
PUBLIC SERVICE LAW

ARTICLE VII

Fuel Gas and Electric Transmission Facilities Siting

**Presentation to The Department of
Environmental Conservation**

*Tina Palmero
Department of Public Service
January 2011*

TYPES OF ELECTRIC AND GAS TRANSMISSION LINE FILINGS UNDER PSC JURISDICTION

FUEL GAS TRANSMISSION FACILITIES

Gathering Line Application	Notice of Intention "NOI"	Gas Application "Application"	Article VII Application "Certificate"
any distance and < 125 psi	1,000 ft to 5 miles and < 6 inches and > 125 psi	< 10 miles and > 125 psi	> 10 miles and > 125 psi
Law:	Article VII, Sec.121-a.2	Article VII, Sec.121-a.3	Article VII, Sec. 122
Regulation: Subchapter G	Part 85-1.2	Part 85-1.3	Part 85-2

ELECTRIC TRANSMISSION FACILITIES

Article VII Application "Certificate"	Non-Article VII Report "Report"
> 125kV and > 1 mile or 100-125kV and > 10 mile	65 kV and > 1 mile
Law:	Article VII, Sec. 122
Regulation: Subchapter G	Part 85-2 Part 102

WHAT IS ARTICLE VII?

Enacted by the legislature in 1970 to:

- Establish a single forum for reviewing the need for, and environmental impact of certain major electric and gas transmission facilities.
- Requires an applicant to obtain a Certificate of Environmental Compatibility and Public Need from the Public Service Commission and meet various requirements prior to construction.

PURPOSE OF ARTICLE VII

Legislative intent:

- Provide a single forum through an open process to resolve all matters of interest to the State
 - Citizens & Interest Groups
 - Municipalities
 - State Agencies
- Article VII is Not Subject to SEQRA, however:
 - Requires environmental analysis
 - Requires impact minimization
 - Allows for full public participation

PURPOSE OF ARTICLE VII

LEGISLATION CALLED FOR NEW FACILITY SITING PROCEDURES TO:

- **Minimize**
 - **Environmental Impacts, such as**
 - forest clearing, streams, wetlands & habitats
 - Land use conflicts, agricultural land disturbance, historic resources
 - **Quality of Life Impacts, such as**
 - Construction disturbance, traffic, dust
 - Operating effects, EMF, noise, visual impacts
- **Provide a Forum for Resolution of Issues**
 - **Line Location**
 - **Matters of State Law and Local Law**

WHAT IS COVERED UNDER ARTICLE VII?

- **Electric Lines**

 - 125 kV or more & 1 mile or longer

 - 100 kV or more & 10 miles or longer

 - Exceptions:

 - underground lines in city w/ pop. In excess of 125,000

 - line approved by FERC in connection with hydro facility

- **Installation of non-Art. VII electric line falls under
PSL Part 102**

WHAT IS COVERED UNDER ARTICLE VII ?

- Gas Lines

- 1000 feet or more @ 125 psig
 - Exceptions
 - Located entirely in a state or municipal highway or street
 - Located entirely underground in a city
 - Replace an existing facility, and are less than 1 mile

ARTICLE VII APPLICATION CONTENT REQUIREMENTS

- 16 NYCRR Part 85 (General Procedures) provide details of filing requirements
 - Facility Location
 - Maps and Aerial Photographs
 - Description of Facilities
 - Including all appurtenant facilities
 - Description of the Need to Build and Operate
 - Environmental impact assessment of Facility
 - Construction, Operation and Maintenance
 - Comparison of any Reasonable Alternates

APPLICATION FILING REQUIREMENTS

- Municipalities
- State Legislators
- State Agencies
- Also at Local Libraries
- On-Line at PSC website:
<http://www.dps.state.ny.us/articlevii.htm>

