

NEW YORK CODES, RULES AND REGULATIONS

TITLE 16. DEPARTMENT OF PUBLIC SERVICE
CHAPTER I. RULES OF PROCEDURE
SUBCHAPTER G. CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED
PART 85. GENERAL PROCEDURES

SUBPART 85-1. PROCEDURES WITH RESPECT TO GAS TRANSMISSION LINES LESS THAN 10 MILES
LONG

§ 85-1.0 Definitions

As used in this Subpart, unless the context requires otherwise:

- (a) applicant means a person who files any NOI or application;
- (b) application means a document filed under section 85-1.3 of this Subpart;
- (c) EM&CS&P means environmental management and construction standards and practices filed under section 85-1.2 or 85-1.3 of this Subpart;
- (d) fuel gas transmission line (line) means a pipeline extending a distance of 1,000 feet or more, to be used to transport fuel gas at pressures of 125 psig or more, excluding appurtenant facilities, [1] but shall not include any such transmission line which is located wholly underground in a city, or wholly within the right-of-way of a State, county or town highway or village street, as those terms as defined in article one of the Highway Law and article six of the village law, or which replaces an existing transmission line, including appurtenant facilities, and extends a distance of less than one mile;
- (e) municipality means a county, city, town or village;
- (f) NOI means a notice of intention filed under section 85-1.2 of this Subpart;
- (g) person means any individual, corporation, public benefit corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust or estate;
- (h) pipeline means a line which transports gas at any pressure;
- (i) psig means pounds per square inch gauge;
- (j) PSL means the New York Public Service Law; and
- (k) R/W means right-of-way, which is an easement-acquired or fee-owned corridor in which a gas transmission facility is located.

[1] Appurtenant facilities are defined in Public Service Law, section 120(4).

SUBPART 85-1. PROCEDURES WITH RESPECT TO GAS TRANSMISSION LINES LESS THAN 10 MILES
LONG

16 NYCRR § 85-1.1 (2013)

§ 85-1.1 Environmental management and construction standards and practices

All persons who intend to construct fuel gas transmission lines as described in this Subpart shall:

(a) file in accordance with the requirements of § 3.5 of this Title, the EM&CS&P that will be followed to protect and minimize impact to the environment during installation and maintenance of all such lines; and

(b) file in accordance with the requirements of § 3.5 of this Title, a certified statement agreeing to install and maintain such lines in accordance with EM&CS&P approved by the Commission.

16 NYCRR § 85-1.2 (2013)

§ 85-1.2 Filing and service of notices of intention

(a) Any NOI filed by an applicant to construct a fuel gas transmission line less than five miles long and six inches or less in nominal diameter shall contain:

(1) the dates on or about which the applicant intends to begin construction of the line;

(2) a brief statement describing and locating the line (using text and a topographic map at a scale of 1:24,000 -- 1 inch = 2,000 feet -- or larger with legend), including:

(i) its length (and the nominal diameter of its segments), including markers required by paragraph 9 of Appendix 14-K of *16 NYCRR Part 255*;[3]

(ii) depth at which pipe will be buried;

(iii) maximum allowable operating pressure (psig);

(iv) R/W width;

(v) width of any area to be cleared;

(vi) any known underground facilities to be crossed or paralleled;[3]

(vii) name or permit number of any wells to be connected to the line;[3]

(viii) the point where the line connects to another pipeline (giving the nominal diameter of such line and the owner's name);[3]

(ix) existing or proposed access roads to be used for construction and maintenance of the line and any associated compressor station;[3]

(x) for any new or expanded compressor station,[3] a site development plan (at a scale of at least 1 inch=20 feet), showing: location; setbacks to property lines; structures (giving profile, materials and finish); grading and landscaping; drainage provisions; number, type, size and model of the compressor(s) and silencer(s); and the materials and design of any noise abatement structures; and

(xi) the name of every municipality in which any portion of the line is to be located;[3]

(3) an indication of which measures and techniques from the approved EM&CS&P to which the applicant has agreed (or any site-specific modification thereof) will be followed in an effort to minimize or avoid adverse environmental impact on sensitive resources affected by the line(s) to the maximum extent practical, which resources include:[4]

(i) existing and officially approved planned residential, commercial, industrial, institutional, recreational and agricultural land uses;[5]

(ii) ecosystem resources, including highly erodible soils,[6] wetlands, flood plains, streams, springs, wells, unique old-growth forests, active sugarbushes, productive timber stands,[7] trees listed in the Registry of Big Trees in New York State and habitats of rare, threatened and endangered species (from wetlands on, these resources can be identified in cooperation with the landowner and the Department of Environmental Conservation);

(iii) officially designated visual resources,[8] including scenic areas, roads, vistas and overlooks; and

(iv) officially designated cultural resources,[8] including archaeological sites and historic districts, places and properties.

