

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 11, 2011

COMMISSIONER PRESENT:

Garry A. Brown, Chairman

CASE 08-T-0034 - Application of Hudson Transmission Partners, LLC for a Certificate of Environmental Compatibility and Public Need for a 345 kV Submarine/ Underground Electric Transmission Link Between Manhattan and New Jersey.

CASE 10-E-0339 - Petition of Hudson Transmission Partners, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation.

CASE 11-E-0215 - Petition of Hudson Transmission Partners, LLC for Approval of Construction and Permanent Financing Pursuant to Public Service Law Section 69 and Request for Emergency Action Pursuant to Section 202(6) of the State Administrative Procedure Act.

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY, AUTHORIZING FINANCING, AND
APPROVING ENVIRONMENTAL MANAGEMENT
AND CONSTRUCTION PLAN (SEGMENT 1)

(Issued and Effective May 12, 2011)

INTRODUCTION

On September 15, 2010, in accordance with Article VII of the Public Service Law (PSL), Hudson Transmission Partners, LLC (HTP) was granted a Certificate of Environmental Compatibility and Public Need (Certificate). The Certificate authorized construction of the New York portion of an electric transmission facility that HTP intends to construct between

Ridgefield, New Jersey and Consolidated Edison Company of New York, Inc's (Con Edison) West 49th Street substation in Manhattan (Project or Transmission Facility).¹ Among other matters, the Certificate directed HTP to comply with the provisions of PSL §68 that require HTP to obtain a Certificate of Public Convenience and Necessity (CPCN), and to submit an Environmental Management and Construction Plan (EM&CP) for approval.

On March 25, 2011, HTP submitted an EM&CP for the first segment of the Project that includes trenching, duct/conduit installation, and site excavation to accommodate Horizontal Directional Drilling (HDD) operations, the submarine-to-upland cable transition vault, and the fluid vault associated with the upland cable. As discussed below, this order approves the EM&CP for the first segment of the Transmission Facility.

On April 14, 2011, the Commission issued an order approving a lightened regulatory regime for HTP, but declined to grant a CPCN until HTP filed a final copy of the City of New York's consent to use municipal property in conjunction with the construction and operation of the Project.² HTP filed the required consent of New York City (NYC) on May 5, 2011. Accordingly, HTP is granted a CPCN in this order.

The Lightened Regulation Order also clarified that PSL §69 applies to HTP. On May 2, 2011, HTP filed a petition for approval of construction and permanent financing pursuant to PSL

¹ Case 08-T-0034, Hudson Transmission Partners - Article VII Application, Order Granting Certificate of Environmental Compatibility and Public Need (issued September 15, 2010).

² Case 10-E-0339, Hudson Transmission Partners - Petition for Certificate of Public Convenience and Necessity, and Lightened Regulation, Order Providing for Lightened Rate Making Regulation (issued April 14, 2011) (Lightened Regulation Order).

§69.³ This order authorizes the proposed financing for the Project.

DISCUSSION

State Environmental Quality Review

A comprehensive environmental review of the construction and operation related impacts of the Transmission Facility was conducted pursuant to PSL Article VII.⁴ The granting of a PSL Article VII Certificate is specifically listed as a Type II action exempt from review under the State Environmental Quality Review Act (SEQRA).⁵ The record in the PSL Article VII proceeding contains extensive information regarding the potential environmental impacts of the construction and operation of the Transmission Facility. The PSL Article VII Certificate addresses the potential environmental impacts, and provides protective measures tailored to avoid, minimize, and mitigate the environmental impacts.

The authorization to seek financing and the granting of a CPCN, as provided herein, are activities undertaken in relation to the PSL Article VII Certificate. In this context, these activities are not subject to the requirements of SEQRA.⁶ Accordingly, a separate environmental review under SEQRA is not warranted in connection with HTP's Petition for financing and a CPCN.

³ Case 11-E-0215, Hudson Transmission Partners - Petition for Financing.