ARTICLE VII “LITE”aka

SECTION 121 – a

- In 1981 legislature stream-lined process with the addition of Section 121 - a to decrease the process time for shorter gas lines. Filing requirements are limited and projects are on a “fast-track” approval process.
 - Notice of Intention (NOI) (PSL Sec. 121 – a.2)
 - Gas lines: 1,000 to under 5 miles and 6” or less in diameter – law requires PSC to act within 30 days
 - Application (PSL Sec. 121 – a.3)
 - Gas lines 5 to under 10 miles – law requires the PSC to act within 60 days
-

ARTICLE VII SECTION 121 – a FILING REQUIREMENTS

- **NOI (Section 121-a.2)**
 - Date applicant intends to begin construction
 - Statement describing and locating the line
 - The approved environmental management and construction standards and practices (EM&CS&P) that will be followed to minimize or avoid environmental impacts to the maximum extent practicable.

- **Applications (Section 121 – a.3)**
 - All the above plus a more detailed description of the ecosystem, land use, visual and cultural resources that would be affected by the line.

ARTICLE VII SECTION 121 – a FILING REQUIREMENTS

- NOI (Section 121 a.2)
 - Served on municipalities

- Application (Section 121 a.3)
 - Served on:
 - Municipalities
 - DEC
 - Ag and Markets
 - Other person or entities that Commission deems appropriate

ARTICLE VII REVIEW PROCESS

- Docketed by PSC Case # XX – T - XXXX

- Dept. of Public Service Staff Assigned
 - Engineers
 - Environmental Specialists
 - Economists
 - Legal Counsel
 - Consumer Outreach Specialists
 - Administrative Law Judges (Hearing Examiners)

ARTICLE VII REVIEW PROCESS

SECTION 121 - a

- Filing is docketed (Case XX-T-XXXX)
- DPS Staff Assigned:
 - Environmental Staff
 - Outreach to other state agencies (DEC, DOT, Ag and Mrkts) and municipalities
 - Counsel
 - Application sufficiency – 14 day review for application compliance
 - Gas Safety
 - 16NYCRR Part 255 – Transmission and Distribution of Gas covers regulations governing design, construction and testing of gas gathering lines and construction requirements for steel transmission lines.

PARTIES TO AN ARTICLE VII PROCEEDING

■ Formal Parties

- NYS Dept. Environmental Conservation
- NYS Secretary of State
- NYS Dept. of Agriculture & Markets
- Office of Parks, Recreation & Historic Preservation
- NYS Dept. of Public Service Staff
- Others must request Intervenor Status:
 - Municipalities where line is proposed
 - Residents of those municipalities
 - Environmental & Public Interest Groups
 - Utility Companies

PARTIES TO AN ARTICLE VII PROCEEDING

- Formal Party Status
 - Participate in Evidentiary Review
 - Questions to Applicant
 - Develop Written Testimony and Analysis
 - Participate in Evidentiary Hearings
 - File Briefs and Motions
 - Participate in Settlement Discussions, if any
 - Formal party Status must be requested
 - Petition to the Presiding Law Judges

PARTIES TO AN ARTICLE VII PROCEEDING

■ Informal Parties

- Anyone Can Comment, Provide Letter or Written Statement to Secretary of the Commission

- The Public Can Participate as Informal Parties
 - Public Statement Hearings
 - Request to receive correspondence

PARTIES TO ARTICLE VII

SECTION 121-a

- **Formal Parties**

- **NOI (121 – a.2)**

- Municipalities

- **Applications (121-a.3)**

- DEC

- Ag & Mrkts

- Municipalities

- **Any person may file comments with the Secretary of the Commission to be made part of record.**
-

HEARING PROCESS FOR MAJOR ARTICLE VII PROJECT

- **Evidentiary Phase – Formal Process**
 - Applicant direct case presented
 - Other parties' direct cases
 - Rebuttal case – responses
 - Proposed settlements may occur

- **Briefing Phase**
 - Summarize evidence and arguments

HEARING PROCESS FOR MAJOR ARTICLE VII PROJECT

- **Decision Phase**
 - A.L.J. Recommended Decision (R.D.)
 - Replies to the R.D. – Exceptions
 - P.S.C. Decision

- **Appeals to PSC Decision**
 - Must be filed within 30 days

HEARING PROCESS

SECTION 121-a

- No formal hearing unless:
 - Commission determines a substantial public interest
 - NOI – 30 day..can get pushed to 60 day review for a Commission decision.
 - Application – 60 day review unless commission decides to hold a hearing and can extend time to render a decision.