(b) The applicant shall file and serve the NOI in accordance with the requirements of § 3.5 of this Title and serve one copy on the chief executive officer of every municipality in which any portion of the line is to be located.[9] Proof of service shall accompany the NOI.

(c) If an applicant wishes to construct and operate a line without obtaining a permit from any other State agency, municipality or agency thereof, the NOI shall contain, in addition to the information required by subdivision (a) of this section:

(1) a request that the line(s) included in it be reviewed under § 121-2(7) of the Public Service Law;

(2) a list of applicable State and local laws and regulations issued thereunder, including copies of any local ordinance, law, resolution or other action, any regulation issued thereunder, or any local standard or requirement that, as applied to the line, the applicant believes to be unreasonably restrictive in view of the existing technology, factors of cost or economics or the needs of consumers;[10] and

(3) a request that the commission make the determination set forth in § 126(1)(f) of the Public Service Law.

(d) If the NOI contains the request set forth in paragraph (c)(1) of this section, the applicant shall serve one copy on each State agency which has the authority to administer and enforce compliance with any legal provision cited in response to the requirement of paragraph (c)(2) of this section. The applicant shall serve the Commissioner unless an agency has regional offices; in such case, a copy shall also be sent also to the regional office.[11] Proof of service shall accompany the NOI.

[3] This item shall be shown on the map, which shall cover the entire project area.

[4] The applicant shall provide the name, title and qualifications of the company representatives directly responsible for seeing that all environmental requirements are fully met.

[5] Concerning agricultural land use, the applicant shall, in cooperation with the landowner(s) and Soil and Water Conservation District, consider both active and inactive fields. Active and inactive fields, by definition, are cropland, rotation hayland and cropland, hayland, livestock grazing areas, orchards and vineyards. The applicant shall also identify those areas containing practices for agricultural resources management, including strip-cropping, diversion terraces, underground tile drain lines, surface drainage ditches, and waste management conveyance and storage systems.

[6] To aid in the selection of measures and techniques for minimizing adverse environmental impact on the soil's resource, the applicant should contact the county office of the U.S. Department of Agriculture, Soil Conservation Service, to identify the soil type(s) and slope(s) and respective limitations, including the depth of the topsoil, depth from surface to bedrock, and soil drainability.

[7] Productive timber stands are viable or potential commercial forest stands composed of saplings (0-5 inches in diameter), poles (6-11 inches in diameter) and/or mature trees (12 inches plus in diameter).

[8] Designated and listed by the State, county, town, city or incorporated village. This includes listings by the State Historic Preservation Officer and the National and State Registers for historic and cultural sites.

[9] Provision of additional copies directly to county and town planners, and county, town, city or village highway superintendents, will expedite the certification process.

[10] To satisfy this requirement, a list of State and local permits will usually be sufficient. This list might include wetland permits, stream-crossing permits, road-crossing permits, or any other State or municipal permit. The applicant's filing of a road-crossing permit form with the Department of Transportation does not alter the commission's jurisdiction as the ultimate decisionmaking authority with respect to the siting of fuel gas transmission lines.

[11] Before filing copies with the commission, the applicant should contact the appropriate regional office to obtain the name and address of the official who should be served.

§ 85-1.3 Filing and service of applications

(a) An application to construct a fuel gas transmission line which is less than 10 miles long, other than as described in § 85-1.2(a) of this Subpart, or section 120(2) of the Public Service Law, shall contain:

(1) the information required by:

(i) § 85-1.2(a) of this Subpart; and

(ii) § 85-1.2(c)(2) of this Subpart;

(2) a description using text and detailed construction-type map (at a scale of 1 inch = 400 feet, or larger) showing the centerline and the specific relationship of the line to such features as:

(i) sensitive resources which will be affected by the line, as defined in § 85-1.2(a)(3) of this Subpart;

(ii) property boundaries, fences, walls and hedgerows to be crossed; and

(iii) any dwelling within 150 feet;

(3) a statement explaining the need for the line, including:

(i) a demonstration that a market^[12] (or specific purchaser) for the gas will exist;

(ii) where the applicant will serve retail customers, a demonstration that gas supplies will be adequate to serve existing and potential consumers during the first 10 years of the line's operation; and

(iii) a showing (if well-drilling is not contemplated in conjunction with the line) of the improvements in system reliability, capability, safety or benefits offered by the line; and

(4) any other information the applicant considers relevant.

