

PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

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In the Matter of the Application :
of : Case No.
Orange and Rockland Utilities, Inc. : JOINT PETITION
and Sprint Spectrum, LP :
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TO: THE PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK:

Introduction

Orange and Rockland Utilities, Inc. (“O&R”) and Sprint Spectrum, LP, a Delaware Limited Partnership (“Sprint”) (together “Petitioners”) hereby seek Public Service Commission (“Commission”) authorization for Sprint’s existing wireless equipment (“Equipment”) attached to O&R Electric Transmission Facilities (“Tower 200”) pursuant to O&R’s Electric Transmission Wireless Attachment Standard Procedure (“Standard Procedure”)¹ and Section 70 of the Public Service Law (“PSL”).²

¹ O&R’s Standard Procedure was approved by the Commission in Case 07-M-0594, Joint Petition of Orange and Rockland Utilities, Inc. and Sprint Spectrum, L.P., Request for Approval Under Section 70 of the PSL for Attachment of Wireless Facilities to Transmission Facilities, Order Approving Petition, issued and effective February 14, 2008, Ordering Clause 2, p. 7.

² Sprint is joining this Petition for the sole purpose of satisfying the Commission’s regulations implementing PSL Section 70.

Communications in this proceeding should be addressed to the attention of:

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Pursuant to the *Order Approving Procedure* in Case 02-M-1288,³ the Commission approved Niagara Mohawk Power Corporation's generic procedures for wireless attachments to its transmission facilities. The Commission also explained the obligation of all investor-owned utilities in the state to "obtain approval for existing and future attachments to their transmission facilities according to their own procedures that provide the same protections and assurances as Niagara Mohawk's procedures as set out in this Order."⁴

Pursuant to the *Notice of Obligation to Seek Approval for Wireless Attachments to Transmission Facilities* in Case 02-M-1288,⁵ the Commission directed each utility with

³ Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval to Authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Power Corporation Transmission Facilities, Order Approving Procedure, issued and effective April 14, 2004, Ordering Clause 1, p. 5.

⁴ *Id.* p. 4.

⁵ Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval to Authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Power Corporation Transmission Facilities, Notice of Obligation to Seek Approval for Wireless Attachments to Transmission Facilities, issued April 14, 2004, p. 1.

wireless attachments to its transmission facilities, to “file an original and three copies of its own plan, for complying with the Public Service Law and the Commission’s review of such wireless attachments, taking into account the effects of the attachments on system reliability, safety and the environment.” O&R’s Standard Procedure was approved by the Commission in February 2008.⁶

Currently, wireless telecommunication providers attached their facilities to O&R transmission facilities pursuant to a Site Lease Acknowledgment (“SLA”) that incorporates by reference the terms and conditions of a master lease agreement (“Lease Agreement”), the specific terms of which had been negotiated separately over time with each of the telecommunication providers interested in attaching to one or more of O&R’s transmission facilities.

Application for Attachment to Tower 200

Sprint has a principal place of business at 6391 Sprint Parkway, Overland Park, KS, 66251-2650. Sprint represents that it is duly licensed by the Federal Communications Commission (“FCC”) to provide Commercial Mobile Radio Services (“CMRS”) and that it is duly authorized to provide this service from Tower 200.

Sprint’s SLA for Tower 200 was executed on November 16, 1998 (Exhibit A). Tower 200 is located in the Town of Tuxedo, Orange County, New York, at Arden Road. The tower is located on O&R’s Transmission Line 311. The installation consists of four (4) panel antennas attached to Tower 200 at approximately 87 feet in height above ground line and includes approximately 320 square feet at the base of Tower 200 for equipment associated with the Sprint antennas (collectively, the “Leased Premises”). The Leased

⁶ Supra at no. 1.

Premises and the equipment located thereon are more particularly described in the SLA. The SLA for Tower 200 incorporates the terms and conditions of the Lease Agreement by and between O&R and Sprint dated December 8, 1997 (Exhibit B). Sprint was issued a permit to install the Equipment by the Town of Tuxedo on April 6, 1999 (Exhibit C).

The SLA permits the Leased Premises to be used by Sprint on a non-exclusive basis as long as the Equipment does not adversely O&R's operations on the site or any other existing users of the site. Unless otherwise defined herein, the capitalized terms that follow shall have the meanings ascribed to them in the SLA and Lease Agreement.

