

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 16, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 09-M-0675 - Petition of Orange and Rockland Utilities, Inc. and T-Mobile Northeast LLC for Approval Pursuant to Section 70 of the PSL for Authorization for T-Mobile's Existing Wireless Equipment Attached to Orange & Rockland's Electric Transmission Facilities (Pole B71).

CASE 09-M-0676 - Petition of Orange and Rockland Utilities, Inc. and T-Mobile Northeast LLC for Approval Pursuant to Section 70 of the PSL for Authorization for T-Mobile's Existing Wireless Equipment Attached to Orange & Rockland's Electric Transmission Facilities (Tower 54).

ORDER GRANTING PETITIONS

(Issued and Effective January 22, 2014)

BY THE COMMISSION:

INTRODUCTION

On September 11, 2009, Orange and Rockland Utilities, Inc. (O&R) and T-Mobile Northeast LLC (T-Mobile) submitted two joint petitions requesting authorization for existing leases for location of T-Mobile wireless antenna panels and equipment boxes at two O&R transmission towers Pole B71 and Tower 54. On November 26, 2013 in Case 09-M-0676 and November 27, 2013 in Case 09-M-0675, T-Mobile filed supplements to the petitions verifying that it completed remedial measures required for safe

operation of its facilities and submitting engineering plans and designs for enclosures to prevent persons from accessing the wireless equipment or the transmission towers. For Pole B71, the plans require an anti-climbing enclosure for the site's ice-bridge¹ (Generic Design) to prevent persons from walking across the bridge to the Pole. For Tower 54, the plans require a fence around the Tower site and a sheet metal enclosure around a portion of the cable bridge. T-Mobile requests approval of the petitions, upon condition that it submits proof indicating that it completed installation of the proposed enclosures as described in the submitted plans for within 60 days after issuance of this Order Pole B71 and within a date specified in the Commission's order for Tower 54.

The petitions are filed in compliance with Commission orders determining that each investor-owned electric corporation is required to obtain approval for transfer of the right to occupy space on or near transmission structures for wireless facilities pursuant to Public Service Law §70,² directing each corporation to submit petitions for approval for each existing and future lease, and requiring necessary engineering, legal and environmental documentation for each petition in accordance with an established Standard Procedure.³

O&R and T-Mobile submitted the required documentation for wireless installations as required in O&R's Standard

¹ Ice-bridges cover coaxial cables running from the tower structure to the equipment shelter to provide protection from possible ice damage.

² Case 02-M-1288, Niagara Mohawk Power Corporation - Wireless Facilities, Order Approving Agreement (May 15, 2003) (2003 Order).

³ Case 02-M-1288, supra, Order Approving Procedure (issued April 14, 2004), p. 4.

Procedure.⁴ As demonstrated in the petitions, the wireless installations comport with legal, environmental, and engineering requirements to ensure the safety and reliability of the O&R system; and, comply with federal, state and local environmental review, site approval, and permitting requirements.

The leases establish specific terms for use of the O&R facilities to maintain safety and reliability and for payment of an occupancy fee to benefit O&R ratepayers. T-Mobile requires the use of these wireless facilities to continue to provide wireless service to its subscribers and offer competitive telecommunications services in New York State. The proposed enclosures around Pole B71 and Tower 54 will provide needed security for restricting access to the wireless equipment and transmission towers. Accordingly, we approve the T-Mobile leases for use of the O&R transmission towers, upon the condition that the proposed security enclosures are constructed in accordance with the submitted plans within 60 days after the issuance of this Order.