(b) The applicant shall file and serve the application, in accordance with the requirements of § 3.5 of this Title and serve one copy each on:

(1) the central office and the appropriate regional offices of:

(i) the Department of Environmental Conservation;^[13] and

(ii) the Department of Transportation;^[13]

(2) the Commissioner of Agriculture and Markets;

(3) the State Archaeologist;

(4) the State Historic Preservation Officer;

(5) any other State agency which has authority to administer and enforce compliance with any legal provision listed in response to the requirement of subparagraph (a)(1)(ii) of this section; and

(6) the chief executive officer of every municipality in which any portion of the line is to be located.^[14]

(c) Proof of service shall accompany the application.

[12] Where such a demonstration is made in another proceeding, either before this Commission or the Federal Energy Regulatory Commission, that demonstration may be supplied.

[13] Before serving copies, the applicant should contact the appropriate regional office to obtain the name and address of the official who should be serviced.

[14] Provision of additional copies directly to county and town planners, and county, town, city or village highway superintendents, will expedite the certification process.

§ 85-1.4 Determination of line length and system configuration

(a) In calculating the length of a line to determine whether an application or NOI should be filed:

(1) the length of a well line shall be measured from the trap or separator at the well to the point at which the gas being transported from the well commingles with other gas; and

(2) the length of any other line shall be measured from the point at which gas leaves one pipeline to the point at which it enters another pipeline.

(b) Any NOI or application shall include every line then planned for a proposed system. A system includes all lines tying into a common point leading to market, which is usually a meter site, but may be a regulator station or compressor site. The type of document submitted will be determined by the length of the longest line included.[15]

[15] FOOTNOTE: The document filed should include a map showing all lines anticipated to be part of a given system, even though not proposed for construction at the time of the current filing.

16 NYCRR § 85-1.5 (2013)

§ 85-1.5 Determination of noncompliance

If any NOI or application filed pursuant to section 85-1.2 or 85-1.3 of this Subpart fails to comply in whole or in part with the applicable provisions of the Public Service Law and these regulations, the commission or its designee will, within 14 days of receipt, advise the applicant of the noncompliance and how to comply.

16 NYCRR § 85-1.6 (2013)

§ 85-1.6 Review of notices of intention

(a) Upon receipt of any NOI that complies with section 85-1.2 of this Subpart and which does not contain a request that it be reviewed under section 85-1.7 of this Subpart, the commission will determine, within 30 days of filing, whether there is a substantial public interest which requires the line(s) to be reviewed under section 85-1.7.

(b) If the commission determines that review under section 86-1.7 of this Subpart is not required, it will certify the proposed line. Failure to act within 30 days will constitute a certificate.

(c) If the commission determines that review of any line(s) is required under section 85-1.7 of this Subpart, it will conduct such review, serving copies of the NOI on other appropriate persons.

(d) If any NOI complies with section 85 1.2 of this Subpart, and contains a request that it be reviewed under section 85-1.7 of this Subpart, a substantial public interest will be deemed to exist and the commission will review the line under section 85-1.7.

16 NYCRR § 85-1.7 (2013)

§ 85-1.7 Review of applications

(a) Any person may file comments with the commission on any application. The record of the certification proceeding may be limited to the application, any comments thereon filed within 15 days of the date of service thereof, and any report by the staff of the Department of Public Service.

(b) The parties to the certification proceeding shall include the applicant and all persons served with a copy of the application or NOI reviewed under this section.

SUBPART 85-2. PROCEDURES WITH RESPECT TO ALL ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES 10 OR MORE MILES LONG

16 NYCRR § 85-2.1 (2013)

§ 85-2.1 Definitions

As used in this Subchapter, other than in Subpart 85-1:

- (a) The term municipality means a county, city, town or village in this State.
- (b) The term secretary means the Secretary to the Public Service Commission.
- (c) The term person means any individual, corporation, public benefit corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust or estate.
- (d) The term certificate means a certificate of environmental compatibility and public need.
- (e) The term facility or transmission facility means:
 - (1) an electric transmission facility (including associated equipment) with a design capacity of:
 - (i) 125 kilovolts or more, to extend a distance of one mile or more; or
 - (ii) 100 kilovolts or more, but less than 125 kilovolts, to extend a distance of 10 miles or more; or
 - (2) a fuel gas transmission line extending a distance of 1,000 feet or more, to be used to transport fuel gas at pressures of 125 pounds per square inch or more, excluding appurtenant facilities.

