

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 17, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin
Patricia L. Acampora

CASE 06-M-0411 – Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications, Inc. Under Public Service Law Section 70 to Authorize Attachment of Cingular Wireless Facilities to Niagara Mohawk Electric Transmission Facilities on Niagara Mohawk property in the Town of Brunswick.

CASE 02-M-1288 – Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications, Inc. to Attach Wireless Facilities on Niagara Mohawk Transmission Facilities.

ORDER APPROVING AGREEMENT

(Issued and Effective June 19, 2006)

BY THE COMMISSION:

BACKGROUND

On April 6, 2006, Niagara Mohawk Power Corporation (Niagara Mohawk or NMPC) and National Grid Communications, Inc. d/b/a National Grid Wireless Infrastructure (Grid Wireless, and collectively, the Petitioners) filed a joint petition for approval under Public Service Law §70 authorizing Grid Wireless to permit attachment of wireless facilities belonging to Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless (Cingular) to attach wireless facilities to certain NMPC electric

transmission facilities. Niagara Mohawk and Grid Wireless are affiliates and separate subsidiaries of National Grid USA.

Grid Wireless seeks to sublicense Cingular to make wireless attachments to Niagara Mohawk's double-circuit transmission tower # 392 on the North Troy – Wynantskill #14, North Troy-Reynolds Road #16 (115kV) transmission line located in the Town of Brunswick, Rensselaer County NY. This project consists of the installation of initially 6 antennas (with 3 future antennas) on a new 100-foot tubular steel pole set inside the existing 81-foot tall double-circuit 115kV lattice transmission structure. The antenna array will be located above the top phase of the conductors and the shield wires.

A 20-foot long by 11.5-foot wide by 9.5-foot high precast concrete equipment shelter will be located on a concrete pad surrounded by a 21.5-foot by 33-foot by 8-foot high chain-linked fence topped by 3 strands of barbed wire. The fenced equipment shelter will be placed on an approximately 60-foot long by 60 foot wide crushed-stone work pad and vehicle parking area. The cables connecting the antennas to the equipment will be located inside the tubular pole to a point about 10-feet above the ground where the cables will exit the pole. A 9.5-foot waveguide bridge will cover the coaxial cables from the tubular pole to the equipment shelter. Electrical and telephone service to the equipment shelter will be placed underground along the 12-foot wide access road from Pinewood Avenue to the equipment shelter. The proposal also contains plans for a screen planting of evergreens on the north side of the fenced equipment shelter. The petition is for a site-specific proposal. NMPC has submitted the required information with the petition.

DISCUSSION

Section 70

PSL §70 provides: "No gas corporation or electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system without the written consent of the Commission."

On May 15, 2003, the Commission approved a master NMPC and National Grid Communications (Gridcom) joint agreement authorizing Gridcom to attach wireless facilities on Niagara Mohawk transmission facilities¹. On April 14, 2004 the Commission approved NMPC's procedures designed to facilitate the review of future petitions for wireless attachments to NMPC's transmission facilities.²

The Agreement between Gridcom and NMPC assures Niagara Mohawk's right to use its transmission facilities for the provision of safe and reliable service and allows Grid Wireless to permit Cingular to attach their equipment to NMPC's transmission structures in accordance with the policies of the Commission and the Federal Communications Commission. In return for the use of its transmission structures, NMPC will receive monthly occupancy fees based upon volume discount pricing.

For this particular attachment, NMPC and Grid Wireless have executed a Supplemental Agreement subject to the same terms and conditions as the Master Agreement between NMPC and Grid Wireless. The initial term for the agreement is for five years with options to renew for up to four additional terms of five years each, provided Grid Wireless is not in default under the Agreement.

¹ Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications for approval to authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Transmission Facilities, Order Approving Agreements (Issued May 15, 2003).

² Case 02-M-1288 Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications for approval to authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Transmission Facilities, Order Approving Procedure, (Issued and Effective April 14, 2004). Wireless providers are required to provide NMPC with construction and site plans showing the potential site; copies of any required approvals and permits to construct and operate wireless and associated facilities; a structural analysis of the transmission structure showing the structure's ability withstand the wireless antenna's weight on the structure; copies of any environmental assessments, regulatory, municipal permits and approvals; title searches and insurance (as needed) and a showing of compliance with all applicable regulations, codes and standard (April 14, 2004 order).

The proposed attachment is approved in compliance with the April 14, 2004 order as it is in the public interest. The following documentation has been submitted to the Commission in support of the petition.

Engineering and Environmental Review

The petition contained the required components of the procedure and process approved by the Commission in the April 14, 2004 order, including the Supplemental Agreement and construction drawings, a structural analysis of the additional loads on the steel pole, a completed State Environmental Quality Review Act (SEQRA) Environmental Assessment (Long-form EAF), and a Building Permit issued by the Town of Brunswick for the antennas and equipment building installation. The Town of Brunswick assumed lead agency under SEQRA and determined that a Negative Declaration was appropriate for the proposed approval by the Town Board. The Town of Brunswick issued a building permit to Cingular. Besides the Commission's approval of this Petition, Staff is not aware of any other required State or local approvals.

In keeping with the directives in Case 02-M-1288, we have reviewed the Petitioners' submittals, and determined that the proposed antenna attachment meets the design and National Electric Safety Code (NESC) requirements for the reliability of the electric system. It is the responsibility of NMPC to ensure that the wireless antennas are installed in accordance with the design drawings and the specifications that Staff reviewed. Upon completion of the wireless antenna and the equipment shelter installation, NMPC should provide the Commission staff with a written certification that the installation conforms to NMPC construction standards and the NESC.

Electrical service should not be provided to the site until all equipment can be locked and secured. Equipment and material used in construction and installation of the antennas should be secured at all times and kept within the limits of construction as shown on the construction drawings. The Petitioners' drawing includes provision for a temporary portable emergency generator to power the site in the event of a power failure. Provision for parking the temporary portable generator has been designed and located

within the fenced area. The temporary portable generator shall meet all noise requirements.

A field review was also conducted. The 115kV double circuit transmission line is located on the west side of the Eagle Ridge subdivision, just south of Pinewood Avenue. The west side of the right-of-way is occupied by a natural gas pipeline. The area is best described as rural-residential suburb of Troy, New York. The construction plans show a row of evergreens for a screen planting on the north side of the fence around the equipment shelter. This is the side facing the Eagle Ridge subdivision. NMPC will select a deer-tolerant evergreen tree species for the screen planting. This area has a large deer population and browse damage to landscape plantings is high.

The Commission will approve minor changes to the approved construction drawings pending review by Staff and submittal of the change for approval by the Secretary of the Commission or a designee such as the Director of the Office of Electricity and Environment.

State Environmental Quality Review Act

Under the State Environmental Quality Review Act (SEQRA), a state agency must determine whether actions it is requested to approve may have a significant impact on the environment. The proposed action to be approved is the Agreement between Niagara Mohawk and Grid Wireless, allowing Cingular to install an antenna array and an equipment shelter on the Niagara Mohawk transmission facility in the Town of Brunswick. The proposed action does not meet the definition of either a Type 1 or Type 2 action under 6 NYCRR Sections 617.4, 617.5 or 16 NYCRR Section 7.2. The proposed action should be classified as an "unlisted" action requiring SEQRA review.

The Commission issues a negative declaration.

CONCLUSION

The Commission approves the joint petition allowing attachment of Cingular's wireless facilities to NMPC's transmission facilities in the Town of Brunswick as it is in the public interest because it will help to meet the allowed revenue requirement

of NMPC and will not negatively impact the environment or the reliability of the electric system. Niagara Mohawk shall comply with the following conditions:

1. During site work and construction/antenna installation, Niagara Mohawk shall observe the construction activities to ensure faithful execution of the Commission's Order and that the activities by others are consistent with the Commission's rules and regulations for rights-of-way vegetation management plans.
2. Niagara Mohawk shall define and control the limits of construction disturbance on the right-of-way to the minimum necessary for safe construction activities.
3. Niagara Mohawk shall ensure that temporary erosion controls are in place before any soil is moved for site preparation and continue to be effective pending final restoration of the disturbed site.
4. Niagara Mohawk shall ensure that dirt and mud are not tracked onto the local roads by vehicles leaving the site.
5. Niagara Mohawk shall ensure that all rubbish and debris will be disposed in a permitted landfill.
6. Niagara Mohawk shall select a deer tolerant evergreen species for the landscape screen planting on the north side of the fence around the equipment shelter.
7. Niagara Mohawk shall only use a temporary portable generator at the site in the event of a power outage.
8. Upon completion of the wireless antenna and the equipment shelter installation, Niagara Mohawk shall provide the Commission with a written certification that the installation conforms to NMPC construction standards and the NESC, Electrical service shall not be provided to the site until all equipment can be locked and secured. Equipment and material used in construction and installation of the antennas should be secured at all times and kept within the limits of construction as shown on the construction drawings.
9. NMPC shall report any proposed changes to the approved construction plans to Department of Public Service (DPS) Staff. DPS Staff shall refer reports of any proposed changes to the Secretary of the Commission (or a designee) that do not cause substantial change in environmental impact or

are not related to contested issues. NMPC shall not execute any proposed change until it receives oral or written approval, except in emergency situations threatening personal injury, property damage or severe environmental impact or as specified in the Commission-approved construction drawings.

10. Niagara Mohawk shall monitor final restoration for effectiveness.

The Commission orders:

1. The Joint Petition of NMPC and National Grid Communications for the installation of the cellular antennae and base equipment attachments of Southwestern Bell Mobile Systems, LLC, d/b/a Cingular Wireless to Niagara Mohawk electric transmission facilities in the Town of Brunswick, Rensselaer County, New York is approved as it is in the public interest, in compliance with the April 14, 2004 order in Case 02-M-1288, and consistent with that order and subject to all conditions in this order;
2. Niagara Mohawk shall notify the Commission within ten days of the wireless attachments becoming operational;
3. Niagara Mohawk shall notify the Commission within ten days of completion of construction and site restoration that the installation antennas conform to Niagara Mohawk's construction standards and the NESC;
4. A Negative Declaration under SEQRA is issued; and
5. Case 06-M-0411 is closed. Case 02-M-1288 is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

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PUBLIC SERVICE COMMISSION

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NOTICE OF DETERMINATION
OF SIGNIFICANCE
Negative Declaration

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications, Inc. to authorize Southwestern Bell Mobile Systems, LLC d/b/a Cingular Wireless to attach wireless antenna equipment to Niagara Mohawk's transmission facilities, based upon our determination in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The approval of this action is an Unlisted Action as defined under 6 NYCRR Section 17.7(c).

Based upon our review of the record, the approval of the Joint Petition of Niagara Mohawk and National Grid Communications, Inc. to authorize Cingular Wireless to attach wireless facilities to Niagara Mohawk's transmission facilities, under Section 70 of the Public Service Law will cause no changes to the operation of the distribution facilities that will result in significant adverse environmental impacts.

The address of the Public Service Commission, the lead agency for the purposes of the uncoordinated Environmental Quality Review of this project is Three

CASES 06-M-0411 and 02-M-1288

Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary