

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 14, 2013

COMMISSIONERS PRESENT:

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

CASE 09-M-0147 - Tower E-10

CASE 09-M-0235 - Tower S-115

CASE 09-E-0657 - Tower K-222

CASE 09-M-0373 - Tower K-153

CASE 09-M-0377 - Tower K-47

CASE 09-M-0391 - Tower E-142

CASE 09-M-0420 - Tower K-103

CASE 09-M-0423 - Tower K-32

CASE 09-M-0425 - Tower D-306

CASE 09-M-0426 - Tower D-254

Petitions for Approval Pursuant to Public Service Law §70 for Existing Omnipoint Communications, Inc. Wireless Facilities Located on and Adjacent to Consolidated Edison Company of New York, Inc. Transmission Towers.

ORDER GRANTING PETITIONS

(Issued and Effective November 20, 2013)

BY THE COMMISSION:

INTRODUCTION

On February 17, 2009 (Case-M-0147), February 23, 2009 (Case 09-M-0235), February 26, 2009 (Case 09-E-0657), April 30, 2009 (Case 09-M-0373 and Case 09-M-0377), May 1, 2009 (09-M-0391), and May 6, 2009 (Cases 09-M-0420, 09-M-0423 and 09-M-0425, and 09-M-0426), Consolidated Edison Company of New York, Inc. (Con Edison) and Omnipoint Communications, Inc. d/b/a T-Mobile (T-Mobile)

submitted ten petitions requesting authorization for existing licenses for location of T-Mobile wireless antenna panels and equipment cabinets at ten specific Con Edison towers situated on major high-tension transmission lines. On June 25, 2012, T-Mobile filed supplements to the petitions providing generic engineering design plans and diagrams for anti-climb enclosures for the ice-bridges¹ (Generic Design) to prevent persons from accessing the wireless equipment or transmission towers by walking over the bridges. It requests approval of the petitions, upon the condition that it submits proof within 60 days after issuance of this Order indicating that it completed installation of the proposed enclosures as described in the Generic Design. On October 4, 2012, Con Edison filed letters stating that its review of the Generic Design enclosures will not impact its ability to conduct operations at the sites.

These 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 (PSL) §70,² directing each corporation to submit petitions for approval for each existing and future license, and requiring documentation for each petition requesting approval in accordance with an established Standard Procedure providing necessary engineering, legal and environmental documentation.³

Con Edison and T-Mobile submitted the required documentation for wireless installations as required in Con Edison's Standard Procedure.⁴ As demonstrated in the petitions, the wireless installations: comport with legal, environmental, and

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), p. 4.

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

⁴ Case 02-M-1288, supra, Electric Transmission Tower Wireless Attachment Standard procedure for Consolidated Edison Company of New York, Inc., dated June 14, 2004.

engineering requirements to ensure the safety and reliability of the Con Edison system; and, comply with federal, state and local environmental review, site approval, and permitting requirements. The licenses establish specific terms for use of the Con Edison facilities to maintain safety and reliability and for payment of an occupancy fee to benefit Con Edison 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 anti-climb enclosures around the ice-bridges will provide needed security for restricting access to the wireless equipment and high-tension transmission towers. Accordingly, we approve the T-Mobile licenses for use of Con Edison transmission towers, upon the condition that the proposed security enclosures are constructed in accordance with the Generic Design within 60 days after the issuance of this Order.

STANDARD PROCEDURE

In its Standard Procedure, Con Edison: 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 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: licenses; 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, a statement that the wireless attachment is consistent with the certification and right-of-way management plan.

PETITIONS

Each petition contains: fee schedules, described as uniform and non-discriminatory and comparable to wireless industry standards; Site Licenses; Standard Terms and Conditions of Antenna License, or Master License; an engineering firm's structural analysis report; municipal permits; and statements that the tower is consistent with PSL Article VII certifications and right-of-way management plan.⁵ When necessary, the petitioners provide copies of the analyses of the radiofrequency environment in compliance with Federal Communication Commission requirements, and any available environmental analyses submitted in connection with applications for municipal permits.

