

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 18, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
James S. Alesi  
David J. Valesky  
John B. Maggiore  
Uchenna S. Bright  
Denise M. Sheehan

CASE 21-T-0366 - Application of Empire Offshore Wind LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 17.5 Miles of Transmission Lines from the Boundary of New York State Territorial Waters to a Point of Interconnection in Brooklyn, Kings County.

ORDER APPROVING ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN  
FOR PART 1A  
SUBJECT TO CONDITIONS

(Issued and Effective April 19, 2024)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

On December 18, 2023, the Public Service Commission (Commission) issued a Certificate of Environmental Compatibility and Public Need (CECPN or Certificate)<sup>1</sup> to Empire Offshore Wind LLC (Empire Wind or Certificate Holder). The Certificate

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<sup>1</sup> Case 21-T-0366, Order Adopting Terms of a Joint Proposal (issued December 18, 2023) (CECPN Order).

authorizes Empire Wind to construct: (1) two 230-kilovolt (kV) high-voltage alternating current (HVAC) submarine export cables within an approximately 15.1 nautical mile-long submarine export cable corridor, extending from the boundary of New York State waters (three nautical miles from shore) to the cable landfall in Brooklyn; (2) two three-core 230-kV HVAC onshore export cables buried underground from the cable landfall either directly to the cable terminations or to a vault within the proposed onshore substation; (3) an onshore substation located at the South Brooklyn Marine Terminal (SBMT) that would increase the voltage to 345-kV for the onshore interconnection cables; and (4) two 345-kV cable circuits, each with three single-core HVAC onshore interconnection cables, that would be buried underground from the onshore substation to the point of interconnection at the Gowanus 345-kV Substation owned by the Consolidated Edison Company of New York, Inc. (Con Edison). The Project will connect the proposed Empire Wind 1 Offshore Wind Farm, located in Federal jurisdictional waters, to the existing mainland electric grid in the Brooklyn, New York; pursuant to the requirements of Article VII of the Public Service Law (PSL).

The Certificate Conditions contain several requirements for compliance, including a requirement that the Certificate Holder submit for public review and Commission approval an Environmental Management and Construction Plan (EM&CP) detailing the Facility design, construction and maintenance plans, and environmental controls in accordance with the Specifications for the Development of Environmental Management and Construction Plan (EM&CP Specifications) set forth in Appendix E to the Certificate. The Certificate also provides flexibility for the Certificate Holder to develop the

Facility in segments in order to facilitate construction sequencing and scheduling.<sup>2</sup>

On November 20, 2023, the Certificate Holder filed its Part 1 EM&CP seeking approval to construct Part 1 of the Project. During development of the Part 1 EM&CP, DPS Staff and staff of the New York State Department of Environmental Conservation (NYSDEC) provided informal comments and recommendations to Empire Wind in the form of written correspondences and technical conferences. Upon filing, the Certificate Holder and its consultants were also provided with additional informal comments and recommendations for revising the Part 1 EM&CP from DPS Staff, NYSDEC, New York City Department of Transportation (NYCDOT), New York City Department of Environmental Protection (NYCDEP), and Con Edison. Supplements to the Part 1 EM&CP were filed on November 29, 2023, January 2, and January 4, 2024. A revision to the Part 1 EM&CP was filed on March 15, 2024, addressing the parties' comments and narrowing the scope of the EM&CP from Part 1 into Part 1A. This Order approves the Part 1A EM&CP, as revised, so that the Certificate Holder may begin construction of Part 1A of the Project, pursuant to the Certificate and the conditions below.

PUBLIC NOTICE

The Certificate Holder filed its proposed Part 1 EM&CP on November 20, 2023, and filed supplements to the Part 1 EM&CP on November 29, 2023, January 2, and January 4, 2024. Subsequently, the Certificate Holder filed a revised Part 1 EM&CP on March 15, 2024, in response to parties' informal comments and narrowing the scope of the EM&CP from Part 1 into Part 1A. In accordance with Certificate Conditions C2 through

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<sup>2</sup> CECPN Order, Certificate Condition A10.

C4, public notice of the Part 1 EM&CP filing for review and comment was served on all parties on the service list for Case 21-T-0366 and on persons who own or reside at property crossed by or abutting the impacted portion of the Project corridor. Hard copies of the Part 1 EM&CP were made available at the Brooklyn Public Library Red Hook Branch, Park Slope Branch, Flatbush Branch, Bay Ridge Branch, and Sunset Park Interim. As further required by Certificate Conditions C2 through C4, the Certificate Holder published notice in The Brooklyn Paper, a weekly local newspaper of general circulation in the municipality where Part 1 construction is proposed. The Certificate Holder filed the affidavits of service on November 22, and December 20, 2023, and proof of publication on February 12, 2024.

