

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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In the Matter of	:	
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POSEIDON TRANSMISSION 1, LLC	:	Case 13-T-0391
	:	
Application of Poseidon Transmission 1, LLC for a	:	
Certificate of Environmental Compatibility and Public	:	
Need Pursuant to Article VII of the Public Service Law	:	
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RESPONSE TO DPS DEFICIENCY ITEM 1

DPS-1:

The documents do not comply with the requirements of 16 NYCRR §85-2.10(a)(1) that the applicant provide proof of service on each municipality in which any portion of the facility is to be located, both as primarily and alternatively proposed, in that the chief executive officers of New York City were not served.

Response:

Poseidon Transmission 1, LLC has provided copies of the notice and Article VII Application filed on September 30, 2013 on the Honorable Michael R. Bloomberg and Helen M. Marshall, Office of the Queens Borough President. Attached for your files are copies of the relevant cover letters.

Name of Person(s) Preparing Response: The Dax Law Firm, P.C.

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 2

DPS-2:

The documents do not comply with the requirements of 16 NYCRR §85-2.10(a)(6) that the applicant provide proof of service on each member of the New York State Legislature through whose district any part of the facility, as primarily or alternatively proposed, would pass, in that Assemblymembers Harvey Weisenberg and Phillip Goldfeder (for the 20th and 23rd Assembly Districts, respectively) and Senators Dean Skelos and Joseph Addabbo (for the 9th and 15th Senate Districts) were not served.

Response:

Poseidon Transmission 1, LLC has provided copies of the notice and Article VII Application filed on September 30, 2013 on Assemblymembers Harvey Weisenberg and Phillip Goldfeder (for the 20th and 23rd Assembly Districts, respectively) and Senators Dean Skelos and Joseph Addabbo (for the 9th and 15th Senate Districts). Attached for your files are copies of the relevant cover letters.

Name of Person(s) Preparing Response: The Dax Law Firm, P.C.

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 3

DPS-3:

The documents do not comply with the requirements of 16 NYCRR §86.3(b)(1)(i) that the applicant submit specified aerial photographs including overlays, in that overlays do not clearly identify the proposed right-of-way.

Response:

Attached Figure 2-3 (Revised) identifies a six (6) foot permanent easement that will be sought from the Office of Parks, Recreation and Historic Preservation and a six (6) foot right of occupancy from New York State Department of Transportation and local highway departments and the Long Island Power Authority by Poseidon for the Project. The final temporary and permanent easements required for the Project and negotiated with land owners will be provided in the EM&CP.

Name of Person(s) Preparing Response: Scott Lundin, ESS Group, Inc.
Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 4

DPS 4:

The documents do not comply with the requirements of 16 NYCRR §86.3(b)(1)(iii) that the applicant submit specified aerial photographs, in that the aerial photographs do not show the location of access and maintenance routes (including any access from public roads that may not coincide with the proposed facility centerline, access to the transition vault at Jones Beach State Park, access to the crossing of the Cedar Creek wastewater treatment facility property, access to construction sites along controlled-access highways, and permanent access to the converter station site).

Response:

Attached Figure 2-3 (Revised) identifies the location of the preliminary access routes required during construction for the proposed Land Cable Route and Converter Station. Temporary access to the landfall and transition vault in the vicinity of the Jones Beach State Park and at specified locations along the controlled-access highway that may be required during construction are shown on Sheets 2, 14, 24, 26, 28, 30. The Cedar Creek wastewater treatment facility property will be accessed via the existing road leading into the facility (see Sheets 11 and 12). Permanent access to the Converter Station and the preliminary location of entrance gates along the perimeter of the site are shown on Sheet 34.

Final access routes and converter station site layout will be provided in the EM&CP. Permanent maintenance routes are not anticipated for the Project given the accessibility of the entire Land Cable Route via public roads and existing utility rights-of-way.

Name of Person(s) Preparing Response: Scott Lundin, ESS Group, Inc.
Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 5

DPS-5:

The documents do not comply with the requirements of 16 NYCRR §86.4(a)(3) that the applicant submit a statement explaining what consideration, if any, was given to any alternate method which would fulfill the energy requirements with comparable costs, in that such explanation was not provided.

Response:

As explained in Exhibit 3, the Poseidon Project's purpose is to create a connection between the Long Island Power Authority's (LIPA) 138 kV transmission system and PJM's 500 kV transmission system in order to allow suppliers of capacity and energy in PJM to have access to LIPA's market with all the benefits for LIPA customers attendant thereto (*e.g.*, lower prices, greater supply diversity and increased reliability).

Poseidon Transmission 1, LLC (Poseidon) is a developer of independent transmission projects, not a regulated retail utility with the power of eminent domain. While certain of the purposes served by the Poseidon Project could potentially be met with alternative methods (*e.g.*, new on-Island generating capacity), the costs of such projects are not readily apparent and, in any event, Poseidon is not a developer of generating projects. More importantly, the full range of the Poseidon Project's benefits could not be met with any method other than a high-voltage, direct current transmission facility connecting LIPA's 138 kV system to PJM's 500 kV system. Therefore, Poseidon restricted its assessment of alternatives to the choice of terminating substations, conversion technology, cable routes and converter station sites, all as explained in Exhibit 3.

Name of Person(s) Preparing Response: Clarke Bruno

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 6

DPS 6:

The documents do not comply with the requirements of 16 NYCRR §86.5(b)(4) that the applicant state what, if any, schedule or methods of clearing the right-of-way has been formulated, in that such statement was not provided.

Response:

As described in Exhibit 4, Section 4.7.2.1 the HVDC Land Cable Route was sited, to the extent practical, primarily adjacent to roadways and within existing maintained ROWs to avoid the need to disturb or remove vegetation. Adequate workspace to accommodate HDD operations and open-trenching exists within currently maintained and mowed open areas along most of the Land Cable Route. However, some clearing and removal of vegetation, shrubs and trees will be necessary during construction and accomplished using standard tree cutting and vegetation removal equipment. Any clearing and grubbing of trees, shrubs and grasses associated with installation of the cable will be confined to the limits of the construction workspace, which is anticipated to be a maximum of 30 feet wide, centered on the Land Cable Route.

The schedule for the clearing within the construction workspace along the HVDC Land Cable is expected to occur incrementally as the installation activity progresses along the Land Cable Route. Clearing of the Converter Station site is anticipated be one of the first activities that will occur during construction of the Converter Station. Additional details of the methods of clearing will be provided in the EM&CP.

Name of Person(s) Preparing Response: Robert Erickson, ESS Group, Inc.
Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 7

DPS 7:

The documents do not comply with the requirements of 16 NYCRR §86.5(b)(7) that the applicant state what, if any, pesticide or herbicide will be used in the construction or maintenance of the proposed facility (including the volumes and manner of use), in that such statement was not provided.

Response:

No application of herbicides or pesticides is intended to be used during construction. Land clearing will be performed by conventional mechanical means and limited to the minimum width necessary to install the cables.

Since Poseidon is seeking easements for installation of the HVDC Land Cable within existing highway, street and utility corridors, the areas along existing access roads and within transmission Rights-of-Way will be maintained by others. It is anticipated that these area will continue to be maintained in the manner consistent with their vegetation management plans which are anticipated to prevent tree-growth over the Land Cables. Poseidon does not intend to use any pesticides or herbicides along the Land Cable Route.

Except for the ornamental plantings (grass, shrubs, etc.) that may be installed along the periphery of the Converter Station site as screening, the main equipment area will be maintained free of intrusive vegetation that could affect operation of the facility (such as overhanging tree limbs). The open areas within the fenced Converter Station site will be paved or graveled. In is anticipated that weeds will be controlled using spot applications of commercially available herbicides.

Name of Person(s) Preparing Response: Robert Erickson, ESS Group, Inc.
Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 8

DPS 8:

The documents do not comply with the requirements of 16 NYCRR §86.5(b)(9) that the applicant state what, if any, provisions have been made for cleanup and restoration of the project area after construction, in that the statement (including a discussion of any plans for cleanup and restoration of upland areas and restoration of benthic conditions at underwater locations) was not provided.

Response:

As described in Exhibit 4, re-vegetation and restoration of disturbed areas within the construction workspace will include preparation of the soil for subsequent plantings, application of topsoil (as required) on unpaved areas, and the seeding of grass and planting of shrubs and trees pursuant to ROW owner landscaping requirements and specified in the EM&CP. Temporary restoration, including hydroseeding or mulching of grassy areas will be performed as necessary. Where permanent restoration is not possible (e.g., winter weather conditions), the disturbed areas will be temporarily restored until permanent restoration can occur.

As discussed in Section 4.6.2.1 benthic areas impacted within the footprint of the Temporary Cofferdams, by Submarine Cable installation and during barge spudding are expected to re-colonize quickly. Because of the relatively small area of affected benthic habitat within the Cofferdam and rapid recolonization expected, impacts to the benthic community will be minor and temporary.

Name of Person(s) Preparing Response: Robert Erickson, ESS Group, Inc.
Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 9

DPS 9:

The documents do not comply with the requirements of 16 NYCRR §86.6(a) that the applicant submit design, profile and architectural drawings and descriptions of the proposed facility that include the length, width and height of any structure, in that such information was not included.

Response:

Preliminary architectural drawings for the New York Converter Station are provided in Exhibit 5, which include the length, width, and height the proposed structures. The reactor hall complex will be approximately 125 feet (38 meters) wide by 243 feet (74 meters) long by 52.5 feet (16 meters) high. The Storage Building will be approximately 49 feet (15 meters) wide by 75.5 feet (23 meters) long by 23 feet (7 meters) high.

Attached Figure 5-1, Sheets 2 and 3 (Revised) is provided per the request of DPS Staff. The version of Figure 5-1 submitted with the application provided dimensions of the proposed facilities in metric units and Staff requested the figures be modified to provide English units.

Name of Person(s) Preparing Response: Scott Lundin, ESS Group, Inc.
Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 10

DPS 10:

The documents do not comply with the requirements of 16 NYCRR §86.6(b) that the applicant submit design, profile and architectural drawings and descriptions of the proposed facility that include the material of construction, color and finish, in that such information was not included.

Response:

As described in Exhibit 5, the Converter Station buildings will have steel skin façades with neutral paint colors selected to minimize visual impacts.

Name of Person(s) Preparing Response: Scott Lundin, ESS Group, Inc.

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 11

DPS-11:

The documents do not comply with the requirements of 16 NYCRR §86.8(a) that the applicant submit a list of all local legal requirements applicable to the proposed facility, a statement that the location of the proposed facility conforms to all such local legal requirements (except any that the applicant requests the Commission to refuse to apply), and a statement justifying the request, in that the applicant identified but did not specifically request waiver of the use restrictions in Town of Huntington local law 7.8.3 Article II: Zoning Districts, §198-10(A) for the R-40 district, nor identify or recite the specific provisions of this local law, or provide an analysis of the limitations that the use restrictions in the local law would place on the proposed converter station use.

Response:

Applicant has not requested a waiver of the cited use restriction for the reasons explained below. The Converter Station and AC transmission cable are proposed to be located in a Residence District designated as “R-40.” The existing Ruland Road Substation is located in an adjacent Residence District also designated as “R-40.” The specific regulation cited by Department Staff, Town of Huntington local law 7.8.3 Article II: Zoning Districts, §198-10(A), is a general prohibition which states in relevant part that: “No land may be used except for purposes permitted in the district in which it is located.” Because Applicant has determined that public utility uses and buildings are purposes which may be authorized by the Zoning Board of Appeals (ZBA) for the Town of Huntington, Applicant did not request a waiver of this restriction in its initial Application. Rather, Applicant has concluded that under Article VII the Commission stands in the place of the ZBA for purposes of applying the relevant standards and authorizing the Converter Station.

Applicant’s conclusion is based upon authorizing language contained elsewhere in the Town’s zoning law. Purposes permitted within the R-40 Residence District are set forth or referenced at

Town of Huntington local zoning law Article III: Residence Districts, §§ 198-14 (A)-(E), collectively. Section 198-14(D) refers to “Supplementary use regulations and conditionally permitted uses” as set forth in Article XI of the zoning law. That Article, *i.e.* “Article XI: Conditional Uses; Supplementary Regulations, §198-68(A)(4),” in turn, specifically allows that public utility uses and buildings may be permitted in each zoning district, including the R-40 Residence District, upon approval of the Town of Huntington ZBA. It states, in relevant part:

Public utility uses and buildings, excluding gas storage facilities and generating stations, in any district, provided that in the case of residence districts the Board shall find that such use of building is necessary to the service of the neighborhood or that its location is fixed by the technical requirements of the utility system.

Based on this language, Applicant determined that public utility buildings and structures are specifically permitted in the R-40 Residential District provided the Commission, rather than the ZBA, agrees with the Applicant’s conclusion that the Converter Station location is “fixed by the technical requirements of the utility system.” Therefore, because Applicant determined that uses permitted as “conditionally permitted uses” pursuant to Article XI of the Town of Huntington zoning law were uses “permitted in the district” within the meaning of the general prohibition set forth in Article II: Zoning Districts, §198-10(A), as cited by the Department, Applicant believes that locating the Converter Station in the R-40 Residence District is consistent with this local law and requires no waiver.

Name of Person(s) Preparing Response: The Dax Law Firm, P.C.

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 12

DPS-12:

The documents do not comply with the requirements of 16 NYCRR §86.8(a) that the applicant submit a statement justifying its request that the Commission refuse to apply the Town of Huntington code 7.8.17 Article VII, Off-street Parking, zoning requirement §198-48 Design Standards setting the number of parking spaces at the site, in that the applicant did not identify the number of parking spaces that it proposes to include in the site plan, nor the location of those parking spaces on amended preliminary site arrangement plans.