Description of Licenses

Tower E-10: On July 19, 2002, Con Edison and T-Mobile executed a site license for Tower E-10. The site, on Con Edison's E Line right-of-way, is located on Tuckahoe Road in the City of Yonkers, Westchester County. The installation consists of three antenna panels attached to Tower E-10 at approximately 100 feet above the ground and includes approximately 300 square feet for the equipment cabinets associated with the antennas.

Tower S-115: On February 6, 2003, Con Edison and T-Mobile executed a site license for Tower S-115. The site, on Con Edison's S Line right-of-way, is located on Route 17M in the Town of Blooming Grove, Orange County. The installation consists of three antenna panels attached to Tower S-115 at approximately 101 feet above the ground and includes approximately 240 square feet for the equipment cabinets associated with the antennas.

Tower K-153: On March 4, 2003, Con Edison and T-Mobile executed a site license for Tower K-153. The site, on Con Edison's K Line right-of-way, is located on Dell Avenue in the Town of Yorktown, Westchester County. The installation consists of three antenna panels attached to Tower K-153 at approximately 141 feet above the

⁵ Each of the towers is located on a major transmission line certified for construction pursuant to PSL Article VII.

ground and includes approximately 240 square feet for the equipment cabinets associated with the antennas.

Tower K-47: On December 21, 1998, Con Edison and T-Mobile executed a site license for Tower K-47. The site, on Con Edison's K Line right-of-way, is located on Secor Road in the Town of Greenburgh, Westchester County. The installation consists of three antenna panels attached to Tower K-47 at approximately 121 feet above the ground and includes approximately 220 square feet for the equipment cabinets associated with the antennas.

Tower E-142: On March 4, 2003, Con Edison and T-Mobile executed a site license for Tower E-142. The site, on Con Edison's E Line right-of-way, is located at 137 Station Place in the Town of New Castle, Westchester County.⁶ The installation consists of three antenna panels attached to Tower E-142 at approximately 97 feet above the ground and includes approximately 240 square feet for the equipment cabinets associated with the antennas.

Tower K-103: On December 21, 1998, Con Edison and T-Mobile executed a site license for Tower K-103. The site, on Con Edison's K Line right-of-way, is located off Bedford Road in the Town of Mount Pleasant, Westchester County. The installation consists of three antenna panels attached to Tower K-103 at approximately 125 feet above the ground and includes approximately 230 square feet for the equipment cabinets associated with the antennas.

Tower K-32: On August 20, 1998, Con Edison and T-Mobile executed a site license for Tower K-32. The site, on Con Edison's K Line right-of-way, is located off Ashford Avenue in the Town of Greenburgh, Westchester County. The installation consists of three antenna panels attached to Tower K-32 at approximately 116 feet above the ground and includes approximately 150 square feet for the equipment cabinets associated with the antennas.

⁶ This location for Tower E-142 is the one identified in supporting documents filed with the petition and confirmed by Con Edison. The petition lists a different location for the tower.

Tower D-306: On October 4, 2000, Con Edison and T-Mobile executed a site license for Tower D-306. The site, on Con Edison's D Line right-of-way, is located at Peekskill Hollow Road in the Town of Putnam Valley, Putnam County. The installation consists of six antenna panels attached to Tower D-306 at approximately 120 feet above the ground and includes approximately 144 square feet for the equipment cabinets associated with the antennas.

Tower D-254: On February 6, 2003, Con Edison and T-Mobile executed a site license for Tower D-254. The site, on Con Edison's D Line right-of-way, is located off Granite Springs Road in the Town of Yorktown, Westchester County. The installation consists of three antenna panels attached to Tower D-254 at approximately 108 feet above the ground and includes approximately 200 square feet for the equipment cabinets associated with the antennas.

