

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 19, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-M-0804 - Joint Petition of Niagara Mohawk Power Corporation and Nextel WIP Lease Corporation d/b/a Nextel Partners Under Public Service Law Section 70 to Authorize Attachment of Wireless Facilities to Niagara Mohawk Electric Transmission Facilities in the Town of Mayfield.

CASE 02-M-1288 - Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications, Inc. to Attach Wireless Facilities on Niagara Mohawk Transmission Facilities.

ORDER APPROVING PETITION

(Issued and Effective October 10, 2007)

BY THE COMMISSION:

BACKGROUND

On July 6, 2007, Niagara Mohawk Power Corporation (Niagara Mohawk or NMPC) and Nextel WIP Lease Corporation d/b/a Nextel Partners (Nextel, and collectively, the Petitioners) filed a joint petition for approval under Public Service Law (PSL)§70 authorizing Nextel to attach wireless facilities to certain NMPC electric transmission facilities. Niagara Mohawk is a separate subsidiary of National Grid USA.

Nextel seeks to make wireless attachments to Niagara Mohawk's structure #43 on the Northville-Meco #8, 69 kV circuit

transmission facility located in the Town of Mayfield, Fulton County, New York. The site is within the Adirondack Park.

This project consists of the initial installation of three antennas (with three future antennas) on a new 75-foot tubular steel pole that will replace the existing 60-foot tall wood pole transmission structure. The antenna array will be located above the top phase of the conductors and the shield wires. A 20-foot long by 11.5-foot wide prefabricated equipment shelter will be located on a concrete pad surrounded by a 24-foot by 35-foot by 8-foot high chain-linked fence topped by 3 strands of barbed wire. The fenced equipment shelter will be placed on a 43-foot long by 32-foot wide crushed-stone work pad with an adjoining vehicle parking area. The cables connecting the antennas to the equipment will be attached to the outside of the tubular pole to a point about 10 feet above the ground where the cables will exit the pole. A waveguide ice bridge will cover the coaxial cables from the tubular pole to the equipment shelter. This bridge is provided for protection from possible ice damage.

Nextel erected a temporary wireless antenna and portable equipment shelter on private property adjacent to the Niagara Mohawk right-of-way (ROW). New distribution poles extend along Christie Road carrying electrical service to the off-ROW access road. Underground electrical and communication lines are located parallel to the access road providing service to the temporary antenna and shelter. That service will be extended underground along the 10-foot wide access road onto the ROW and, hence, to the pull boxes at the equipment shelter.

This petition is for a site-specific proposal. NMPC has submitted the required information with the petition.

DISCUSSION

Section 70

PSL §70 provides: "No gas corporation or electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the Commission."

On May 15, 2003, the Commission approved a master Niagara Mohawk and National Grid Communications (Gridcom) joint agreement authorizing Gridcom and third parties to attach wireless facilities on Niagara Mohawk transmission facilities.¹ On April 14, 2004, the Commission approved NMPC's procedures designed to facilitate the review of future petitions for wireless attachments to Niagara Mohawk's transmission facilities.²

¹ Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications for approval to authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Transmission Facilities, Order Approving Agreements (Issued May 15, 2003). Gridcom is no longer affiliated with NMPC. However third parties may still attach to NMPC transmission facilities under the agreement.

² Case 02-M-1288 Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications for approval to authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Transmission Facilities, Order Approving Procedure, (Issued and Effective April 14, 2004). Wireless providers are required to provide NMPC with construction and site plans showing the potential site; copies of any required approvals and permits to construct and operate wireless and associated facilities; a structural analysis of the transmission structure showing the structure's ability withstand the wireless antenna's weight on the structure; copies of any environmental assessments, regulatory, municipal permits and approvals; title searches and insurance (as needed) and a showing of compliance with all applicable regulations, codes and standards (April 14, 2004 order).