The term facility or transmission facility does not include any electric transmission line located wholly underground in a city with a population in excess of 125,000, or a primary transmission line (as such term is used in the Federal Power Act [*16 U.S.C. 791--a-828c*]) approved by the Federal Energy Regulatory Commission in connection with a hydroelectric facility or any fuel gas transmission line that is located wholly underground in a city or wholly within the right-of-way of a state, county or town highway or village street (as those terms are defined in article 1 of the Highway Law and article 6 of the Village Law), or that replaces an existing transmission line, including appurtenant facilities, and extends a distance of less than one mile.

- (f) The term application means the application form required by section 85-2.8 of this Subpart.
- (g) The term appurtenant facilities means installations (excluding gas compressors) that are merely auxiliary or appurtenant to a fuel gas transmission line, such as: valves; drips; measuring and regulating equipment; yard and station piping; cathodic protection equipment; gas cleaning, cooling and dehydration equipment; residual refining equipment; water pumping, treatment and cooling equipment; electrical and communication equipment; and buildings.

16 NYCRR § 85-2.2 (2013)

§ 85-2.2 Materials required for filing

- (a) A filing for a certificate shall contain:
 - (1) the application;
 - (2) the exhibits and information required by statute and these regulations;
 - (3) the testimony, in written form, and exhibits which will comprise the applicant's direct case in support of its application; and
 - (4) any additional information which the applicant deems necessary or desirable.
- (b) At the time the applicant presents its filing to the secretary, the applicant shall subject in accordance with the requirements of section 3.5 of this Title. The commission or its staff may request additional copies of the filing at any time.

16 NYCRR § 85-2.3 (2013)

§ 85-2.3 Acceptance, amendment or rejection of a filing

(a) A filing shall be given a case number for tracking purposes when received by the secretary. The commission shall fix a date for commencing a public hearing:

(1) on a filing with respect to an electric transmission facility, not less than 60 nor more than 90 days after it complies with section 122 of the Public Service Law; and

(2) on a filing with respect to a gas transmission facility 10 or more miles long, not less than 20 nor more than 60 days after it complies with section 122 of the Public Service Law.

(b) Acceptance of a filing by the secretary shall not constitute a waiver of any failure to comply with the requirements of these regulations. The commission may, at any time, reject all or any part of a filing that does not conform to the requirements of these regulations.

(c) If all of the information required by these regulations is not available at the time of the filing, the applicant may petition the commission for permission to submit the unavailable information at a specified future date. Such date shall be before the date upon which the hearing is concluded. The commission may grant such a petition in whole or in part, or it may defer the matter, in whole or in part, for decision by the presiding officer.

16 NYCRR § 85-2.4 (2013)

§ 85-2.4 Fund for municipal and other parties

(a) Each application that proposes an electric transmission facility of 125kV or more shall, at the time it is provided to the Secretary, be accompanied by a fee in the amount specified herein:

(1) if the proposed route for the facility is greater than 100.0 miles in length, \$ 450,000;

(2) if the proposed route for the facility is greater than 50.0 and up to 100.0 miles in length, \$ 350,000;

(3) if the proposed route for the facility would require a new right-of-way for 10.0% or more of its length and is from 10.0 to 50.0 miles long, \$ 100,000; and

(4) if the proposed route for the facility would use an existing right-of-way for more than 90.0% of its length and is from 10.0 to 50.0 miles long, \$ 50,000.

(b) Any municipality or other party (except an applicant) may request funds to defray expenses for expert witness, consultant, administrative and legal fees (other than in connection with judicial review). Requests for funds shall be submitted to the presiding officer not later than 15 days after the issuance of a notice of the initial prehearing conference, unless otherwise specified by the presiding officer.

(c) Subject to the availability of funds, the presiding officer may fix additional dates for submission of fund requests.

