

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 18, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
James L. Larocca  
Gregg C. Sayre

CASE 13-T-0035 - Petition of New York Power Authority to Amend  
its Certificate of Environmental Compatibility  
and Public Need for the Moses to Plattsburgh  
Transmission Facility for the Moses-Willis  
Circuit Separation Project - Formerly Case  
26680.

ORDER GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED

(Issued and Effective April 25, 2013)

BY THE COMMISSION:

BACKGROUND

On November 14, 1975, the Commission granted a  
Certificate of Environmental Compatibility and Public Need  
(Certificate) to the Power Authority of the State of New York  
(now doing business as the New York Power Authority (NYPA)),  
authorizing, subject to conditions, the construction and  
operation of two parallel single circuit 230kV electric lines on  
wood pole H-frame structures.<sup>1</sup> On April 13, 1976, the Commission

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<sup>1</sup> Case 26680, Power Authority of the State of New York, Order  
Granting Certificate of Environmental Compatibility and Public  
Need (issued November 14, 1975).

approved the Environmental Management and Construction Plan (EM&CP) for the project.<sup>2</sup> The facility was energized in 1978.

#### PROPOSED AMENDMENT

##### The Petition

In a petition filed January 30, 2013, NYPA requests that the Certificate be amended, pursuant to Section 121(3) of the Public Service Law (PSL), to authorize it to construct the Moses-Willis Circuit Separation Project (Project), located in the Town of Massena, St. Lawrence County, in order to eliminate an existing double circuit contingency. The proposed Project includes the relocation of approximately 1.8 miles of a 230kV overhead circuit to an adjacent series of existing structures within the same right-of-way, the construction of four new structures in a vacant field with 2,213 feet of new 230kV conductor, and one new dead end structure south of the Moses Switchyard.

Notices of the proposed amendment were published on January 15 and January 22, 2013, in the "Daily Courier-Observer," a newspaper of general circulation in the area of the transmission facilities, in accordance with PSL §122(2) and (4) and 16 NYCRR §85-2.10(c). By Notice issued February 12, 2013, the Secretary established a deadline of February 26, 2013, for receipt of comments on the proposed amendment. One timely comment in support of the Project was received from Marble River, LLC. The New York State Department of Environmental Conservation (DEC) filed late comments on March 26, 2013.

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<sup>2</sup> Case 26680, Power Authority of the State of New York, Order Approving Environmental Management and Construction Plan for the Moses-Willis Segment (issued April 13, 1976).

The Moses-Willis Circuit Separation Project

The first 1.8 miles of the MW-1 and MW-2 lines from the Moses switchyard travel south across the St. Lawrence South Channel and the Wiley-Dondero Canal in a vertical configuration on double circuit galvanized lattice steel towers. This segment is within a joint right-of-way (ROW) corridor with multiple circuits (MAL4, MAL5&6, Cedar Rapids 1&2, MW-1 & MW-2, MRG-1, MRG 2&3, Seaway 1&2, L33P and L34P). Within this joint corridor, there are a total of eight double circuit towers for the MW-1 and MW-2 lines ranging in height from 125 feet to 266 feet. Continuing southeast, the MW-1 and MW-2 transmission lines separate onto single circuit wooden H-frame structures. The MW-1 and MW-2 single circuit wooden H-frame structures continue on to Willis and are located on a 200 foot-wide ROW with 100 feet between the centerlines of each circuit.

To eliminate the double-circuit contingency, NYPA proposes to de-energize the existing MW-2 circuit and install a new MW-2 circuit on eight existing structures of the MAL4 circuit. This will result in the MW-1 circuit remaining in place on the Moses-Willis structures, and a segment of the MW-2 circuit being relocated onto a completely separate set of Alcoa4 structures. In order to complete the MW-2 circuit, four new single pole, steel structures will be constructed in Dodge's Field and one wooden 3-pole H-frame structure will be replaced with a steel 3-pole H-frame structure. One dead-end structure will also be installed south of the Moses switchyard and connected to the existing MW-2 line to provide physical stability to the existing Moses-Willis structures.

Existing double-circuit structures on both the Moses-Willis and Alcoa4 facilities will be reinforced to strengthen the structures and allow for the MW-2 and the MAL4 line to be located in a vacant position on the existing Alcoa4 towers, and

the MW-1 line and the de-energized segment of the (former) MW-2 line to remain on the existing Moses-Willis towers. The structures to be reinforced are identified as A3, B3, C3, MW-201, MW-205, A4, B4, C4, D4, 206, 207, 208, and 209.