Response:

Applicant intends to include ten (10) parking spaces at the Converter Station site and has amended the site plan and preliminary site arrangement plans to indicate the location of those parking spaces.

Name of Person(s) Preparing Response: The Dax Law Firm, P.C.
Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 13

DPS-13:

The documents do not comply with the requirements of 16 NYCRR §86.9 that the applicant state whether it has pending an application that concerns the subject matter of the proceeding before the Commission, in that while listing other New York State approvals needed, the applicant does not report that the project will require a Public Service Law §68 Petition for Grant of a Certificate of Public Convenience and Necessity.

Response:

Please see Exhibit 8, which lists, *inter alia*, the required certificate of public convenience and necessity.

Name of Person(s) Preparing Response: The Dax Law Firm, P.C.

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 14

DPS-14:

The documents do not comply with the requirements of 16 NYCRR §86.10(a) that the applicant provide a detailed estimate of the total capital costs of the proposed facility, in that such detailed estimate was not provided.

Response:

Please see the unredacted version of Exhibit 9, submitted to the RAO on September 30, 2013.

Name of Person(s) Preparing Response: The Dax Law Firm, P.C.

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 15

DPS 15:

The documents do not comply with the requirements of 16 NYCRR §88.3(d) that the applicant indicate, on a profile of the proposed underground transmission line, the depth of the cable and the location of manholes, in that such information was not included.

Response:

Attached Figure E3-16 (Sheets 1-4) provides three representative profiles that have been developed to illustrate the configuration of the Cable Route:

- Representative profile of HDD crossing beneath a tidal channel north of Jones Beach for the HVDC Land Cable. The depth of the HVDC Land Cable is shown at the typical burial depth of 4-feet below existing grade on either side of the tidal channel with a splice vault, which includes two man holes;
- Representative profile of HDD crossing beneath an existing road for the HVDC Land Cable. The depth of the HVDC Land Cable is shown at the typical burial depth of 4-feet below existing grade on either side of the road being crossed with a splice vault, which includes two man holes;
- Representative profile of Submarine Cable buried 4-feet below the existing seabed;
- Representative profile of the AC Land Cable illustrating 4 and 5-ft burial depth for the two circuits.

Detailed engineering for the HDD segments has not been completed and the angle of the HDD segments determine the ultimate depth and length of the HDD. Typical HDD entry/exit angles range from 9 to 15 degrees. For the purpose of the representative profiles, an HDD angle of 13° was used. Final HDD designs will be provided in the EM&CP.

Name of Person(s) Preparing Response: Scott Lundin, ESS Group, Inc.

Dated: November 25, 2013

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RESPONSE TO DPS DEFICIENCY ITEM 16

DPS-16:

In addition, the documents also do not comply with PSL §122 in that they do not comply with certain other Commission regulations establishing application requirements, given that Poseidon omitted the required information and requested waiver of the regulations. The waiver of Commission regulations constitutes a rule as defined in the State Administrative Procedure Act (SAPA) and the Commission will not be in a position to act on Poseidon's request until the notice and comment procedures specified in SAPA have been completed. The regulations for which waivers were requested are:

- (a) 16 NYCRR §86.3(a)(1)(i) regarding providing New York State Department of Transportation (NYSDOT) Topographic Edition Mapping showing the proposed right-of-way (with control points indicated), covering an area of at least five miles on either side of the proposed facility location;*
- (b) 16 NYCRR §86.3(a)(1)(iii) regarding maps showing the location of any known archaeological, geologic, historical or scenic area, park or untouched wilderness on or within three miles of the right-of-way;*
- (c) 16 NYCRR §86.3(a)(2) regarding providing New York State Department of Transportation 1:250,000 scale mapping;*
- (d) 16 NYCRR §86.3(b)(2) regarding submission of aerial photographs of urban areas and urbanizing fringe areas taken within six months of the date of filing;*
- (e) 16 NYCRR §86.4(b) regarding indication, on NYSDOT maps, of any alternative route considered; and*

(f) 16 NYCRR §88.4(a)(4) regarding inclusion of the system reliability impact study forwarded by the Transmission Planning Advisory Subcommittee for approval by the Operating Committee of the New York Independent System Operator.

Response:

Poseidon acknowledges that its waiver motion remains pending and did not submit the listed materials (a) through (f) because of the pendency of the waiver motion.

Name of Person(s) Preparing Response: The Dax Law Firm, P.C.

Dated: November 25, 2013