STANDARD PROCEDURE

In its Standard Procedure, O&R: provides a detailed list of the responsibilities of the licensee and licensor; describes the application, licensing, and permitting process; states that attachments to transmission towers are governed by the National Electrical Safety Code, Federal Communications Commission OET Bulletin No. 65, electric transmission, engineering, environmental, construction and other corporate

⁴ Case 02-M-1288, supra, Electric Transmission Tower Wireless Attachment Standard Procedure of Orange and Rockland Utilities, Inc., filed June 14, 2004; and, Case 07-M-0954, Orange and Rockland Utilities, Inc. and Sprint Spectrum, L.P. - Wireless Equipment on Transmission Facilities, Order Approving Petition (issued February 14, 2008).

standards, and applicable local, state, and federal requirements; and, lists the documents required for a petition seeking PSL §70 approval for wireless attachments. The required documents include: leases; Wireless Telecommunications Tower Attachment Checklist; exhibit showing location of the equipment on the tower; structural analysis report; evidence of compliance with governmental requirements; and, for a tower on a transmission line certified pursuant to Public Service Law Article VII,⁵ a statement that the wireless attachment is consistent with the certification and right-of-way management plan.

PETITIONS

Each petition contains: Site Lease Agreement; Master Lease Agreement; an engineering firm's structural analysis report; and, municipal permits. For Tower 54, the petitioners provide a copy of the analysis of the radiofrequency environment in compliance with Federal Communication Commission requirements.

Description of Licenses

Pole B71: On May 11, 2000, O&R and T-Mobile executed a Site Lease Agreement for Pole B71, amended on June 11, 2003. The site, on O&R's Transmission Line 67/68 right-of-way, is located on Diltz Road in the Town of Ramapo, Rockland County. The installation consists of 12 antenna panels attached to Pole B71 at approximately 120 feet above the ground and includes approximately 158 square feet for the equipment cabinets associated with the antennas.

Tower 54: On July 30, 1997, O&R and T-Mobile executed a Site Lease Agreement for Tower 54. The site, on O&R's Transmission Line 551/702 right-of-way, is located between Route

⁵ Pole B71 and Tower 53 are not located on transmission lines certified pursuant to PSL Article VII.

59 and West Nyack Road in the Town of Clarkstown, Rockland County. The installation consists of 9 antenna panels attached to Tower 54 at approximately 110 feet above the ground and includes approximately 200 square feet for the equipment cabinets associated with the antennas.

Lease Terms

For each location, O&R and T-Mobile executed a Site Lease Agreement that incorporates the terms and conditions of a Master Lease Agreement. The leases are non-exclusive, permitting other wireless carriers to attach to the transmission structures, as long as the additional attachments do not adversely affect O&R's operations or operations of any other users of the site. The initial term of each license is five years; with options to renew for two five-year terms. T-Mobile is provided non-exclusive use of and controlled and shared access to the leased promises, provided that it notifies O&R in advance of any entry onto the premises to enable O&R to monitor T-Mobile's activities; any work done at the site is done at T-Mobile's expense. O&R performs all work on the transmission structures; and O&R-approved contractors perform any other work.

The leases establish O&R's right to terminate the arrangements after provision of reasonable notice, if the T-Mobile equipment interferes with any of O&R's activities, operation, or equipment at the sites after a reasonable time for curing the objectionable condition. T-Mobile is required to provide comprehensive public liability and property damage insurance protection for O&R and prohibited from introducing any hazardous substance to the leased premises. T-Mobile is authorized to transfer the leases to a credit-worthy affiliate or subsidiary without O&R's written permission; any material modification or change to the equipment requires the written advance consent of O&R.

O&R charges a uniform rent for use of its transmission facilities. The fee escalates with each renewal term by the aggregate change in the Consumer Price Index for the Northeast Urban Region since the commencement of the initial term.

Based upon its review of the documentation submitted by T-Mobile, O&R concludes that T-Mobile submitted the necessary documentation, in accordance with the Standard Procedure. O&R states that the documentation demonstrates that location of the wireless equipment on the two structures does not result in adverse effects on the operation of its transmission circuit's, system reliability, electrical safety, or the environment.