### Environmental Impacts

#### A. Aquatic Resources and Wetlands

The Certificate Amendment as proposed was designed to avoid construction in or movement through any aquatic resources. NYPA commissioned two separate wetland delineation surveys. No New York State Department of Environmental Conservation (DEC) regulated wetlands will be impacted by the existing or proposed facilities.

In its Petition, NYPA indicates that improvements to existing access roads will result in minimal impacts to wetlands under the jurisdiction of the U.S. Army Corps of Engineers. NYPA has requested that we issue a Water Quality Certificate for the Project, pursuant to Section 130 of the Public Service Law and Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1341. The requested Water Quality Certification is addressed below.

#### B. Archeological Resources

At NYPA's request an archeological survey was performed in the project area in April 2012. This "Phase 1" survey was forwarded to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) with a finding of "no historic properties affected." NYPA received a letter from OPRHP concurring with this assessment. Additionally, NYPA sent the same survey to the Tribal Historic Preservation Officer for the St. Regis Mohawk Nation and no response was received.

#### C. Threatened and Endangered Species

The Company reviewed data from the "Natural Heritage Program" (NHP) and determined that the American Bald Eagle,

Upland Sandpiper and Short-eared Owls had, or have, potential habitat in the project area. In-field surveys have revealed no nesting pairs of Eagles along the project route. The Upland Sandpiper and Short-eared Owl prefer a grassland habitat and the majority of ROW in the project area has converted to scrub-shrub cover. Considering the limited nature of the project, Department Staff does not believe a significant threat exists to these upland species and recommends no special measures be taken. DEC has stated that the State threatened Blanding's Turtle (*Emydoidea blandingii*) may also exist in or near the project area. DEC's specific comments and recommendations are discussed below.

D. Invasive Species Assessment

At the urging of Department Staff, NYPA performed a review of the impact of the Project on the potential spread of invasive species. For the Joint Transmission Corridor section of the Project, activities will be restricted to existing access roads and upland locations. For the Dodge's Field section of the Project, NYPA has designed the Project to minimize its impact on the delineated wetlands by locating the new pole locations, temporary lay down areas, and pulling stations outside of the delineated wetlands. To minimize any spread of invasive species, the Project's activities will conform to the requirements of the Environmental Energy Alliance of New York's (EEANY's), "Best Management Practice (BMP) for Preventing the Transportation of Invasive Plant Species," dated 4/26/2012 (Appendix 5).

E. Visual Impact Assessment

NYPA performed a visualization of the Project and the findings are presented in Appendix 3 of the application. The stringing of the new 230 kV conductor onto the Alcoa4 towers does not have any additional visual impact. The installation of

the dead-end structure south of the Moses switchyard, the four new monopoles in Dodge's Field and the replacement of one wood H-frame structure with a steel H-frame structure have a minimal visual impact on the area. The cumulative visual impact of all proposed work can be described as minimal and incremental.

#### Water Quality Certification

NYPA has requested that the Commission issue a Water Quality Certificate, pursuant to §401 of the Federal Clean Water Act (CWA), for wetland activities associated with improvements to access roads during construction of the proposed Project. The CWA requires a federal permit to discharge dredged or fill material into "navigable waters" (33 U.S.C. §§ 1311(a) and 1342(a)) and requires an applicant for a federal permit to provide a Water Quality Certification from the State that the discharge will comply with state water quality standards.<sup>3</sup>

Given the normal 60-day period for granting the Water Quality Certifications established in federal rules (33 C.F.R. §325.2(b)(1)(ii)), we delegated responsibility for granting Water Quality Certifications in connection with Article VII Certificates to the Director of the Office of Energy Efficiency and the Environment (Director). We anticipate that the Director will issue a Water Quality Certification after the Certificate Amendment has been granted.

#### Environmental Management and Construction Plans

After submittal of its Petition, NYPA began discussions with Department Staff as to the time frame for

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<sup>3</sup> Section 410 of the CWA defines "navigable waters" as waters of the United States, including the territorial seas (33 U.S.C. §1362(7)). The Army Corps of Engineers, which issues the permits, defines these waters to include tributaries (33 CFR §328.3(a)(5)) and other types of water sources.

submitting a separate and distinct set of Environmental Management and Construction Plans (EM&CP) for our approval. Upon examination of the EM&CP approved on April 13, 1976, for the Moses-Willis project, the current Petition and the supplemental documents provided to the DEC, Staff indicated that it believed sufficient information currently existed that would obviate the need for a separate EM&CP submittal and session item.

Upon examination of Staff's recommendation, NYPA supplemented its original petition with additional information on March 8, 2013. After re-examining the original Petition and all subsequent submittals, Staff believes that sufficient construction and engineering data exists and recommends we approve the changes to the EM&CP for the Moses-Willis Circuit Separation Project. This would include that portion of the project moved to the existing Alcoa structures and the new facilities built in Dodge's Field. We shall so Order.

#### Affected Landowners

The first 1.8 miles of the circuit separation will involve moving conductors and equipment onto land owned by Alcoa. At Dodge's Field, approximately 11.4 acres of land will have to be acquired from two different landowners. The 7.6 acre parcel will be acquired from a private landowner, Mr. Keith Avery. The easement for a 3.8 acre parcel will be acquired from Long Sault, Inc. (Long Sault). Long Sault is a division of APGI Oasis, a wholly owned subsidiary of Alcoa, Inc.

With respect to the 7.6 acre parcel owned by Mr. Avery, NYPA is using eminent domain, with the landowner's consent, as a means of acquiring clean title to the parcel. Department Staff has informed us that this is not an unusual practice in ROW acquisition. The landowner has agreed to a

purchase price with NYPA for the subject property. This is not a situation of using eminent domain against the landowner's wishes. With respect to the 3.8 acre parcel owned by Long Sault, NYPA is in the process of finalizing the conveyance of the easement without using the power of eminent domain. NYPA entered into discussions with Long Sault over two years ago and the parties agreed to mutually acceptable terms for the conveyance of the 3.8 acre easement in December 2012.

Request for "Expedited Review"

NYPA contends that the double circuit contingency constrains North Country operation, reduces reliability by potentially causing voltage, thermal and load shedding issues, and causes a reduction in the deliverability of power across the Moses-Willis-Plattsburgh line. If a double circuit Moses-Willis structure were to be damaged, both circuits would be out-of-service. The time to repair and/or replace a structure can be weeks or months.

NYPA seeks to address reliability concerns and to reinforce the bulk transmission system as quickly as practicable. Accordingly, it claims expedited approval of this Application is appropriate and no hearing is required pursuant to Public Service Law Section 123(2). We concur.

COMMENTS

Via email dated March 21, DEC, states that the State threatened Blanding's Turtle (*Emydoidea blandingii*) is known to occur near the project site and may be found within the project area during construction. DEC requests that silt fences be erected and maintained between wetland areas and work zones to prevent siltation and to prevent turtles from reaching construction areas. DEC also requests that if Blanding's Turtles are encountered within the project area during



construction, DEC will be contacted to discuss relocating the turtle to a safe location. We shall so order.

As noted above, Marble River, LLC (Marble River) submitted comments, by letter dated February 26, 2013, in support of the proposed Project. Marble River owns and operates the Marble River Wind Farm that is interconnected with the transmission system owned by NYPA. Marble River supports the Project because it believes it will remove the double circuit contingency and will improve transmission reliability in the region.

#### DISCUSSION AND CONCLUSION

Because no substantial public interest appears to require otherwise, we have reviewed this amendment filing under PSL §121(3). A hearing concerning the proposed amendment is not required by PSL §123(2) because the Project will not result in any material increase in any environmental impact or a substantial change in the location of any part of the transmission facility. Indeed, based upon Staff's field work, the potential environmental impact of the facility movement and structure replacements is negligible.

#### The Commission orders:

1. The Certificate of Environmental Compatibility and Public Need granted in Case 26680 to The Power Authority of the State of New York (Certificate Holder) on November 14, 1975, is amended to authorize construction of the Moses-Willis Circuit Separation Project as described in the petition filed in this proceeding on January 30, 2013, and in this Order.

2. The Certificate Holder's request for expedited review is granted.

3. The Environmental Management and Construction Plan (EM&CP) for the Moses-Willis Circuit Separation Project is approved.

4. If the Certificate Holder complies with all the conditions in this Order and the EM&CP, the Director of the Office of Energy Efficiency and the Environment, pursuant to §401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), and PSL Article VII, will issue a Water Quality Certification that the Project will comply with the applicable requirements of §§ 301, 302, 306, and 307 of the Clean Water Act, as amended, and will not violate New York State Water Quality standards and requirements.

5. The Certificate Holder shall train and instruct all construction and supervisory personnel in the recognition and identification of the State threatened Blanding's Turtle (*Emydoidea blandingii*). Control measures recommended by the New York State Department of Conservation (DEC) shall be added to the approved EM&CP. Should any Blanding's Turtles be encountered during construction, the Certificate Holder will immediately contact DEC personnel previously identified and will follow DEC's guidance for protecting these animals.

6. This proceeding is closed.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary