existing access roads, have evaluated the route for federally regulated wetlands, performed an invasive plant species inventory, and conducted an initial threatened and endangered species review.

The results of these stream and wetlands surveys are: identification of six named streams, approximately 12 acres of lake (Pepacton Reservoir), and approximately two acres of ponds within the existing ROW. Approximately 2.3 acres of National Wetland Inventory wetlands spread across seven locations are located within the existing ROW; the existing ROW traverses no DEC- regulated wetlands. No filling of wetlands will be necessary for the MSSC project. If required by DEC or other permitting agencies,⁷ the stringing of the lead cord will be walked across any streams or wetlands traversed by the existing ROW. Moreover, because the reconductoring portion of the MSSC project will not require the construction of any additional structures or access roads, no incremental visual impacts are expected.

⁵ Temporary access roads or work areas may be required during construction. Such temporary use and access rights will have no permanent impact to vegetative cover within the existing ROW.

⁶ Although no access acquisitions or improvements are planned for the project, some minor repairs may be necessary on the existing roads based on conditions at the time of actual construction.

⁷ As part of the SEQRA process, the permitting agencies that NYSEG anticipates will review its portion of the MSSC project will invite public comments on the reconductoring activities.

16 NYCRR Part 102

By this Petition, NYSEG requests a Commission declaration that the proposed reconductoring of a portion of NYSEG's existing FCC-33 line, as described above, is both exempt from the reporting requirements of Part 102 of the Commission regulations, and a replacement of existing facilities with like under PSL §121(1).

With respect to Part 102, section 102.2(a)(2) exempts from the reporting requirements projects which involve the upgrade or rebuild of existing facilities on existing ROW, provided that:

- (i) no additional rights-of-way are required;
- (ii) there is no increase in the number of structures on the right-of-way;
- (iii) the resulting structures do not carry more than two circuits;
- (iv) no substantial modification will be made to existing vegetative cover on the right-of-way; and
- (v) the height of a new tower does not exceed the height of a replaced tower by more than 10 feet.

16 NYCRR §102.2(a)(2)(i) through (v).

The project details set forth above in this Petition make it clear that the proposed reconductoring of FCC-33 satisfies all five elements needed to exempt the project from Part 102's report filing requirements.

Public Service Law Section 121(1)

Public Service Law section 121 empowers the Commission to determine that the replacement of existing with like major utility transmission facilities does not constitute

the type of construction activity that requires an Article VII certificate. Because the proposed reconductoring portion of the MSSC project involves such replacement of like facilities and fully meets the above quoted Part 102 exemption criteria, the Commission should apply its own well-established precedent to make the determination that such reconductoring does not constitute the construction of a major utility transmission facility requiring an Article VII certificate under the PSL. Previous Commission orders consistently have noted that the section 102.2(a)(2) criteria are more stringent than the factors considered by the Commission in cases where it is called on solely to determine whether a project constitutes replacement of “existing with like.”⁸

As noted by the Commission in Case 10-T-0030:

The fact that the project meets the criteria specified in 16 NYCRR § 102.2(a)(2) means that no report regarding these transmission facilities need be filed. The same fact also shows that the project is the replacement of existing with like facilities because the factors we have considered as supporting such determinations in previous cases, such as Case 92-T-0763, supra, are less restrictive than the section 102.2(a)(2) criteria.⁹

⁸ See *Order For a Finding that the Reconstruction in Question is Considered a Replacement of Like Facilities*, Case 26322 (issued October 2, 1972) (finding reconstruction to be replacement of existing with like where proposed line had same voltage, followed same right-of-way, was of same type of construction, and was expected to not have significant additional clearing beyond what was required for existing line, even though not all Part 102 exemption criteria was met); *Order Determining Reconductoring of Existing Transmission Facilities be Considered a Replacement of Like Facilities*, Case 26362 (issued December 7, 1972); and *Memorandum-Order*, Case 92-T-0763 (issued October 23, 1992) (finding reconstruction to be replacement of existing with like where proposed reconductoring resulted in the modification of five structures, replacement of 20 structures, height increases of 15 feet on average, additional acres cleared for new ROW with low visual or environmental impact) .

⁹ *Declaratory Ruling Concerning Jurisdiction Over the Proposed Reconductoring of Certain Transmission Facilities*, Case 10-T-0030 (issued March 29, 2010).

Accordingly, NYSEG respectfully requests that the Commission determine that the proposed reconductoring of a portion of the existing FCC-33 electric transmission line as described herein is exempt from the reporting requirements contained in Part 102 of the Commission regulations and find further that the reconductoring portion of the MSSC project will involve solely the replacement of existing with like facilities so as to not constitute the construction of a major utility transmission facility under PSL Article VII.¹⁰

CONCLUSION

For the reasons set forth above, New York State Electric & Gas Corporation respectfully requests that the Commission:

- (1) Issue the declaratory ruling detailed in this Petition; and
- (2) Grant such other and further relief as the Commission may determine is necessary or appropriate in furtherance of the relief sought by New York State Electric & Gas Corporation.

¹⁰ Of course, a favorable ruling on this Petition will not result in the reconductoring work being authorized without appropriate environmental review. NYSEG is in the process of preparing the requisite DEC permit applications, including: a SEQRA Full Environmental Assessment Form; a Temporary Revocable Permit for work to be performed in Catskill Park and Catskill Forest Preserve; State Pollution Discharge Elimination System permit documentation, and any additional permits and approvals required by that agency. In addition, NYSEG will consult with and obtain necessary approvals from the United States Army Corps of Engineers (Nationwide Permit Coverage for work in Federal-regulated wetlands); United States Fish and Wildlife Service; State Historic Preservation Office; New York State Department of Transportation (for Utility Work Permits); New York City Department of Environmental Protection; and Delaware River Basin Commission. Finally, local site plan approval for a special use permit is anticipated to be required for the NYSEG SC work at the Fraser substation in the Town of Delhi, Delaware County.

Respectfully submitted,

New York State Electric & Gas Corporation

By:

A handwritten signature in black ink, appearing to read "David T. Metcalfe". The signature is fluid and cursive, with a prominent initial "D" and "M".

David T. Metcalfe
Cullen and Dykman LLP
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EXHIBIT 1