(d) Each request for funds shall be submitted to the presiding officer, with copies to the other parties to the proceeding, and contain:

(1) a statement of the number of persons and the nature of the interests the requesting party represents;

(2) a statement of the availability of funds from the resources of the requesting party and from other sources and of the efforts that have been made to obtain such funds;

(3) if the requesting party represents owners or occupants of real property, the location of such real property in relation to the route proposed for the facility and any alternative route specified as reasonable in the application;

(4) the amount of funds being sought;

(5) to the extent possible, the name and qualifications of each expert to be employed;

(6) if known, the name of any other party who may, or is intending to, employ such expert;

(7) a detailed statement of the services to be provided by expert witnesses, consultants or others (and the basis for the fees requested), specifying how such services will contribute to a complete record leading to an informed decision as to the appropriateness of the facility and route;

(8) a statement as to the result of any effort made to encourage the applicant to perform any proposed studies or evaluations and the reason it is believed that an independent study is necessary; and

(9) a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person.

(e) At any conference held to consider fund requests, the presiding officer shall discuss the award of funds and encourage the consolidation of requests.

(f) Not later than 15 days after the close of the initial prehearing conference, the presiding officer shall make an initial award of funds, and from time to time thereafter may make additional awards of funds, in relation to the potential for such awards to make a contribution to a complete record leading to an informed decision as to the appropriateness of the facility and route.

(g) If after its filing the application is amended in a manner that warrants substantial additional scrutiny, the Commission may require the applicant to pay an additional intervenor fee in an amount not to exceed \$ 125,000, and the presiding officer may make additional awards of funds, in relation to the potential for such awards to make a contribution to a complete record leading to an informed decision as to the appropriateness of the facility and route.

(h) The presiding officer shall ultimately award, on an equitable basis, at least 50% of the funds to municipalities and up to 50% to other parties whose requests comply with the provisions of subdivisions (b) and (d) of this section, so long as the funds will contribute to a complete record leading to an informed decision as to the appropriateness of the transmission facility and route and facilitate broad public participation in the proceeding.

(i) The fee submitted with each application, as well as any fee required to be submitted when an application is amended, shall be deposited in an intervenor account, established pursuant to *Section 97-11 of the State Finance Law*.

(j) On a quarterly basis, unless otherwise required by the presiding officer, any municipality or other party receiving an award of funds shall:

(1) provide an accounting of the monies that have been spent; and

(2) submit a report to the presiding officer showing:

(i) the results of any studies conducted using such funds;

(ii) whether the purpose for which the funds were awarded has been achieved;

(iii) if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved and why further expenditures are warranted.

(k) Where it appears warranted, the presiding officer may incorporate the reports referred to in subdivision (j) of this section into the hearing record as public statements.

(l) Disbursements from the intervenor account to municipal and other parties shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairman or a designee. Before any funds may be disbursed to a municipality or other party, such party must enter into a local assistance contract with the Department of Public Service. Vouchers prepared pursuant to such local assistance contract must be submitted for payment not later than six months after any withdrawal of an application or the Commission's final decision on an application (including a decision on rehearing, if applicable). Any funds that have not been disbursed shall be returned to the applicant after the Commission's final decision on an application (including any decision on rehearing or on remand following a court order, if applicable) has been made. If an application has been withdrawn, any funds remaining shall be returned within a reasonable time.

§ 85-2.5 Additional information

(a) Upon request of the commission or the presiding officer, the applicant shall submit such additional information as may be specified.

(b) Upon the motion of any party or of staff counsel, or upon its own motion, the commission may order an applicant to provide such additional information as the commission deems necessary or desirable. A motion to the commission under this subdivision shall clearly state the additional information sought and the reasons such information is necessary or desirable.

(c) The commission may, upon the motion of any party or of staff counsel, or upon its own motion, dismiss the filing of an applicant who fails to comply with an order to supply additional information.

(d) When a filing is set for hearing, any motion for additional information shall be addressed to the presiding officer.

16 NYCRR § 85-2.6 (2013)

§ 85-2.6 Consultation with staff

Applicants, other parties, and all interested groups and persons are invited and encouraged to confer on an informal basis with the staff of the commission with respect to any matter related to a filing or proposed filing. Except as expressly provided to the contrary, neither an applicant, other party, interested group or person, nor the commission staff, shall be bound by any statement made during the course of such informal consultation. The commission shall not be bound without its consent.

16 NYCRR § 85-2.7 (2013)

§ 85-2.7 Incorporation by reference

Any party or staff counsel may move to incorporate by reference information contained in any filing with this commission, or contained in any other public document. When incorporating by reference, a party or staff counsel shall clearly identify the material to be incorporated. A party shall supply to the commission, upon request, additional copies of any material incorporated by reference.

16 NYCRR § 85-2.8 (2013)

§ 85-2.8 Content of application

An application for a certificate shall contain:

- (a) a description of the proposed facility;
- (b) a statement of the location of the proposed site or right-of-way;
- (c) a summary and description of any studies which have been made of the environmental impact of the proposed project;
- (d) a statement explaining the need for the proposed facility;
- (e) a description of any reasonable alternate locations or routes for the proposed facility, including a description of the comparative merits and detriments of each location or route and a statement explaining why the primary location or route is best suited for the proposed facility; and
- (f) such other information as the applicant deems necessary or desirable.

16 NYCRR § 85-2.9 (2013)

§ 85-2.9 Filing and content of applications for electric transmission facilities in national interest electric transmission corridors

An application seeking approval of an electric transmission facility in a national interest electric transmission corridor as designated by the Secretary of the U.S. Department of Energy pursuant to section 216 of the Federal Power Act (16 U.S.C. section 824p) is considered filed on a date set forth in a letter to the applicant from the secretary, namely, the date of receipt of the application and any supplemental information necessary to bring it into compliance with all the following requirements, except any such requirements where the commission has granted permission to submit unavailable information at a future specified date pursuant to section 85-2.3(c) of this Subpart or which the commission has waived pursuant to section 85-3.3 of this Title:

(a) section 122 of the Public Service Law;

(b) sections 85-2.2 and 85-2.8 of this Subpart;

(c) Part 86 of this Subchapter, except that an application for the overhead portion of a transmission facility need not contain the information required by:

(1) section 86.3(a)(1)(i) of this Title, so long as recent edition topographic maps (at a scale of 1:24,000) for an area of at least five miles on either side of the proposed centerline are included in Exhibit 2 of this application;

(2) section 86.3(a)(1)(iii) of this Title, as long as Exhibit 2 maps show any known geologic, historic or scenic area, park, or untouched wilderness within three miles on either side of the proposed centerline;

(3) section 86.3(a)(2)(i)-(iv) of this Title, so long as Exhibit 2 maps show the relationship of the proposed facility to interconnected electric systems;

(4) section 86.3(b) of this Title, so long as all Exhibit 2 aerial photographs reflect the current situation and specify the source and date of the photography; and

(5) section 86.4(b) of this Title, so long as recent edition topographic maps (at a scale of 1:24,000) are included in Exhibit 3 of the application and indicate any alternative route considered;

(d) Part 86 of this Subchapter, except that an application for the underground portion of a transmission facility need not contain the information required by:

(1) section 86.3(a)(1)(i) of this Title, so long as recent edition topographic maps (at a scale of 1:24,000) for an area of at least one mile on either side of the proposed centerline area included in Exhibit 2 of this application;

(2) section 86.3(a)(1)(iii) of this Title, so long as Exhibit 2 maps show any known geologic, historic or scenic area, park, or untouched wilderness within one mile on either side of the proposed centerline;

(3) section 86.3(a)(2)(i)-(iv) of this Title, so long as Exhibit 2 maps show the relationship of the proposed facility to interconnected electric systems;

(4) section 86.3(b)(2) of this Title, so long as all Exhibit 2 aerial photographs reflect the current situation and specify the source and date of the photography; and

(5) section 86.4(b) of this Title, so long as recent edition topographic maps (at a scale of 1:24,000) are included in Exhibit 3 of the application and indicate any alternative route considered;

(e) Part 86 of this Subchapter, except that an application for the submarine portion of a transmission facility need not contain the information required by:

(1) section 86.3(a)(1)(i) of this Title, so long as recent edition nautical charts (published by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration) depicting the location of the proposed facility are included in Exhibit 2 of this application;

(2) section 86.3(a)(1)(iii) of this Title, so long as Exhibit 2 nautical charts show any known historic resource within one mile on either side of the proposed centerline;

(3) section 86.3(a)(2)(i)-(iv) of this Title, so long as Exhibit 2 maps show the relationship of the proposed facility to interconnected electric systems;

(4) section 86.3(b)(2) of this Title; and

(5) section 86.4(b) of this Title, so long as recent edition nautical charts are included in Exhibit 3 of the application and indicate any alternative route considered;

(f) Part 86 of this Subchapter, except that an application containing a certified statement that the transmission facility discussed therein will not be proposed for inclusion in utility rate base (either directly or indirectly through a contractual arrangement with a regulated utility) need not contain the information required by section 86.10 of this title; provided, however, that if a regulated rate is sought after the filing of the application, the applicant shall provide the information required by that section; and provided further that, if an applicant raises the issue of the cost of a particular alternative as a disadvantage, it shall provide sufficient cost information to enable a comparison to be made between the proposed facility and such alternative; and

(g) Part 88 of this Subchapter.