⁴ Case 08-T-0034, supra, Order Granting Certificate.

⁵ See, Environmental Conservation Law §8-0111(5)(b); 6 NYCRR 617.5(c)(35); City of New York v. TransGas Energy Servs. Corp., 34 A.D.3d 466, 470 (2d Dep't 2006).

⁶ 6 NYCRR §617.2(b)(1).

Public Convenience and Necessity

PSL §68 prohibits an electric corporation from constructing electric plant, or from exercising any right or privilege under any franchise, until it receives our approval in a certificate issued pursuant to that Section. In this instance, however, our issuance of a PSL Article VII Certificate supplants the requirement for construction approval under PSL §68, but not the requirements for our approval of its corporate formation and the exercise of any municipal "right, privilege or franchise."⁷ Before a CPCN may be issued, the electric corporation seeking our approval must provide a certified copy of its charter and a verified statement that it has received all required consents of the proper municipal authorities.

On July 13, 2010, HTP filed a petition requesting, in part, a CPCN pursuant to PSL §68, authorizing HTP to exercise New York City's consent to utilize municipal property (July 13, 2010 Petition).⁸ On April 14, 2011, the Commission issued an order approving a lightened regulatory regime, as requested in the July 13, 2010 Petition, although a CPCN was not granted because HTP had not yet verified that it had secured the municipal consent necessary to occupy property owned by the City of New York. The Commission directed HTP to file a final copy of the NYC's consent

⁷ Case 05-T-0089, Fortuna Energy, Inc., Order Requiring a Hearing and Extending the Time Required to Render a Decision Pursuant to Public Service Law Section 121-a(7) (issued March 23, 2005); see Matter of TransGas Energy Sys., LLC v. New York State Bd. on Elec. Generation Siting & Env't, et al., 2009 NY Slip Op 6696 (2d Dept., 2009), lv. Denied 2010 NY Slip Op 60611; Case 10-G-0462, DMP New York, Inc. and Laser Northeast Gathering Company, LLC, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Rate Making Regulation (issued February 22, 2011).

⁸ The July 13, 2010 Petition was supplemented in filings on March 9, 2011, March 21, 2011, March 23, 2011, March 28, 2011, April 5, 2011, and May 5, 2011.

to use municipal property in conjunction with the construction and operation of the Project.⁹ However, the hearing required by PSL §68 was held on April 14, 2011, to consider the terms of the municipal consent provided by HTP that was awaiting final signatures and registration by the City of New York. Those terms specified the conditions under which HTP would be granted NYC's consent to use and occupy the portion of the Project located within NYC.

On May 5, 2011, HTP filed a signed final copy of the required consent of NYC, along with a verified statement by a responsible official for HTP that it has secured the municipal consent necessary to use and occupy property owned by NYC. The relevant terms included in NYC's final consent are consistent with those contained in the consent considered during the hearing on April 14, 2011. The only modification includes a typographical error in the payment schedule from HTP to NYC that modified the phrase "[f]or the period July 1, 2010 to June 30, 2011," to read "[f]or the period July 1, 2020 to June 30, 2021."

As previously determined in granting the PSL Article VII Certificate, the Project is needed and within the public interest. The Project would result in increased electrical capacity into NYC, while minimizing adverse environmental impacts. The Project would help meet future demands for power in NYC, and help promote reliability. Based on these factors, it is determined that HTP will provide safe, reliable and adequate service. Therefore, based upon the July 13, 2010 Petition, as supplemented, the Commission's findings in the Lightened Regulation Order and Article VII Certificate, and the hearing

⁹ Case 10-E-0339, Hudson Transmission Partners - Petition for Certificate of Public Convenience and Necessity, and Lightened Regulation, Order Providing for Lightened Rate Making Regulation (issued April 14, 2011) (Lightened Regulation Order).

held on April 14, 2011, it is determined that the exercise of NYC's consent allowing the use of municipal property in conjunction with the construction and operation of HTP's Transmission Facility is necessary and convenient for the public service.

Financing

The Commission's Lightened Regulation Order provides that, under PSL §69, approval of financing plans may be appropriately granted under lightened regulation, but the scrutiny applicable to monopoly utilities may be reduced for lightly-regulated companies that operate in a competitive environment. As a result, an in-depth analysis of proposed financing transactions is not needed. Instead, by relying on representations made in a petition, prompt regulatory action may be possible.¹⁰

HTP advises that its members are Hudson Power Ventures, LLC (HPV), a Connecticut limited liability company, Anbaric, LLC, a Delaware limited liability company, and Triton Partners, LLC, a Maine limited liability company. Each of these entities currently owns an equal membership interest in HTP. Development capital for the project is being provided by Starwood Energy Group Global, LLC (Starwood), EIF Management, LLC (EIF), and the three members of HTP.¹¹ Following the financial closing, the three current members of HTP would collectively own no more than 10% of the membership interest in HTP, while Starwood and EIF would each own 50% of the remaining

¹⁰ Case 10-E-0339, supra, Order Providing for Lightened Rate Making Regulation, p. 15.

¹¹ HTP reports that its members, through affiliates, own interests in Neptune Regional Transmission System's electric transmission line. Starwood and EIF each have interests in various electric generating facilities.

interest in HTP. HPV would be the managing member of HTP with control over day-to-day operation and construction of the Project.

HTP intends to pursue a 22-year loan agreement with a consortium of institutional investors to cover the construction period and 20 years of operation. The total debt to be financed will not exceed \$750 million. HTP will provide, as security, its rights to the Project assets, including contracts, permits, and real estate interests.

Authorization for HTP to finance the Project utilizing "evidences of indebtedness payable at periods of more than twelve months" appears to be for a statutory purpose, and does not appear to be contrary to the public interest.¹² HTP is therefore authorized to undertake the proposed financing and shall be accorded the flexibility extended to other lightly-regulated entities to modify, without our prior approval, the identity of the financing entities, payment terms, and the amount financed up to the ceiling of \$750 million.¹³ Affording HTP this financing flexibility avoids disruption of its financing arrangements and enables it to operate more effectively in competitive wholesale electric markets. Additional scrutiny is not required to protect captive New York ratepayers, because HTP bears the financial risk associated with its financial arrangements.

Emergency Adoption

Approval of the financing is adopted on an emergency basis pursuant to State Administrative Procedures Act (SAPA) §202(6). The adequacy and reliability of the supply of

¹² PSL §69.

¹³ See, e.g., Case 03-E-1181, Dyneyg Danskammer LLC and Dyneyg Roseton LLC, Order Authorizing Entry Into Credit Facility and Issuance of Secured Notes (issued November 26, 2003); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

electricity is essential to the public health, safety and general welfare of the citizens of New York. A failure to timely adopt the financing could potentially impair the ability of HTP to meet its construction schedule, and could adversely affect the availability of needed capacity for reliability in New York City. The access to new power supply sources, which HTP will provide, will be critical to the maintenance of reliability as existing resources are retired or, in the event that generating facilities such as the Indian Point Nuclear Station are not re-licensed. As a result, compliance with the advance notice and comment requirements of SAPA §202(1) would be contrary to the public interest, and the immediate authorization of the proposed financing is necessary for the preservation of the public health, safety and general welfare. Moreover, if subsequent notice procedures were required in connection with this rule, which is in regard to a security authorization for which a public hearing is not required to be held by statute, the purpose of the rule would be frustrated because the financial closing could not take place under these circumstances.

EM&CP

The Project involves the construction and operation of a new 345 kV electric transmission facility between Ridgefield, New Jersey and Con Edison's West 49th Street substation in Manhattan. The Commission authorized the New York portion of the Project to be installed in the riverbed of the Hudson River and extend to a transition vault located underground on West 52nd Street in Manhattan. From the vault, the Transmission Facility will be spliced to an approximately 1,125-foot upland portion underground on West 52nd Street and 12th Avenue, occupying streets and other public property under the control of NYC. The terminus

for the New York portion of the Project is the West 49th Street substation, which is adjacent to 12th Avenue.