Tower K-222: On February 6, 2003, Con Edison and T-Mobile executed a site license for Tower K-222. The site, on Con Edison's K Line right-of-way, is located on Indian Hill Road in the Town of Yorktown, Westchester County. The installation consists of three antenna panels attached to Tower K-222 at approximately 128 feet above the ground and includes approximately 240 square feet for the equipment cabinets associated with the antennas.

License Terms

Con Edison and T-Mobile executed an Antenna License Standard terms and Conditions, or Master License, and a site license for each location. The licenses are non-exclusive, permitting other wireless carriers to attach to the transmission structures, as long as the additional attachments do not adversely affect T-Mobile's equipment or Con Edison's facilities. The initial term of each license is five years; with options to renew for three five-year terms. T-Mobile is provided non-exclusive use of and controlled and shared access to the licensed promises, provided that it notifies Con Edison in advance of any entry onto the premises to enable Con Edison to monitor T-Mobile's activities; any work done at the site is done at T-Mobile's expense. Con Edison performs all work on

the transmission structures; and Con Edison-approved contractors perform any other work.

The licenses establish Con Edison's right to terminate the arrangements after provision of reasonable notice, if the T-Mobile equipment interferes with any of Con Edison's activities, operation, or equipment at the sites after a reasonable time for curing the objectionable condition, or necessary for its business or operations. T-Mobile is authorized to transfer the licenses to its principal, affiliate, subsidiary, subsidiary of its principal, or any entity that acquires T-Mobile assets in the market without Con Edison's written consent or prior approval; Con Edison's written consent is required for any assignment or transfer of the license to other parties; any material modification or change to the equipment requires the written advance consent of Con Edison. T-Mobile may terminate the license upon payment of a buy-out fee and is responsible for any real estate and other taxes imposed upon Con Edison in relation to the wireless equipment. T-Mobile is required to provide comprehensive public liability and property damage insurance protection for Con Edison.

Con Edison charges a uniform rent for use of its transmission facilities. The fee escalates annually each July by four percent or the Consumer Price Index increase, whichever is greater. According to the petition, the fee schedule is based upon comparable pricing prevalent in the wireless industry for attachment of similar equipment to transmission towers.

Based upon its review of the documentation submitted by T-Mobile, Con Edison concludes that T-Mobile submitted the necessary documentation, in accordance with the Standard Procedure. Con Edison states that the documentation demonstrates that location of the wireless equipment at the ten towers 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 Con Edison 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 Con Edison's core customers. Con Edison and T-Mobile request that 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))⁷ and that the Commission designate a person with the authority to approve any minor changes to the construction drawings.

T-Mobile Supplement

T-Mobile states that, during an investigation of these petitions, the Department of Public Service (DPS) Staff identified the need for remedial measures to improve the safety and security of the ice-bridges by preventing persons from accessing the wireless equipment and high-tension transmission towers. In response, T-Mobile submitted a generic engineering designs and diagrams prepared by Tectonic Engineering and Surveying Consultants, P.C. for anti-climbing devices at each tower location. The Tectonic Generic Design requires 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 each tower location. The T-Mobile supplement includes certification from Tectonic that the Generic Design provides adequate safety, security, and reliability at each tower.

T-Mobile asserts that the modifications will in no way impede a utility worker's access to the transmission tower or impact system reliability and safety. It asserts that the Generic Design is a better alternative to removal of the ice-bridges and burying T-Mobile's coaxial cables, because it results in less environmental impact.

⁷ Waivers are not required for these petitions because the Commission previously granted a waiver of these rules for any and all future wireless attachments made in accordance with the Standard Procedure (Case 08-M-0520, Consolidated Edison Company of New York, Inc. and AT&T Mobility, LLC – Wireless Attachments, Order Approving Waiver (issued April 22, 2009), p. 4).

The letter requests Commission authorizations for the wireless facilities at Con Edison's transmission towers in advance of the construction of the security enclosures, upon the condition that T-Mobile file proof with the Secretary to the Commission within 60 days after issuance of this Order showing that it constructed the proposed enclosure at each location consistent with the Generic Design.