The Agreement between Gridcom and Niagara Mohawk assures Niagara Mohawk's right to use its transmission facilities for the provision of safe and reliable service and allows Niagara Mohawk to permit Nextel to attach their equipment to Niagara Mohawk's transmission structures in accordance with the policies of the Commission and the Federal Communications Commission. In return for the use of its transmission structures, Niagara Mohawk will receive monthly occupancy fees based upon volume discount pricing.

For this particular attachment, Niagara Mohawk and Nextel have executed a Supplemental Agreement subject to the same terms and conditions as the Master Agreement between Niagara Mohawk and Gridcom. The initial term for the agreement is for five years with options to renew for up to four additional terms of five years each, provided Nextel is not in default under the Agreement.

The proposed attachment should be approved in compliance with the April 14, 2004 order if it is in the public interest. The following documentation has been submitted to the Commission in support of the petition.

Engineering and Environmental Review

The petition contained the required components of the procedure and process approved in the April 14, 2004 order, including the Supplemental Agreement and construction drawings, a structural analysis of the additional loads on the steel pole, a Niagara Mohawk Wireless Attachment Checklist, a completed State Environmental Quality Review Act (SEQRA) Environmental Assessment (Short-form EAF), an Adirondack Park Agency (APA) Permit and a Building Permit issued by the Town of Mayfield for the antennas and equipment building installation. In addition, the Town of Mayfield assumed lead agency status under SEQRA, issued a Negative Declaration and a building permit to Nextel.

Besides our approval of this Petition, Staff is not aware of any other required State or local approvals.

In keeping with the Commission's directives in Case 02-M-1288, we have reviewed the Petitioner's submittals. Based upon our review, the proposed antenna attachment meets the design and National Electric Safety Code (NESC) requirements for the reliability of the electric system. It is the responsibility of Niagara Mohawk to ensure that the wireless antennas are installed in accordance with the design drawings and the specifications reviewed. Upon completion of the wireless antenna and the equipment shelter installation, Niagara Mohawk should provide the Commission with a written certification that the installation conforms to Niagara Mohawk construction standards and the NESC. Electrical service should not be provided to the site until all equipment can be locked and secured. Equipment and material used in construction and installation of the antennas should be secured at all times and kept within the limits of construction as shown on the construction drawings. Our review of the construction drawings submitted indicates there is no fencing topped with barbed wire around the coaxial cable extending from the pole to the equipment shelter. Such fencing shall be installed. There is no gate at the property line/edge of the ROW to preclude access to the ROW. A locked gate shall be installed at the property line/edge of the ROW. Niagara Mohawk shall ensure the drawings are revised and submitted for Department Staff to review before construction is commenced.

A field review was also conducted. The 69 kV single circuit transmission line is located on a 75-foot easement across private property oriented in a north-south direction through a mixed woods property parcel just west of NY Route 30 and the Great Sacandaga Lake between the Village of Mayfield and Northville. The area around the proposed site is in forest,

agricultural and seasonal and year-round residential land uses. The site is classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan map. As the result of a nearby landowner's comment to the APA, Nextel decided to move the antennas from one pole to another and reduce the height of the proposed new pole by ten feet. The APA determined that the Nextel proposal was a new structure in excess of 40 feet in height and a major public utility use, both Class A regional projects requiring an Agency Permit pursuant to Section 810(1)(c)(5)&(7) of the Adirondack Park Agency Act. Also the subdivision into sites from the lease of a portion of the project site involving less than 120,000 square feet in size was a Class B regional project requiring an Agency permit pursuant to Section 810 (2)(b)(2)(b) of the Adirondack Park Agency Act. As such, an APA Project Permit #2005-335 was issued to Nextel on December 1, 2006.

Minor changes to the approved construction drawings may be submitted to Department Staff for review and may be approved by the Director of the Office of Electricity & Environment.

State Environmental Quality Review Act

Under the SEQRA, a state agency must determine whether actions it is requested to approve may have a significant impact on the environment. The proposed action to be approved is the Commission's approval of the Agreement between Niagara Mohawk and Nextel, allowing Nextel to install an antenna array and an equipment shelter on the Niagara Mohawk transmission facility in the Town of Mayfield. The proposed action does not meet the definition of either a Type 1 or Type 2 action under 6 NYCRR Sections 617.4, 617.5 or 16 NYCRR Section 7.2. The proposed action should be classified as an "unlisted" action requiring SEQRA review.

We have conducted an uncoordinated SEQRA review of the project and determined that no significant adverse environmental impacts will result. Therefore, we will issue a negative declaration.

Approval of the joint petition to allow attachment of Nextel's wireless facilities to Niagara Mohawk's transmission facilities in the Town of Mayfield is in the public interest because it will help to meet the allowed revenue requirement of Niagara Mohawk and will not negatively impact the environment or the reliability of the electric system.

CONCLUSION

1. The joint petition of Niagara Mohawk and Nextel for attachment of Nextel wireless facilities to Niagara Mohawk's transmission facilities in the Town of Mayfield, Fulton County is approved under Public Service Law § 70, in compliance with the April 14, 2004 Order in Case 02-M-1288, subject to the conditions set out herein.

2. A Notice of Determination of Significance-Negative Declaration under SEQRA is issued and attached to this Order.

3. Niagara Mohawk, during site work and construction/antenna installation, shall observe the construction activities to ensure faithful execution of the Order and that activities by others are consistent with the Commission's rules and regulations for rights-of-way vegetation management plans.

4. Niagara Mohawk shall define and control the limits of construction disturbance on the ROW to the minimum necessary for safe construction activities.

5. Niagara Mohawk shall ensure that temporary erosion controls are in place before any soil is moved for site preparation and continue to be effective pending final restoration of the disturbed site.

6. Niagara Mohawk shall ensure that dirt and mud are not tracked onto the local roads by vehicles leaving the site.

7. Niagara Mohawk shall ensure that all rubbish and debris is disposed in a permitted landfill.

8. Upon completion of the wireless antenna and the equipment shelter installation, Niagara Mohawk shall provide the Commission with a written certification that the installation conforms to Niagara Mohawk construction standards and the NESC. Electrical service shall not be provided to the site until all equipment can be locked and secured. Equipment and material used in construction and installation of the antennas should be secured at all times and kept within the limits of construction as shown on the construction drawings.

9. Niagara Mohawk shall report any proposed changes to the approved construction plans to Department Staff. Department Staff shall refer reports of any proposed changes to the Secretary of the Commission (or a designee) that do not cause substantial change in environmental impact or are not related to contested issues. Niagara Mohawk shall not execute any proposed change until it receives oral or written approval, except in emergency situations threatening personal injury, property damage or severe environmental impact or as specified in the Commission-approved construction drawings.

10. Niagara Mohawk shall monitor final restoration.

11. Niagara Mohawk shall notify the Commission within 10 days of completion of construction and site restoration.

The Commission orders:

1. The joint petition of Niagara Mohawk Power Corporation and Nextel WIP Lease Corporation d/b/a Nextel Partners for attachment of Nextel wireless facilities to Niagara Mohawk's transmission facilities in the Town of Mayfield, Fulton County is approved under Public Service Law §70, in compliance with the

CASES 07-M-0804 and 02-M-1288

April 14, 2004 Order in Case 02-M-1288, subject to the conditions set out herein.

2. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
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 of the Joint Petition of Niagara Mohawk and Nextel WIP Lease Corporation d/b/a Nextel Partners to authorize Nextel Partners to attach wireless antenna equipment to Niagara Mohawk's transmission facilities, 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. The approval of this action is an Unlisted Action as defined under 6 NYCRR Section 17.7(c).

Based upon our review of the record, the approval of the Joint Petition of Niagara Mohawk and Nextel Partners to authorize Nextel Partners to attach wireless facilities to Niagara Mohawk's transmission facilities, under Section 70 of the Public Service Law will cause no changes to the operation of the transmission facilities that will result in significant adverse environmental impacts.

The address of the Public Service Commission, the lead agency for the purposes of the uncoordinated Environmental

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Quality Review of this project is Three Empire State Plaza,
Albany, New York 12223-1350. Questions may be directed to
Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary