

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 13, 2016

COMMISSIONERS PRESENT:

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

CASE 16-V-0314 - Petition of Empire Video Services Corporation a
Certificate of Confirmation for its Franchise
with the Village of Penn Yan, Yates County.

ORDER AND CERTIFICATE OF CONFIRMATION

(Issued and Effective October 20, 2016)

BY THE COMMISSION:

INTRODUCTION

On May 20, 2016, Empire Video Services Corporation (Empire) filed a petition, pursuant to Public Service Law (PSL) §221, requesting issuance of a Certificate of Confirmation for a cable television franchise awarded by the Village of Penn Yan, Yates County (Village). The Village authorized Empire to provide cable service by Resolution approved by its Village Board of Trustees on April 19, 2016, after a duly noticed public hearing held the same date. The term of the franchise is ten years beginning on the date that this Order is issued and effective.

No franchise is effective until the Commission issues a Certificate of Confirmation (PSL §221(1)). The Commission is required to issue a certificate, unless it finds specific violations of law, Commission regulations, or the public interest (PSL §221(3)); and it may approve the application

contingent upon compliance with standards, terms, or conditions that are not met by the proposed franchise (PSL §221(4)). Commission regulations set forth the requirements for franchising procedures and franchise contents (16 NYCRR Parts 894 and 895) and for an application for a Certificate of Confirmation (16 NYCRR §897.2).

After reviewing this application in the context of applicable statutory and regulatory standards, it is determined that issuance of a Certificate of Confirmation for this franchise serves the public interest. This action promotes consumer choice by providing new cable television service offerings in the Village and enhances competition in the cable television market.

PUBLIC NOTICE

On June 1, 2016, public notice of Empire's petition for a Certificate of Confirmation was published in a weekly newspaper of general circulation in the Village. The notice stated that interested parties are provided an opportunity to file comments with the Commission within ten days of the date of the notice's publication (16 NYCRR §897.2(g)). No comments were received.

STATE ENVIRONMENTAL QUALITY REVIEW

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations, (6 NYCRR Part 617 and 16 NYCRR Part 7), all state agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. Empire prepared Part I of the Full Environmental Assessment Form (EAF) and submitted it with their petition. Parts II and III of the EAF were completed by Staff,

and the EAF is retained in our files. We expressed our interest in acting as Lead Agency and have determined that this Unlisted Action, using previously installed overhead fiber optic cable on existing structures, would not result in significant adverse environmental impacts.

The proposed action is the confirmation of a cable franchise which authorizes the construction of facilities to be used for cable television service, broadband internet service, and the provision of broadcast programming. The offering of these services may result in an increase in requests for extensions of Empire's cable system in the future. Other than our approval of the action proposed here, no additional state permits or approvals are required, and no coordinated review under SEQRA was necessary.

Empire states that its cable facilities are generally installed on existing utility poles located in existing rights-of-way within the Village of Penn Yan. According the NYS Cultural Resource Information System, there are state- or national-registered historic structures located in the project area. The Company shall consult with the NYS Historic Preservation Office (SHPO) prior to any new installation or connections to historic structures. The Company has stipulated in its franchise agreement with the Village that wherever electrical utilities have been previously installed underground the cable also would be buried to the extent practicable. The franchise agreement also requires that any areas disturbed by construction and installation (e.g., trench excavation where utilities are underground) be restored to preconstruction conditions. Any installation within existing flood zones (i.e., adjacent to Keuka Lake Outlet and its surrounding tributaries) shall be protected from inundation to the extent practicable.

According to the Yates County Agriculture and Markets map, there are no portions of the project located in Agricultural Districts.

If future extensions of the cable system require construction in agricultural districts, lands in or near sensitive environmental areas including wetlands, or structures or districts eligible for listing on the Historic Registers, Empire shall consult with the appropriate local, State or federal agencies, including but not limited to the New York State Department of Environmental Conservation (DEC), Department of Agriculture and Markets, and the Office of Parks, Recreation and Historic Preservation (OPRHP) and, when necessary, obtain all required permits, approvals, or other authorizations.

After a review of the EAF, supplemental information, the petition, and upon Staff's recommendation, we conclude that, based upon the criteria for determining significance listed in 6 NYCRR § 617.7(c), the confirmation of a cable franchise that authorizes construction of facilities to be used for cable television service and broadcast programming will not result in significant adverse environmental impacts. We, therefore, adopt a negative declaration pursuant to SEQRA. A Notice of Determination of Significance for this Unlisted Action is attached to this Order, and the completed EAF is retained in our files.

DISCUSSION

We determine that approval of the Certificate of Confirmation serves the public interest as it results in the effective provision of cable service in the municipality. Accordingly, a Certificate of Confirmation is issued to Empire to provide cable television service in the Village.

The franchise may omit certain required provisions or contain provisions that may conflict with statutory and regulatory requirements. This Order does not identify and describe each specific omission and conflict because the principles and standards established in the law and rules apply to cable franchises, whether or not specifically identified in our orders, and a franchise agreement may not overrule, modify, or amend these minimum requirements.

It should be noted that the system is already built, and there will be no further construction. Thus, the system description provided in the franchise agreement and Empire's EAF is sufficient. Any future construction will require additional system description consistent with 16 NYCRR §895.1(b).

Therefore, issuance of a Certificate of Confirmation for the franchise is conditioned upon full compliance at a minimum with these requirements, whether or not the provisions in this franchise agreement specifically state or are in conflict with these requirements. Any franchise provision required in the Commission's rules that is omitted from the franchise agreement is added to it and incorporated in the franchise agreement by reference and any federal and state law, rule, regulation, and order, as amended, shall control the interpretation of and performance under this franchise agreement to the extent that any franchise provision does not meet the requirements in the Commission's rules or conflicts with or is inconsistent with federal and state laws, rules, regulations, and orders.

The franchise agreement may contain additional provisions that are not required by the Commission's rules. Our approval of these provisions is granted to the extent that they pertain to the provision of cable service and are, and remain, consistent with PSL Article 11, our regulations, policies and

orders, and applicable federal statutes and regulations. In the event of an ambiguity in any such provision or among separate provisions, the provision or provisions will be construed in the manner most favorable to the franchisor.

The Commission orders:

1. The petition of Empire Video Services Corporation for approval of a Certificate of Confirmation of the franchise to provide cable television service for the Village of Penn Yan, Yates County, is approved. The term of the franchise is ten years, beginning on the date that this Order is issued and effective.

2. This Order does not in any way confer rights or privileges other than those granted in the underlying franchise and the certificate holder remains subject to the obligations imposed by Public Service Law Article 11, the underlying franchise, and all applicable rules, regulations, and orders of this Commission.

3. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

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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 for the confirmation of the cable television franchise to Empire Video Services Corporation.

This is 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. This action is an Unlisted Action as defined under 6 NYCRR Section 617.2(4) (ak). Based upon our review of the record, the confirmation of the exercise of the cable television franchise granted by the Village of Penn Yan, Yates County, to Empire Video Services Corporation will not result in significant adverse environmental impacts.

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Daniel Connor at (518) 474-5541 (daniel.connor@dps.ny.gov) or to the address above.

KATHLEEN H. BURGESS
Secretary