On March 25, 2011, HTP filed an EM&CP for the first segment of the Project that includes trenching, duct/conduit installation, and site excavation to accommodate Horizontal Directional Drilling (HDD), the submarine-to-upland cable transition vault, and the fluid vault associated with the upland cable. As part of the EM&CP, HTP also submitted the details of work site dimensions and locations, locations of utility crossings, and the locations and descriptions of work planned in the vicinity of the Project along 52nd Street and 12th Avenue in Manhattan.

Notice of the filing of the EM&CP for Segment 1 was published in the New York Post on March 25, 2011. The 30-day comment period ended on April 25, 2011. Comments were submitted by Clinton Park Stables Associates LLC, NYC, and Con Edison. The Staff of the Department of Public Service Staff (DPS Staff) also expressed its views to HTP.

Clinton Park Stables Associates LLC (CPS), which is a commercial livery service providing horse-drawn carriages for touring Central Park, raised concerns regarding noise, air quality, deliveries, traffic routing and construction parking effects on its business operation and its working horses. In response to the concerns raised by CPS, HTP reports that it met with Mr. Conor McHugh of CPS on April 5, 2011, to discuss these concerns. In correspondence to CPS, HTP stated that its contractors will incorporate measures to reduce noise and dust, preserve access to the parking lot, and provide traffic control as appropriate. HTP also committed to explore the possible alternative of permitting horses to proceed west from 11th Avenue along West 52 Street to access the stables (West 52 St. is designated as one-way east-bound).

HTP subsequently explained the details of how its contractors will reduce noise and dust, and provide traffic control. HTP indicates that an alternate plan was submitted to the NYC Department of Transportation for approval to allow horses and carriages to travel west on West 52 Street from 11th Avenue while West 51 Street is closed for construction of the HTP facility.

Con Edison requested that HTP incorporate, prior to its approval by the Commission, the statement provided by HTP in its "Direct Notice for Business Property Owners of the Filing of Environmental Management and Construction Plan," submitted in connection with the filing of the EM&CP for Segment 1, that "[a]ll private property that may be disturbed or damaged by any construction activity shall be relocated, restored, repaired and/or replaced by the [HTP] contractor at no cost to the owner of the property."

DPS Staff reviewed the detailed arrangement and construction plans for the facilities and identified several concerns. In part, DPS Staff raised issues regarding electromagnetic field (EMF) levels, as well as concerns similar to CPS related to noise, air quality, deliveries and access to stables for the safe movement of horses and carriages. HTP submitted a supplement to its EM&CP for Segment 1 on May 9, 2011, which adequately resolves DPS Staff's concerns, as well as those raised by CPS and Con Edison. Furthermore, it is also expected that HTP will address concerns regarding construction noise in a diligent manner during the construction period, and that a complaint resolution log will be maintained by HTP. Based on review of all the documents submitted, the comments by various agencies, and the responses and supplemental filings made by HTP, the Segment 1 EM&CP is approved.

It is ordered:

1. Hudson Transmission Partners, LLC is granted a Certificate of Public Convenience and Necessity pursuant to Public Service Law section 68, as described in the body of this Order.

2. Hudson Transmission Partners, LLC is authorized to pursue the financing arrangements, as described in the body of this Order, up to the maximum amount of \$750 million. This rule is adopted on an emergency basis and as a permanent rule, pursuant to §202(6)(c) of the State Administrative Procedure Act.

3. The Environmental Management and Construction Plan submitted by Hudson Transmission Partners, LLC for Segment 1 is approved.

4. The proceeding under Case 08-T-0034 is continued.

5. The proceedings under Cases 10-E-0339 and 11-E-0215 are closed.

(SIGNED)

Commissioner