16 NYCRR § 85-2.10 (2013)

§ 85-2.10 Notice of application

(a) A filing shall be accompanied by proof of service of a copy of the filing on:

(1) each municipality in which any portion of the facility is to be located, both as primarily and alternatively proposed;

(2) the Commissioner of Environmental Conservation;

(3) the Commissioner of Economic Development;

(4) the Commissioner of Agriculture and Markets;

(5) the Secretary of State;

(6) each member of the New York State Legislature through whose district any part of the facility, as primarily or alternatively proposed, would pass;

(7) the Commissioner of Parks, Recreation and Historic Preservation;

(8) in the event any portion of the proposed facility is located within its jurisdiction, the St. Lawrence - Eastern Ontario Commission; and

(9) in the event any portion of the proposed facility is located within its geographical jurisdiction, the Department of Transportation, the Adirondack Park Agency, and any other State agency having authority over the location of any portion of the proposed facility.

(b) Service upon a municipality under paragraph (a)(1) of this section shall be addressed to the chief executive officer of the municipality and shall specify the date on or about which the filing is to be made.

(c) A filing shall be accompanied by a statement of the notice of the filing given to persons residing in municipalities on whom a copy of the filing is required to be served under paragraph (a)(1) of this section. An applicant shall, as minimum notice under this subdivision, publish once a week for two consecutive weeks prior to the filing, in a newspaper or newspapers of general circulation in all the areas through which the facility would pass, both as primarily and alternatively proposed:

(1) a brief description of the proposed facility;

(2) the location of the proposed right-of-way; and

(3) the date on or about which the filing will be made.

(d) The presiding officer shall serve the applicant with a list of those persons who, in addition to those listed in subdivision (a) of this section, have become parties to the proceeding as provided in section 85-2.11(b)(2) of this Subpart. The applicant shall, within 10 days of the date of service of said list, serve a copy of the filing on each such person, and file proof of service thereof with the secretary.

16 NYCRR § 85-2.11 (2013)

§ 85-2.11 Participation and intervention

(a) The parties to a certification proceeding shall include the applicant and such of the following as make timely application for participation:

- (1) the Department of Environmental Conservation;
- (2) the Department of Economic Development;
- (3) the Department of State;
- (4) the Department of Agriculture and Markets;
- (5) the Office of Parks, Recreation and Historic Preservation;

(6) where any portion of the facility or of any alternative is to be located within its jurisdiction, the Tug Hill Commission;

(7) where any portion of the facility or of any alternative, is to be located within the Adirondack Park, as defined in *section 9-0101(1) of the Environmental Conservation Law*, the Adirondack Park Agency;

(8) the Department of Transportation;

(9) any municipality entitled to receive notice under section 85-2.10(a)(1) of this Subpart;

(10) any individual resident in a municipality entitled to receive notice under section 85-2.10(a)(1) of this Subpart; and

(11) any domestic nonprofit corporation or association, formed in whole or in part:

- (i) to promote conservation or natural beauty;
- (ii) to protect the environment, personal health or other biological values;
- (iii) to preserve historic sites;
- (iv) to promote consumer interests;
- (v) to represent the interests of commercial and industrial groups; or
- (vi) to promote the orderly development of the areas in which the facility is proposed to be located.

(b)(1) A person or organization listed in paragraphs (a)(1)-(8) of this section may participate in a certification proceeding by filing with the secretary a notice of intent to be a party at least five days prior to the date of the first scheduled hearing in the proceeding.

(2) A person or organization listed in paragraphs (a)(9)-(11) of this section may participate in a certification proceeding by filing with the secretary a notice of intent to be a party within 30 days after the date given in the published notice as the date for filing of the application.

(c) (1) In its notice of intent to be a party, a person or organization listed in subdivision (a) of this section should state its name, address, telephone number, telecopier machine number, e-mail address, the name of its attorney or qualified representative upon whom service should be made, and the basis upon which it claims to be a party.

