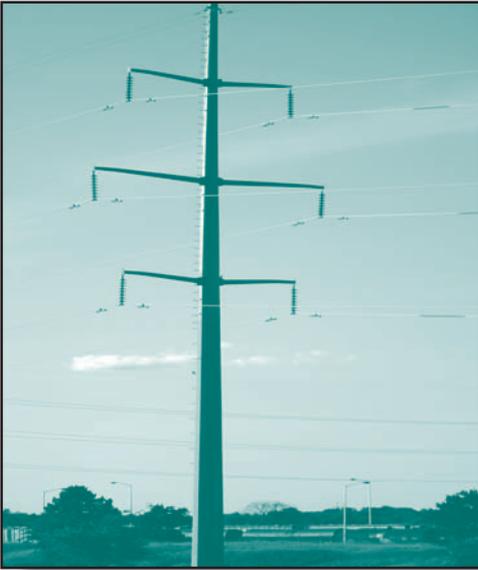


The Certification Review Process For Major Electric and Fuel Gas Transmission Facilities



Under Article VII of
The New York State
Public Service Law

A Guide from the
New York State
Public Service Commission

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Introduction

The following 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 environmental, public health and safety impact review of the siting, design, construction, and operation of major transmission facilities in New York State.

While the New York State 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 Web site, write or call our toll-free number:

■ **Web site:**

www.dps.state.ny.us/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:**

1-877-772-2789

Article VII

Article VII of the New York State 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 which must be approved by the Federal Energy Regulatory Commission.
- Major natural fuel gas transmission facilities are 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 that an applicant must 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, a “major utility transmission facility” can be used to refer to either a “major electricity transmission line” or a “major natural fuel 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 fuel gas transmission facilities that extend more than 1,000 feet, but less than ten miles. The streamlined requirements applicable to such natural fuel gas facilities are set forth in the Public Service Law Section 121-a and in 16 NYCRR Sub-part 85-1. This guide does not discuss these requirements further.

New transmission lines are proposed because of the public's demand 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 State Public Service Law (**Sections 120 through 130**);
- Regulations for Electric Transmission Fuel and Gas Transmission Lines Ten Miles or Longer, Chapter 1, Subchapter G – Certificates of Environmental Compatibility and Public Need (**Parts 85 through 88**); and
- Procedures With Respect To Gas Transmission Lines Less Than 10 Miles Long (**Sections 85-1.0 through 85-1.7**)

by visiting our Web site, www.dps.state.ny.us/articlevii.htm or calling our toll-free number: 1-877-772-2789. You may also write to our Office of Consumer Services. Please see Page 18, “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 Chairman and four Commissioners. The Chairman 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 planners, landscape architects, foresters, aquatic and terrestrial ecologists, engineers, 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 or group. 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 Web site.
- 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, newsletter, local radio or public access television, 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 of, 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 in the alternative locations 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. Representatives of such groups or organizations can act on behalf of their members to request “party status” and actively participate in the case. 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 is 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 active 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.

- 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.

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) at any time in a proceeding by mailing their written statements to the Office of the Secretary, New York State Public Service Commission. These letters should reference the Article VII case number assigned to the application. Please see Page 18, “For Further Information.”

- Other alternatives are available for submitting comments for consideration by the Commission:

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. Callers should press “1” for “Electric and Gas Issues” to leave comments on Article VII cases.

The Internet:

Comments may be submitted via the “PSC Comment Form” in the “Contact Us” file accessed through the homepage of the Commission’s Consumer Web site. Many libraries offer free Internet access. The Web site address is **www.AskPSC.com** and comments are downloaded regularly.

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 locations 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.

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. However, the filing of a copy of an application is not required. This usually includes its placement in the library (ies) in the municipality (ies) through which the primary transmission line is proposed to pass or any alternative locations listed.

An applicant is not required to provide copies of the application or notice of the filing of the application to individual property owners of land in which any portion of the facility is proposed to be located for both the primary route proposed and any alternative locations listed. However, in an effort to foster public involvement, an applicant is encouraged to volunteer to provide notice of the filing of its application to individual property owners of land in which any portion of the facility is proposed to be located, for both the primary route proposed and any alternative locations listed.

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 information as the applicant may consider relevant or the Commission may require.

In an application, the applicant is also encouraged to submit a complete report of the applicant's public involvement activities and its plans to encourage public participation. The Secretary to the Commission generally takes about 30 days after an application is filed to determine if 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 can then file supplemental information. If the applicant chooses to file the supplemental information, the application is again reviewed by the Secretary to the Commission for a compliance determination.

The Certification Process

Once all of the information needed to complete an application is submitted and the application is determined to be in compliance, 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 Page 13, D. and Page 14, E.) and rules on procedural matters.