The 30-day comment period, required by Certificate Condition C4(g), which became effective upon the Commission's issuance of the Certificate on December 29, 2023, ended on January 28, 2024, for the Part 1 EM&CP. Since November 20, 2023, one comment was received that generally supports offshore wind development, specifically the development of the Empire Wind projects. No public comments pertaining to the Part 1A EM&CP have been received. Any comments previously submitted, and any additional comments received, for future EM&CP segments, including the Parts 1B and 1C EM&CPs, will be addressed during the review of the relevant EM&CP filings.

THE EM&CP, COMMENTS, AND RESPONSES

The Certificate Holder's Part 1A EM&CP, as supplemented and revised, provides both typical and site-specific techniques, procedures, and requirements to be followed in development of the Project by the Certificate Holder to ensure the avoidance, minimization, and mitigation of

environmental impacts. The Part 1A EM&CP identifies and defines the scope of work relevant to this phase, including: (i) clearing, grading, demolition, and establishment of laydown areas in the upland portion of the Project Site; (ii) excavating, removing, and/or relocating existing utilities within the proposed substation location; (iii) excavating, removing, and replacing upland components of the bulkhead between the 29th Street and 35th Street piers; (iv) installation of below ground transition vaults; (v) excavating and installing duct banks for onshore cables; and (vi) installing foundations and pile driving for the onshore substation. The EM&CP also describes the plans for Part 1A construction and implementation of required and appropriate measures for avoidance, minimization, and mitigation of impacts, including: dewatering; soils management; stormwater management and erosion controls; traffic controls; protective measures for waterbodies, tidal wetlands, threatened and endangered species, cultural resources, and land use; invasive species management; and the Certificate Holder's organizational framework and protocols to ensure implementation of the EM&CP. The standards for the EM&CP are described in the Joint Proposal and its appendices, particularly in the Certificate Conditions (Appendix D of the Certificate), EM&CP Specifications (Appendix E of the Certificate), Invasive Species Control and Management Plan Specifications (Appendix H of the Certificate), and NYSDEC Supplemental Specifications for Wetlands and Waterbodies (Appendix L of the Certificate).

#### Part 1A EM&CP

As described above, the Certificate Holder filed its proposed Part 1 EM&CP on November 20, 2023, and filed supplements to the Part 1 EM&CP on November 29, 2023, and January 2, and January 4, 2024. Subsequently, the Certificate

Holder filed a revised EM&CP on March 15, 2024, in response to parties' informal comments and narrowing the scope of the EM&CP from Part 1 into Part 1A. In its March 15, 2024 revised EM&CP filing, Empire Wind explains that the Part 1 EM&CP was further divided into Parts 1A, 1B, and 1C, in order to resolve certain constraints associated with the timing for obtaining necessary land rights required prior to construction of Parts 1B and 1C. Empire Wind indicates that it intends to file the Part 1B EM&CP in April 2024, and the Part 1C EM&CP in the fourth quarter of 2024.

#### MS4 Approval and SPDES Permits

Certificate Condition Y5 requires the Certificate Holder to file with the Secretary, prior to approval of the EM&CP for the applicable segment, the Municipal Separate Storm Sewer ("MS4") approval and NYSDEC's letter of acknowledgement of the Notice of Intent for coverage under the State Pollutant Discharge Elimination System ("SPDES") General Permit. On March 21, 2024, Empire Wind received its NYCDEP SWPPP approval (i.e., MS4 approval) and subsequently filed its Notice of Intent for coverage under the SPDES General permit with NYSDEC on March 25, 2024. Empire Wind filed the NYCDEP SWPPP approval and NYSDEC's letter of acknowledgement with the Secretary.

In addition to the Project's coverage under the SPDES General Permit, the Certificate Holder is also required to obtain approval from NYSDEC for a SPDES Individual Permit for dewatering activities, due to known existing environmental contamination at the SBMT site. While approval of the SPDES Individual Permit is not subject to the requirements of Certificate Condition Y5 and is, therefore, not required prior to approval of the Part 1A EM&CP, approval of the SPDES

Individual Permit must be obtained prior to commencement of Part 1A construction activities.