Con Edison Letter

Con Edison states that its Transmission Line Maintenance Department reviewed T-Mobile's Generic Design and determined that the proposed enclosures do not impact Con Edison's ability to conduct its operations at the towers. The Company states that it has no objection to T-Mobile's plan for providing more security at the locations of its wireless equipment.

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 licenses permitting attachments of wireless facilities on and adjacent to ten Con Edison transmission structures.

No other agency exercises jurisdiction relating to the proposed actions; and no interested agency indicated an interest in participating in any of these 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 each of the proposed ten 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 none of the ten licenses will result in any significant adverse impacts on the environment (determination of significance) and, consequently, no environmental impact statements are required, and adopt a negative declaration for each of the proposed ten licenses. 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 licenses for the ten Con Edison transmission towers 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 Con Edison'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 Con Edison's operation of the transmission structures, its system reliability, its provision of safe and adequate electric service, or the environment.

Enclosures for ice-bridges at the towers are necessary to improve safety and security and prevent persons from climbing on the ice-bridges and obtaining access to the high-tension transmission towers and wireless equipment. Review of the Generic Design indicates that it provides 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 Generic Design option, is completed within 60 days after the issuance of this Order and Con Edison and T-Mobile submit evidence to the Secretary to the Commission that construction of the enclosures at each of the ten tower locations is complete. If any minor changes to the Generic Design are necessary, Con Edison 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 Consolidated Edison Company of New York, Inc. and Omnipoint Communications Inc. for approval of licenses relating to location of wireless facilities on and adjacent to Consolidated Edison Company of New York, Inc. electric transmission facilities described in the body of this Order are granted, upon the condition that Omnipoint Communications Inc. shall provide for construction within 60 days after the date of the issuance of this Order of enclosures for the ice-bridges at the towers, in accordance with the proposed generic design and the discussion in the body of this Order.
2. Upon completion of the construction of the ice-bridge enclosures, Consolidated Edison Company of New York, Inc. and Omnipoint Communications Inc. shall submit to the Secretary to the Commission 15 days after completion of the construction a certification that construction of the ice-bridge enclosure for each of the ten towers is complete.
3. The Director of the Office of Energy Efficiency and the Environment is authorized to approve any minor changes to the generic designs and diagrams of the ice-bridge enclosures.
4. The Secretary to the Commission may extend the deadlines set forth in this order upon good cause shown, provided the request for such extension is in writing and filed on a timely basis to provide not less than one day's notice.

CASE 09-M-0147 et al.

5. The proceedings in Cases 09-M-0147, 09-M-0235, 09-M-0373, 09-M-0377, 09-M-0391, 09-M-0420, 09-M-0423, 09-M-0425, 09-M-0426, and 09-E-0657 are closed, upon compliance with Ordering Clause Nos. 1 and 2.

By the Commission,

KATHLEEN H. BURGESS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 09-M-0147 - Tower E-10	CASE 09-M-0235 - Tower S-115
CASE 09-E-0657 - Tower K-222	CASE 09-M-0373 - Tower K-153
CASE 09-M-0377 - Tower K-47	CASE 09-M-0391 - Tower E-142
CASE 09-M-0420 - Tower K-103	CASE 09-M-0423 - Tower K-32
CASE 09-M-0425 - Tower D-306	CASE 09-M-0426 - Tower D-254

Petitions for Approval Pursuant to Public Service Law §70 for Existing Omnipoint Communications, Inc. Wireless Facilities Located on and Adjacent to Consolidated Edison Company of New York, Inc. Transmission Towers.

DETERMINATION OF NON-SIGNIFICANCE
NEGATIVE DECLARATION

This is a negative declaration for unlisted actions, in compliance with the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8). T-Mobile and Con Edison request Commission approval of existing licenses for use of Con Edison towers for 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