Hearings help the Commission decide whether the construction and operation of new transmission facilities will fulfill public needs and be compatible with environmental values and the public health and safety, 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.

Party Status in the Certification Proceeding

Article VII specifies that the applicant and certain state and municipal agencies are parties in any case. The Department of Environmental Conservation and the Department of Agriculture & Markets normally become active parties. Any municipality through which a portion of the proposed facility will pass, or any resident of such municipality, may also become a formal party to the proceeding. This can be done by sending written notice to the Secretary to the Commission, within 30 days of public notice of an application filing, or if such deadline has passed, by filing a petition to intervene. See page 18, "For Further Information."

Obtaining party status enables a person or group to submit testimony, cross-examine witnesses of other parties and file briefs in the case. Being a party also entails the responsibility to send copies of all materials filed in the case to all other parties in the case. Department staff participate in all Article VII cases as a party, the same as any other person who takes an active part in the proceedings.

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 entering into settlements also prepare written statements in support of any settlements that are sent to the Secretary to the Commission.

Commission Decision

Once the Administrative Law Judge makes a recommendation about an application, the Commission reviews the recommendation and considers the views of the applicant, Department staff, other Governmental agencies, organizations, and the general public received in writing or orally at hearings or at any time in the case. To grant a Certificate, either as proposed or modified, the Commission must determine all of the following:

1. 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. 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;
5. in the case of a gas transmission pipeline, the facility location will not pose undue hazard to persons or property along the line;
6. the location conforms with applicable state and local laws; and,
7. 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 in a proceeding, as previously stated, an individual may comment on a proposed case. This can be done by sending a written statement to the Secretary to the Commission, filling out a "Comment Form" on the Commission's Web site or calling the Commission's Opinion Line. Please see page 18, "For Further Information."

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 are 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's 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 filing 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 as to the need for a facility, its environmental compatibility and its compliance with law, it can 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 preclude any other state court, agency or municipality from reviewing the project.

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 can begin. The EM&CP details the precise "field" location of the facilities and the special precautions that will be taken during construction to ensure environmental compatibility.

Deviations of up to 1/8 mile (660 feet) 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 active 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 utility – 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 utilities 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, stakeholders may request their names and addresses be included on a project “service list” which is maintained by the Department. Sending a written request to the Secretary to the Commission to be placed on the service list for a case will allow stakeholders to receive copies of orders, notices and rulings in the case. Such requests should reference the Article VII case number assigned to the application.

Applications, testimony and hearing transcripts regarding Article VII cases can be inspected and copied at the following location:

New York State Department of Public Service

Central Files Unit – 14th Floor
Three Empire State Plaza
Albany, NY 12223-1350

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 Web site or office for a specific list of locations where its application is available to the public for inspection. Information concerning each Article VII case is also available at the Commission’s Web site:
www.dps.state.ny.us/articlevii.htm or www.AskPSC.com

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. For further information on the Article VII process or on specific Article VII cases, please see the following:

■ **Request your name be added to a service list or submit a formal written statement by writing to:**

Secretary

New York State Public Service Commission
Three Empire State Plaza • Albany, NY 12223-1350

■ **Request information on individual cases or inquire about how to participate in the review of current Article VII projects by calling or writing to the following:**

Dianne Cooper

Utility Consumer Program Specialist • Office of Consumer Services
NYS Department of Public Service
Three Empire State Plaza • Albany, NY 12223-1350

dianne_cooper@dps.state.ny.us • Toll-free: 1-877-772-2789 or 518-473-0275

Jim de Waal Malefyt

Utility Supervisor – Environmental
Office of Electricity & Environment
NYS Department of Public Service
Three Empire State Plaza • Albany, NY 12223-1350

Jim_de_Waal_Malefyt@dps.state.ny.us • Phone: 518-486-2941

■ **Obtain information about the Article VII process and specific Article VII cases:**

- View the Commission's Web site:

www.dps.state.ny.us/articlevii.htm or www.AskPSC.com

- Call the Article VII Toll-free Information Line: **1-877-772-2789**

Submit a written comment by using the Internet: Comments may be submitted via the "PSC Comment Form" in the "Contact Us" file accessed through the homepage of the Commission's www.AskPSC.com Web site.

Many libraries offer free Internet access. Comments are downloaded regularly. Comments should reference the Article VII case number assigned to the application.

Enter an opinion on the Commission's Toll-Free Opinion Line: Interested persons may call the special 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. Callers should press "1" for "Electric or Gas Issues" to leave comments on Article VII cases. Comments should reference the Article VII case number assigned to the application.



New York State Board on Electric Siting and the Environment
Three Empire State Plaza ■ Albany, NY 12223-1350