The Initial Term of the SLA is five (5) years. The SLA allows for three (3) additional five (5) year Renewal Terms as set forth in the Lease Agreement. In addition, Sprint has a non-exclusive use of, and controlled and shared access to, the Leased Premises controlled by O&R. Sprint or its agents must notify O&R sufficiently in advance of any entry onto the Leased Premises so that employees in O&R's EHV-Line Operations Department can monitor the activities authorized by the SLA. Any work to be performed at the Leased Premises in connection with the SLA will be done at Sprint's expense and with supplies and materials furnished by Sprint. Any required outages of O&R's transmission facilities required for attachment of the Equipment must be requested by Sprint and coordinated through O&R's EHV Line Operations Department. O&R employees or its contractor will perform all work on the transmission structures. Contractors approved by O&R will perform any other work.

The Lease Agreement provides that if O&R determines that any of the Equipment interferes with any of O&R's activities, operations, or equipment located at the site, Sprint must, upon written notice from O&R, correct the condition within a reasonable time. If Sprint is unable to correct the condition within a reasonable period of time, O&R may

terminate the SLA and Sprint will be required to arrange for removal of the Equipment at its expense.

The SLA is also subject to termination for interference with O&R's operating activities. In such an event, O&R must give Sprint reasonable advance written notice and an opportunity to remove its Equipment from the Leased Premises, provided that such removal is performed without interference to operation of the transmission facilities, does not threaten or impair the system reliability, safety or the environment, and is not likely to cause physical damage to O&R property. In any case of such termination, the Fee will be prorated.

Under the Lease Agreement, Sprint is required to provide insurance protection for O&R in the form of comprehensive public liability and property damage policies, paid in full, naming O&R as an additional insured. Sprint's insurance policies are subject to review by O&R and O&R's reasonable approval. The insurance policies must contain a provision waiving the insurer's subrogation rights against O&R.

The SLA and the Lease Agreement are not transferable (except to a creditworthy affiliate or subsidiary of Sprint) without the prior written consent of O&R. Under the Lease Agreement, Sprint is prohibited from introducing any Hazardous Substance to the Leased Premises and must keep it free and clear of contamination at all times.

The Lease Agreement and/or the SLA may be modified or amended in writing by both parties. Sprint may change or add to the Equipment upon written advance consent of O&R. Sprint is responsible for all real estate and other taxes imposed upon O&R by the taxing authorities because of the presence of the Equipment on the Leased Premises.

License Fees

The Fee charged by O&R for the SLA is \$31,498.50 annually. The Fee increases for each new Renewal Term to reflect the aggregate change in the Consumer Price Index for the Northeast Urban Region since the commencement of the Initial Term.

The Standard Procedure and Checklist

Sprint has submitted the available documentation required by the Commission's Order and Notice in Case 02-M-1288 and in accordance with the Standard Procedure submitted by O&R. A copy of the Wireless Tower Attachment Checklist ("Checklist") required by the Standard Procedure, completed on behalf of Sprint for the SLA for Tower 200 is attached to this Petition (Exhibit D).

O&R has reviewed the documentation submitted by Sprint and determined that the Equipment attached to Tower 200, will have no material adverse effect on the operation of the transmission facilities or system reliability.

O&R's current point of contact for site construction and restoration is:

Steve Costello
Supervisor
Orange and Rockland Utilities, Inc.
500 Route 208
Blooming Grove, NY 10950
(845) 783-5562

Additional information required by the Standard Procedure is attached to this Petition and includes the structural analysis reports for this attachment (Exhibit E) and any additional environmental documentation supplied by Sprint for this location (Exhibit F).

The Sprint Lease is in the Public Interest

Petitioners respectfully request that the Commission authorize the existing Equipment, pursuant to the SLA, at the O&R facilities set forth herein. These facilities are needed by Sprint to continue to provide wireless services to its subscribers via licenses provided by the FCC.

Sprint has obtained the appropriate local municipal approvals to install its Equipment at this location and O&R has determined that the Equipment will not impact its ability to provide reliable, safe and adequate service to its electric customers.

