

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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PUBLIC SERVICE COMMISSION

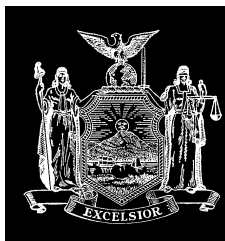
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December 15, 2006

Sent Via Electronic and First Class Mail

To Active Parties:

RE: Case 06-T-0650 - Application of New York Regional Interconnect, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for a High Voltage Direct Current Electric Transmission Line running Between National Grid's Edic Substation in the Town of Marcy, and Central Hudson Gas & Electric's Rock Tavern Substation Located in the Town of New Windsor.

By letter dated November 28, 2006, New York Regional Interconnect, Inc. (Applicant, NYRI) requests of Chief Administrative Law Judge Judith A. Lee that she appoint a mediator to facilitate seeking consensus among the parties on certain specified issues.¹ Chief Judge Lee has appointed me mediator for this matter, pursuant to the Public Service Commission Order offering assistance for the purpose of Alternative Dispute Resolution to assist those parties interested in seeking agreement on certain matters, "such as the scope of required studies, methodologies for analyses, and identification of alternatives to investigate."² The purpose of this letter is to discuss the suitability, scope, and schedule of mediation as to the issues posed by Applicant in light of the filings by other parties in response to the request.³

Let me begin by making it clear that participation in mediation is open to all active parties and that it is entirely voluntary. If two or more parties reach agreement as to any of the issues proposed for mediation, their agreement binds only those who agree. Participation in this

¹ Applicant Letter to Chief Administrative Law Judge Judith A. Lee, and Administrative Law Judges Michelle Phillips and Jeffrey Stockholm (dated November 28, 2006).

² Case 06-T-0650, *Application of New York Regional Interconnect, Inc.*, Order on Waiver Motion and Directing the Filing of Supplemental Information (issued November 10, 2006) (Waiver Order), p. 41. The Waiver Order specifies that the Office of Hearings and Alternate Dispute Resolution can provide trained and experienced Administrative Law Judge neutrals to mediate or facilitate these discussions.

³ Parties received Applicant's request for mediation, dated November 28, 2006, at various times. All interested parties will be allowed 13 days to respond, as if the request had been mailed, consistent with 16 NYCRR 3.6 (d)(1).

process neither binds any other parties nor prejudices the final outcome on the application. My role in this matter is as a neutral facilitator: I will not be ruling on any disputes among parties – that remains the purview of Judges Stockholm and Phillips.⁴ Having been appointed mediator, I am available to assist parties in any way they request. It appears that, at a minimum, Applicant and Staff are interested in a mediation process. As pointed out by the City of Utica (Utica), Applicant is free to meet with Staff, DEC Staff and Department of Transportation Staff to determine what those agencies require. If those agencies or other parties conclude that a mediation process is an economical way to respond to Applicant, they may avail themselves of it. If not, they will not be prejudiced by any mediation outcome.

The Scope of the Requested Mediation

As to the scope of mediation, Applicant requests mediation on certain limited issues concerning the scope and methodology of four studies and analyses:

1. Supplemental visual impact analysis;
2. Analysis of the cumulative impact of the NYRI project and the Millennium Pipeline project where NYRI proposes to parallel Millennium;
3. Impact assessment concerning endangered and threatened species; and
4. Studies of routing alternatives involving the New York Thruway right-of-way, Marcy South transmission facility right-of-way, Rogers Environmental Education Center, Melondy Hill State Forest, Columbia Lake State Forest and the Mongaup Wildlife Management Area.

Department of Public Service Staff (Staff) and Central Hudson Gas and Electric Corporation, Inc. (Central Hudson) do not oppose the request for a mediator but proffer alternative timetables or approaches. The New York State Department of Environmental Conservation (DEC) and the Utica oppose the appointment of a mediator as premature and inappropriate to resolve preliminary questions about the content and scope of an application; they suggest mediation would only be appropriate after the application is found to be in compliance. Utica also asserts Applicant has not presented well-defined issues appropriate for mediation. Communities Against Regional Interconnect (CARI) also opposes NYRI's mediation request. In CARI's view, granting the mediation request would negotiate away the application requirements of the Public Service Law, which NYRI has not yet met, and vitiate the Waiver Order. NYRI responds that the Commission has repeatedly encouraged cooperative efforts among the parties and consultation between the Applicant, DEC, and Staff.

I share parties' concerns that the issues to be mediated need to be defined with much more specificity for the process to be productive. In particular, items 2 and 4 were specifically

⁴ With that in mind, some of the issues raised by the Applicant or by other parties in this exchange of correspondence clearly belong with Judges Stockholm and Phillips: for example, the proposal to establish a Web site for posting of discovery responses. For purposes of this proposed mediation, all filings and discussion should be carried out using electronic media (*See* Procedural Ruling (issued August 14, 2006), p. 3). This Letter to Active Parties will be distributed by mail as well as electronically; all further communication will be electronic only. Parties should ensure that they have included an e-mail address on the Active Party List for this proceeding.

required of NYRI.⁵ As to items 1 and 3, no additional visual impact analysis and no additional rare and endangered species studies have been required to date. Different processes might be fruitful to resolve these diverse items; for example, parties may be interested in negotiating items 1 and 3 without a neutral as a starting point.

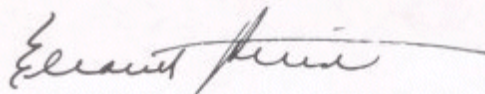
Schedule of the Requested Mediation

As to schedule, Applicant originally asked that all parties submit proposals by December 20, 2006; that meetings be held from January 3 – January 12, 2007; and that the process be complete by January 19, 2007. Staff proposes that Applicant file its proposal by December 18, 2006, and that responses be due January 5, 2007; DEC agrees that any opening proposal should come from Applicant and expresses concern that the proposed timetable is unrealistic. Central Hudson agrees with Staff that Applicant should make the first proposal, but urges that the proposal should be for the overall progress of the case and a comprehensive timetable, while CARI opposes the Applicant's schedule and suggests a more protracted one. By letter dated December 14, 2006, NYRI proposes an amended schedule, suggesting that parties agreeing to participate in mediation, including the Applicant, submit proposals for the specified issues by January 8, 2007; meetings be scheduled for the week of January 22, 2007; and the process completed by January 31, 2007.

Ideally, parties would agree to the procedure to be followed. In the interest of moving this process forward, let me suggest that since most parties prefer to see Applicant's proposal first, NYRI should provide its proposal by January 8, 2007, in order to commence this process. Other parties have the option of providing other proposals until January 24, 2007. I have set aside the period from now through February 16, 2007 to be available for this process. These proposals will be provided to all active parties, and mediation sessions will be on notice and open to all active parties.

This mediation process is governed by the Public Service Commission's rules and practices specifically designed to encourage negotiations. Because I will be serving as a mediator and not an adjudicator, any party is welcome to contact me individually, and all parties are on notice that such discussions may take place. In addition, pursuant to Rules 3.9(d) and (e), substantive discussions and submissions for the purpose of mediation are confidential. They are not subject to discovery or admissible as evidence. Participating parties and the mediator are required to hold such discussions confidential, unless all participating parties consent to disclosure.

I can be reached at 518-474-4505 to consult with any party or group of parties concerning this process.



Eleanor Stein
Administrative Law Judge

⁵ Waiver Order, pp. 42-43, 45-46.