(2) Requests for permission to intervene in a certification proceeding made by persons or organizations not listed in subdivision (a) of this section should contain the information specified in paragraph (1) of this subdivision, as well as an explanation of how such intervention would be likely to contribute to the development of a complete record or why it would otherwise be fair and in the public interest. Such requests shall be governed by the provisions of section 4.3(c) of this Title.

16 NYCRR § 85-2.12 (2013)

§ 85-2.12 Service of documents

(a) The service of documents upon parties in a certification proceeding shall be governed by section 4.3(b)(2) of this Title.

(b) Unless a party otherwise requests, the names and addresses of parties shall be placed on the secretary's service list.

16 NYCRR § 85-2.13 (2013)

§ 85-2.13 Consideration of issues

Upon the motion of any party or of staff counsel, or upon its own motion, the commission may provide that any issue or issues raised by a filing be severed from other issues and decided separately. When an application has been set for hearing, such motion shall be addressed to the presiding officer.

16 NYCRR § 85-2.14 (2013)

§ 85-2.14 Consolidation of the presentations of parties

(a) The consolidation of the presentations of parties with similar interests shall be governed by section 4.3(b)(3) of this Title; provided, however, that the presiding officer may not require the consolidation of the representation of governmental bodies or agencies.

16 NYCRR § 85-2.15 (2013)

§ 85-2.15 Dismissal of an application

Whenever it shall appear that the statutory requirements for a certificate cannot be met, the commission may dismiss the application and terminate the proceedings upon the motion of any party or staff counsel, or upon its own motion.

16 NYCRR § 85-2.16 (2013)

§ 85-2.16 Noncontested proceedings

(a)(1) Upon the motion of any applicant, the commission may, where it appears to be in the public interest, order that the public hearing required by section 123 of the Public Service Law on an application for a certificate for an underground transmission facility or for an overhead transmission facility to be constructed on substantially the same right-of-way as an existing facility that is to be replaced be held before the commission on the application, exhibits, prepared testimony, and any other information filed by the applicant and any prepared testimony, information, or papers filed by any party or staff counsel, without oral testimony.

(2) A motion by an applicant for an expedited proceeding under paragraph (1) of this subdivision, shall be made at the time it files its application for a certificate or within 20 days thereafter. The applicant shall serve a copy of the motion for an expedited proceeding and the public notice required by paragraph (3) of this subdivision on each person or municipality entitled to service of a copy of the filing under section 85-2.10 of this Subpart.

(3) Not less than 30 nor more than 40 days after the date on which it files its application for a certificate, an applicant moving under paragraph (1) of this subdivision shall publish in a newspaper or newspapers of general circulation, in all the areas traversed by the proposed facility, a notice:

(i) briefly describing the proposed facility and the location of the proposed right-of-way;

(ii) stating that the applicant has moved that the public hearing required by section 123 of the Public Service Law be held before the commission on the basis of application, exhibits, prepared testimony, and any other information filed by any party or staff counsel, and that oral testimony not be taken; and

(iii) stating that any person opposed to the granting of the certificate should, within 10 days of the date of the publication of the notice, notify in writing the Secretary to the Public Service Commission at Three Empire State Plaza, Albany, NY 12223-1350, of the reasons for opposition.

(4) An applicant moving under paragraph (1) of this subdivision shall file any written consent required under paragraph (b)(3) of this section within 45 days of the date on which the applicant filed its application for a certificate. An applicant who fails to comply with this requirement shall be deemed to have withdrawn its motion for an expedited proceeding.

(b) The commission may grant a motion made under subdivision (a) of this section if:

(1) the applicant has served a copy of its motion and the public notice required upon each person, municipality and agency entitled to service under section 85-2.10(a) of this Subpart;

(2) no person, municipality or agency has filed with the executive secretary, within 10 days of the date of publication of the newspaper notice required by paragraph (a)(3) of this section, a written objection stating substantive reasons for opposition to the granting of such a motion; and

(3) no person or domestic nonprofit corporation or association entitled to become a party to the proceeding, under paragraphs (a)(10)-(11) of section 85-2.11 of this Subpart, has made timely application for participation, or, in the event one or more such persons, corporations or associations has been granted participation, each such person, corporation or association has consented in writing to the granting of the applicant's motion.

(c) If, at the hearing provided by subdivision (a) of this section, the commission finds that there is a substantive basis for opposition to the granting of the certificate, it shall order that the matter be set for further hearings in accordance with this Subpart.