The petitioners request that the Commission authorize the wireless attachments on the O&R transmission structures for several reasons. T-Mobile needs the facilities to continue to provide wireless services to its customers. The wireless attachments will not impact the electric corporation's ability to provide reliable, safe, and adequate service to its customers. The terms and conditions of the T-Mobile licenses are comparable to the terms and conditions provided to other wireless providers and will benefit O&R's core customers. O&R and T-Mobile request that, based upon other Commission orders approving wireless installations, the Commission waive the Commission's rules relating to the provision of financial information for establishing accounting and ratemaking treatment for property transfers (16 NYCRR §31.1 (f) - (l)).⁶ The petitioners request that the Commission designate a person with

⁶ The Commission determined that compliance with these rules is unnecessary and waived the rules for any future petitions for authorizations for wireless installations under O&R's Standard Procedure (Case 07-M-0954, supra, Order Approving Waiver (issued April 25, 2008)). The information required in these rules is irrelevant to the leases for wireless installations because the occupancy fees are subject to the supplemental Agreements and are not established as a Commission-approved rate.

the authority to approve any minor changes to the construction drawings for enclosures improvement safety of the wireless installations.

T-Mobile Supplements

Pole B71

T-Mobile states that, during an investigation of the petition relating to Pole B71, the Staff identified the need for remedial measures to improve safety and security of the wireless installations and for the construction of a security measures to restrict access via the ice bridge to the transmission facilities. It submitted a supplemental filing that remedial measures are complete, with the exception of a climbing ladder owned by O&R and scheduled for removal during O&R's next schedule outage of the 345kv transmission line. As of March 26, 2013, T-Mobile verified the following remedial measures are complete: (1) the ice bridge is at least 10 feet from grade or any other climbing object; the fence enclosure is locked and secure; and, the electric panel box is locked and outside the cabinet fence area. To provide additional security at the ice bridge, T-Mobile submitted generic engineering designs and diagrams prepared by Tectonic Engineering and Surveying Consultants, P.C. for an anti-climbing device at Pole B71. The generic design proposes two options: a removable sheet metal enclosure and installation of a chain link fence climbing deterrent or installation of an eight foot high chain link fence around the perimeter of the ice-bridge. T-Mobile will determine the most effective option for this specific location. T-Mobile requests approval of the petition relating to Pole B71, upon the condition that T-Mobile install the security measures within 60 days after the issuance of this Order.

Tower 54

T-Mobile states that, during an investigation of the petition relating to Tower 54, the Staff identified the need for remedial measures to improve safety and security of the wireless installations and for the construction of a security measures to restrict access to the transmission facilities. It submitted a supplemental filing stating that, as of July 31, 2013, remedial measures are complete, including: installation of locks on electric panel boxes and equipment cabinets, and securing of signage with steel zip ties. To provide additional safety and security at the ice bridge, T-Mobile submitted designs and diagrams, prepared by Tectonic Engineering and Surveying Consultants, P.C., for a seven-foot chain link fence topped with barbed wire surrounding T-Mobile's equipment cabinets and a section of an ice-bridge. According to the plans, the section of the ice-bridge that extends beyond the fence would be fitted with a removable sheet metal enclosure to prevent persons from using the ice-bridge to access the tower. T-Mobile requests approval of the petition relating to Tower 54, upon the condition that T-Mobile install the security measures within a time specified in the Commission's order.

STATE ENVIRONMENTAL QUALITY REVIEW ACT

Under the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8), state agencies are required to determine whether the actions they are requested to approve result in a significant impact on the environment. The Commission is considering approvals of leases permitting installations of wireless facilities on and adjacent to two O&R transmission structures.

No other agency exercises jurisdiction relating to the proposed actions; and no interested agency asked to participate

in the proceedings. Accordingly, we are the lead agency responsible for environmental review under SEQRA of the proposed actions.

A lead agency is required to classify a proposed action as a Type I action that may have a significant impact on the environment and likely requires preparation of an Environmental Impact Statement, a Type II action that is presumed to result only in minimal environmental impacts and does not require environmental review, or an unlisted action that is not specifically classified as a Type I or Type II action and requires a Full or Short Environmental Assessment Form (EAF). As lead agency for the environmental review of the proposed actions, we determine that the authorizations for the licenses are unlisted actions because they are not specifically classified as Type I or Type II actions under SEQRA (6 NYCRR §617.2(a) through (k)).