DECISION FOR ARTICLE VII CERTIFICATE

- Commission decision options:
 - Deny Application if Facility Not Needed
 - Approve any Proposed Settlements
 - Grant Certificate with Appropriate Conditions
 - Impact mitigations
 - Alternate location
 - Alternate Design

DECISION FOR ARTICLE VII CERTIFICATE

- Commission must make “Findings”
 - The basis of the need for the facility
 - Nature of probable environmental impacts
 - Minimizes environmental impacts
 - Agricultural Lands
 - Wetlands
 - Parks & Rivers, etc.
 - Giving consideration to
 - ✓ Costs & Alternatives
 - For electric, what part, if any, shall be underground
 - For gas, no undue hazard

DECISION FOR ARTICLE VII CERTIFICATE

- Commission Findings, continued...
 - Conformance with State & Local Laws, Regulations
 - Except, Commission may waive unreasonably restrictive local ordinances, laws, regulations, or requirements
 - Facility will serve the public interest, convenience & necessity
- If line approved by Commission, a Certificate of Environmental Compatibility and Public Need is issued by Commission Order
 - All orders on website

DECISION FOR ARTICLE VII SECTION 121-a

- **NOI (pipeline 6" or less in dia. and less than 5 mi)**
 - Commission has to find only that the line minimize or avoid environmental impact to the maximum extent practicable
- **Application (pipeline less than 10 miles)**
 - Commission has to find:
 - Need; nature of impact; no undue hazard; conforms to state and local laws; serves the public interest, convenience and necessity .

TYPICAL PROCESS AFTER A DECISION TO APPROVE AN ART. VII FACILITY

- **Developer Provides Detailed Plans**
 - Surveys and Right-of-way Studies
 - Environmental Management & Construction Plans --
“EM&CP” – may indicate minor deviations of line
 - For environmental or engineering constraints
 - **Public Review of Detailed Plans**
 - Party Comments
 - Public Comments
 - **PSC Approval of Detailed Plans**
 - with conditions as appropriate
-

TYPICAL PROCESS AFTER A DECISION TO APPROVE AN ART. VII FACILITY

- Rights-of-Way and Access Acquisition
 - Construction as per Approved EM&CP Plans
 - Clearing, Grading, Facility Construction
 - Environmental Controls – erosion, traffic, dust
 - Restoration
 - Follow-up Measures
 - Landscaping as required
 - Drainage repairs
 - Rights-of-way Vegetation Management Plan
-

COMPLIANCE PROCESS

- Compliance Unit oversees construction to ensure that all Certificate Order requirements are upheld.
 - Construction and environmental mitigation expertise
 - Compliance Unit has “stop-work” authority (regulatory enforcement) and can recommend that a “show cause” order be issued by the Commission if severe violation.
 - Works with other resource agencies.
-

DEC/DPS ISSUES TO CONSIDER

- **Timing**
 - complying with statutory deadlines
- **Coordination/Jurisdiction**
 - Central Office Staff and Regional Office Staff
- **Communication**
 - DEC, DPS, Applicant
- **DEC Permits and consistency with Orders**
- **Staff resource limitations/workload**

MOVING FOWARD

- Improved communication/coordination
- Proposed revisions to EM&CS&P
- Proposed revisions to Art. VII law and regs
- Draft Guidebook to Art. VII filing requirements
- Continuing Education/Training
 - SWPP, RTE, Invasive, etc.

ARTICLE VII CONTACTS

- Tina Palmero – Chief
 - christina_palmero@dps.state.ny.us
 - (518) 474-1612
- Unit Supervisors
 - Andrew Davis – Certification
 - (518) 486-2853
 - Jim de Waal Malefyt – Certification
 - (518) 486-2941
 - Dave Macks – Compliance
 - (518) 474-1613