The terms and conditions of the Lease Agreement and the SLA are fair and will benefit O&R's core utility customers. As such, the installation is in the public interest and Petitioners respectfully request that the Commission approve the installation authorized under the SLA.

16 NYCRR Part 31

In addition, Sprint's application for Tower 200 complies with 16 NYCRR Part 31 as follows:

Section 31.1(a)

Sprint has a non-exclusive, limited use, revocable lease. As such, the SLA is not a transfer as contemplated by subdivisions (f) – (i) and (p) of NYCRR Section 18.1.

Section 31.1(b)

The SLA contains a description of the O&R premises being leased to Sprint as required by this section.

Section 31.1(c)

The non-exclusive revocable lease ensures that none of O&R's franchises, consents or rights will be transferred merged or consolidated as part of the SLA.

Section 31.1(d)

The Standard Procedures establish as a condition to the license that all local approvals for the license be obtained and copies of the appropriate authorizations are annexed to this petition.

Section 31.1(e)

A copy of the SLA and the Lease Agreement are attached to this petition.

Sections 31.1(f) (g) (h) (j) (k) and (l)

Based upon the Commission's authorization for O&R to use its Standard Procedure,⁷ and based upon the Commission's prior determination in case 02-M-1288 and in accordance with the Order,⁸ it is respectfully requested that compliance with these Sections be waived.

⁷ Supra at no. 1.

⁸ Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval to Authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Power Corporation Transmission Facilities, Order Approving Agreement, Issued and Effective May 15, 2003, Ordering Clause 2, p. 8.

Conclusion

For the reasons set forth above, the Petitioners request that the Commission approve the existing installation for the Sprint Equipment attached to O&R Tower 200 as specified herein and that, if any changes are required, the Commission grant the Secretary or appropriate designee the authority to approve any minor changes to the construction drawings.⁹

New York, New York
September 9, 2009

Respectfully submitted,

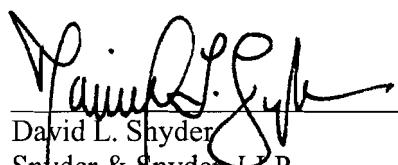
**ORANGE AND ROCKLAND
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By: Its Attorney



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SPRINT SPECTRUM, LP

By: Its Attorney



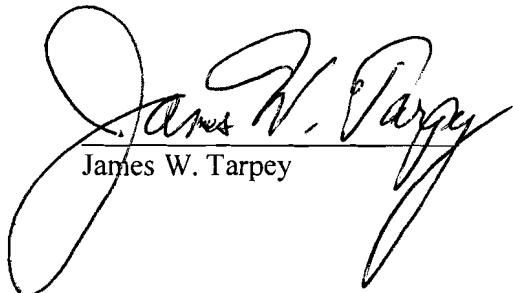
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⁹ This practice was instituted by the Commission in Case 06-M-0411, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. Under Public Service Law Section 70 to Authorize Attachment of Cingular Wireless Facilities to Niagara Mohawk Transmission Facilities on Niagara Mohawk Property in the Town of Brunswick, Order Approving Agreement, Issued and Effective June 19, 2006, at p. 5.

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF ROCKLAND)

James W. Tarpey, being duly sworn, deposes and says that he is a Vice President of Orange and Rockland Utilities, Inc., the Petitioner above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information, and belief.



James W. Tarpey

Sworn to before me this
10th day of September 2009

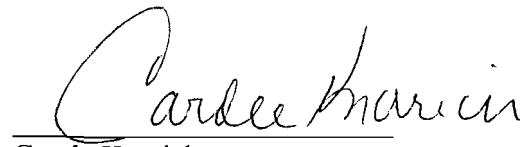


JOANN E. DAGELE
Notary Public, State of New York
No. 01DA6005650
Qualified in Orange County
Commission Expires 4/20/2010

VERIFICATION

STATE OF NEW JERSEY)
)
COUNTY OF BERGEN)

Carole Knarich, being duly sworn, deposes and says that she is a Property Manager for Sprint Spectrum, LP, the Petitioner above named; that she has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of her knowledge, information, and belief.



Carole Knarich

Sworn to before me this
8 of September 2009



ELIZABETH O'CONNOR
Notary Public of New Jersey
Commission Expires 6/25/2012