As required by SEQRA for unlisted actions, the petitioners prepared Part 1 and the DPS Staff prepared Parts 2 and 3 of a Short EAF for both of the proposed licenses. Based upon our review of the petitions, EAFs, field visits, and criteria for evaluation of significant adverse environmental impacts (6 NYCRR §617.7(c)(1)), we make a determination that the leases will not result in any significant adverse impacts on the environment (determination of significance) and, consequently, no environmental impact statements are required, and adopt a negative declarations for the proposed leases. The transmission facilities are located on the properties; the properties are already developed; and, no major changes in use or effects on environmental elements will result. A Determination of Non-Significance Negative Declaration for the proposed leases for the two O&R transmission structures is attached to this Order.

DISCUSSION AND CONCLUSION

The petitions are comprehensive and provide the information necessary for our review and determination, in compliance with our orders and O&R's Standard Procedure. The documents submitted, including the structural analysis reports, environmental assessment forms, and governmental permits, support our determination that the wireless antennas and associated equipment do not result in adverse impacts on O&R's operation of the transmission structures, its system reliability, its provision of safe and adequate electric service, or the environment.

Enclosures at both sites are necessary to improve safety and security and prevent persons from climbing obtaining access to the transmission towers and wireless equipment. Review of the plans and designs submitted by T-Mobile indicates that they provide viable options for protecting the public and assuring the security of the facilities at the sites. We, therefore, grant the petitions for approval of the existing wireless attachments, provided that, construction of the enclosures, in accordance with the filed plans, is completed within 60 days after the issuance of this Order and O&R and T-Mobile submit evidence to the Secretary to the Commission that construction of the enclosures at each of the two locations is complete. If any minor changes to the submitted plans are necessary, O&R and T-Mobile shall submit the revisions to the Director of Office of Energy, Efficiency and the Environment for review and approval.

The Commission orders:

1. The petitions of Orange and Rockland Utilities, Inc. and T-Mobile Northeast LLC for approval of leases relating to location of wireless facilities on and adjacent to Orange and

Rockland Utilities, Inc.'s electric transmission facilities described in the body of this Order are granted, upon the condition that T-Mobile Northeast LLC shall complete construction of the security measures within 60 days after the date of the issuance of this Order, in accordance with the submitted plans and designs and the discussion in the body of this Order.

2. Fifteen days after completion of the construction of the security measures, Orange and Rockland Utilities, Inc. and T-Mobile Northeast LLC shall submit to the Secretary to the Commission certification that construction of the security measures for each facility is complete.

3. The Director of the Office of Energy Efficiency and the Environment is authorized to approve any minor changes to the plans, designs, and diagrams for the security measures.

4. The Secretary in her sole discretion may extend the deadlines set forth in this order, provided the request for such extension is in writing, including a justification for the extension, and filed on a timely basis, which should be on at least one day's notice prior to any affected deadline.

5. The proceedings in Cases 09-M-0675 and 09-M-0676 are closed, upon compliance with Ordering Clause Nos. 1 and 2.

By the Commission,

KATHLEEN H. BURGESS
Secretary

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DETERMINATION OF NON-SIGNIFICANCE
NEGATIVE DECLARATION

This is a negative declaration for two unlisted actions, in compliance with the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8). Orange and Rockland Utilities, Inc. and T-Mobile Northeast LLC request Commission approval of existing leases for use of O&R Pole B71 and Tower 54 for installation of wireless facilities.

The Commission assumed the role of lead agency for the environmental review of the proposed action and determined that it is an unlisted action, as defined under 6 NYCRR §617.2(a) through (k). The Commission determined that its approval will not result in any significant impact on the environment and no preparation of an Environmental Impact Statement is required. The determination is made because a transmission facility is located on the property; the property is already developed; and, no major changes in use or effects on environmental factors will result from granting the authority.

The address of the Public Service Commission is Three Empire State Plaza, Albany, New York 12223-1350. For further information, please contact Richard H. Powell at the above address, Richard.Powell@dps.ny.gov, or (518) 486-2885.

KATHLEEN H. BURGESS
Secretary