DPS Staff

DPS Staff reviewed the Part 1 EM&CP and provided informal comments and recommendations and participated in technical meetings with the Certificate Holder and its consultants. DPS Staff requested revisions and clarifications of various subject areas including civil plans and design, co-located infrastructure, soils and hazardous materials management, tidal wetlands and waterbodies, stormwater management and erosion controls, dewatering, terrestrial archaeological resources, complaint resolution, and decommissioning.

The Commission is advised that DPS Staff's recommendations were adequately addressed and resolved in the Part 1A EM&CP, including all supplements and revisions filed on November 29, 2023, and January 2, January 4, and March 15, 2024.

NYSDEC

NYSDEC staff reviewed the Part 1 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holder and its consultants. NYSDEC staff suggested revisions and requested clarifications of the Part 1 EM&CP plan designs and other parts of the EM&CP, primarily with respect to stormwater management and erosion controls.

The Commission is advised that the Certificate Holder adequately addressed all NYSDEC staff's comments in the Part 1A EM&CP, including all supplements and revisions filed on November 29, 2023, and January 2, January 4, and March 15, 2024.

New York City

NYCDOT and NYCDEP staff reviewed the Part 1 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holder and its consultants. NYCDOT staff suggested revisions and requested clarifications of the Part 1 EM&CP Traffic Management Plan (Appendix M). NYCDEP staff suggested revisions and requested clarifications of the Part 1 EM&CP plan designs and other parts of the EM&CP, primarily with respect to stormwater management and erosion controls, dewatering, spills management, fugitive dust, and pile driving.

The Commission is advised that the Certificate Holder adequately addressed all of the comments received from NYCDOT and NYCDEP in the Part 1A EM&CP, including all supplements and revisions filed on November 29, 2023, and January 2, January 4, and March 15, 2024.

Con Edison

Con Edison reviewed the Part 1 EM&CP and provided an informal comment suggesting revisions and requesting clarifications of the Part 1 EM&CP Spill Prevention Control and Countermeasures Plan (Appendix N). The Commission is advised that the Certificate Holder adequately addressed Con Edison's comments in the Part 1A EM&CP, including all supplements and revisions filed on November 29, 2023, and January 2, January 4, and March 15, 2024.

DISCUSSION AND CONCLUSION

DPS Staff, NYSDEC staff, NYCDEP, NYCDOT, and Con Edison raised various issues and proffered suggestions regarding the details of the proposed Part 1 EM&CP. The Certificate Holder filed a revised Part 1 EM&CP on March 15, 2024,



incorporating and resolving the agencies' recommendations and narrowing the scope of the EM&CP from Part 1 into Part 1A. Empire Wind indicates that it intends to file the Part 1B EM&CP in April 2024, and the Part 1C EM&CP in the fourth quarter of 2024, once the necessary land rights for each segment have been obtained.

Based upon its review, DPS Staff advises that the Part 1A EM&CP, as supplemented and revised, complies with the applicable Certificate Conditions and adheres to the EM&CP Specifications included as Appendix E to the Certificate.

The Commission finds that the Certificate Holder has adequately addressed the concerns raised by the DPS Staff, NYSDEC, NYCDEP, NYCDOT, and Con Edison. Based on a review of all the documents filed, responses received, and revised filings submitted by the Certificate Holder, the Part 1A EM&CP for the Project, as supplemented and revised, is approved.

The 30-day comment period, required by Certificate Condition C4(g), as well as the public notice of EM&CP filing for review and comment and the affidavits of service and proofs of publication required by Certificate Conditions C2 through C4, shall be separately required for both the Part 1B and 1C EM&CPs.

The Commission orders:

1. The Environmental Management and Construction Plan for Part 1A construction (Part 1A EM&CP), initially filed as the Part 1 EM&CP by Empire Offshore Wind LLC (Certificate Holder) on November 20, 2023, and supplemented and revised on November 29, 2023, January 2, 2024, January 4, 2024, and March 15, 2024, is approved subject to the following conditions.

2. Prior to commencement of Part 1A construction, the Certificate Holder shall file with the Secretary a copy of State Pollutant Discharge Elimination System Individual Permit for

dewatering activities, as approved by the New York State Department of Environmental Conservation.

3. Upon filing of the revised EM&CPs for Parts 1B and 1C construction, the Certificate Holder shall publicly notice filing of each EM&CP for review and comment, and file with the Secretary affidavits of service and proofs of publication, as required by Conditions C2 through C4 of the Certificate.

4. The Certificate Holder shall not commence construction until it has received a "Notice to Proceed with Part 1A Construction" letter sent by the Chief of Environmental Certification and Compliance of the Office of Energy System Planning and Performance, or by a designee.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary