

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 19, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 18-T-0499 - Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the Construction of a 20 Mile 345 Kilovolt Transmission Line Located in the Town of Royalton, Niagara County, and the Towns of Alden, Newstead, Lancaster, and Elma in Erie County.

ORDER APPROVING ENVIRONMENTAL MANAGEMENT
AND CONSTRUCTION PLAN

(Issued and Effective November 19, 2020)

BY THE COMMISSION:

INTRODUCTION

On June 16, 2020, the Public Service Commission (Commission) issued a Certificate of Environmental Compatibility and Public Need¹ (Certificate) to NextEra Energy Transmission New York, Inc. (NEETNY or the "Certificate Holder"), to construct and operate the Empire State Line Project

¹ Case 18-T-0499, Order Granting Certificate of Environmental Compatibility and Public Need (issued June 16, 2020) (Order Granting CECPN).

(ESL Project or Project), a 20-mile long 345-kilovolt (kV) transmission line and associated switchyards in the town of Royalton in Niagara County and the towns of Alden, Newstead, Lancaster, and Elma in Erie County (Proposed Line); a new 345 kV switchyard, the Dysinger Switchyard, in Niagara County; and a second, new switchyard, the East Stolle Switchyard, in Erie County. Construction of the ESL Project will relieve transmission congestion in Western New York and will allow for more renewable energy to be delivered into New York State.

The Proposed Line will be constructed in an existing utility corridor, owned by New York State Electric and Gas Corporation (NYSEG), and will connect the proposed new switchyards to one another and interconnect the new switchyards to pre-existing transmission facilities by two sets of transmission lines, approximately 0.5 and 0.4 miles long, respectively.

The Certificate Conditions contain several requirements for compliance, including a requirement that NEETNY submit for public review and Commission approval, plans detailing the Facility design, construction and environmental controls (the Environmental Management and Construction Plan or EM&CP).²

NEETNY filed a proposed EM&CP for approval on June 24, 2020. Pursuant to Certificate Conditions 36 and 37, NEETNY provided the EM&CP Filing Notice to the parties to this proceeding, those on the Project service list and the landowners and/or residents along the proposed transmission line. The EM&CP Filing Notice was also published in newspapers of general circulation in the vicinity of the Proposed Line, in accordance with Certificate Conditions 37 and 38. The 45-day comment

² Id., (Certificate Conditions 35 - 40).

period ended on August 8, 2020. Public comments were initially submitted by the community group Challengers of the Empire State Line (CESL) on August 14, 2020, and additional comments were submitted by CESL on October 6, 2020. Informal comments were submitted to NEETNY by the Staff of the Department of Public Service (DPS Staff or Staff), Staff of the Department of Environmental Conservation (NYSDEC), and Staff of the Department of Agriculture and Markets (NYSDAM). NEETNY addressed these comments in its revised EM&CP (Revised EM&CP), filed on September 21, 2020.

This Order approves the EM&CP so that NEETNY may begin construction and installation of the ESL Project, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

As filed on June 24, 2020, and revised on September 21, 2020, NEETNY's EM&CP provides both typical and site-specific techniques, procedures and requirements to be followed in the development of the Project by NEETNY to ensure environmental protection. The EM&CP identifies and defines the various facilities and environmental features within the existing and new right-of-way (ROW); construction access; protective measures for streams, wetlands, threatened and endangered species, agricultural lands, cultural resources, scenic resources and recreational areas; and NEETNY's organizational framework to ensure implementation of the EM&CP. The standards for the EM&CP are described in the Joint Proposal and its appendices agreed upon by NEETNY, DPS Staff, NYSDEC and NYSDAM, and approved by the Commission. Upon notice of NEETNY's June 24, 2020 EM&CP, the following comments were received.

NYSDEC

NYSDEC Staff reviewed the EM&CP and provided informal comments, suggestions and recommendations to NEETNY and its consultants. These suggestions included, but were not limited to, wetland delineation accuracy and invasive species management. The Commission is advised that NEETNY adequately addressed all of NYSDEC Staff's comments in the Revised EM&CP.

DPS Staff

DPS Staff reviewed the EM&CP and provided informal comments and recommendations to NEETNY and its consultants during various meetings for document reviews and field visits with NEETNY and its consultants. Many of the comments DPS Staff expressed to NEETNY sought clarification and/or additional details of various portions of the proposed EM&CP. DPS Staff suggested revisions to culvert/construction plans, and the Plan and Profile designs as well as other parts of the EM&CP. Items to be clarified included on- and off-ROW access routes, structure and work pad placement, permanent work pad locations and design, and marshalling yard/staging site locations. DPS Staff also sought clarification on temporary versus permanent access road types. NEETNY adequately addressed all of DPS Staff's comments in the Revised EM&CP.

NYS DAM

NYS DAM Staff reviewed the EM&CP and provided informal comments and recommendations to NEETNY and its consultants. NYS DAM Staff suggested revisions to the EM&CP Plan and Profile designs and other parts of the EM&CP, regarding minimization of impacts on agricultural lands. These suggestions included, but were not limited to, access road type and location, location and size of work pads, agricultural operator crossing design detail

and locations of such crossings, and drain tile identification and repair. The Commission is advised that NEETNY adequately addressed all of NYSDAM Staff's comments in the Revised EM&CP.

CESL

CESL represents about 42 residents of Erie and Niagara Counties, most of whom reside in residential developments adjacent to an approximately two-mile long section of the NYSEG utility corridor that will be the site of the ESL Project. CESL submitted comments on August 14, 2020, addressing the June 16, 2020 EM&CP filing, and submitted additional comments on October 6, 2020, after NEETNY responded to CESL's initial comments and the Revised EM&CP was filed.

CESL raised numerous concerns. Most notably, the comments ask for clarification of mitigation measures and assert concerns with Project visual impacts, vegetation and tree clearing methods, restoration, and the long-range ROW management plan. The majority of these comments were addressed by NEETNY and were incorporated into its Revised EM&CP. However, some of CESL's requests could not be met due to potential reliability issues and/or conflicts with Commission orders and electrical line clearance requirements. In accordance with Certificate Conditions 129 and 130, NEETNY will meet with owners and residents adjacent to specified portions of the line, both pre- and post-construction, to address the need for landscape restoration of the line, and in consultation with DPS Staff, prepare plans for any visual restoration found necessary. NEETNY has demonstrated it is committed to working with CESL to address these comments and construct the ESL Project in a manner that is acceptable to and considerate of CESL's concerns.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff, and other parties, raised numerous concerns regarding details of facility design, construction, component locations, and environmental impacts and mitigation, contained in the proposed EM&CP. The Certificate Holder submitted a Revised EM&CP containing revised text, and revised Plan and Profile drawings and specifications to address the concerns raised by DPS Staff and other commenters. Upon review, the Commission finds that NEETNY has adequately addressed those concerns. Based on a review of all the documents submitted, the comments received, and the responses and supplemental filings made by NEETNY, the revised EM&CP for the Project is approved.

The Commission orders:

1. The revised Environmental Management and Construction Plan submitted by the NextEra Energy Transmission New York, Inc. (NEETNY or the Certificate Holder) is approved subject to the following condition.

2. The Certificate Holder shall not commence construction until it has received a "Notice to Proceed with Construction" letter sent by the Director of Facility Certification and Compliance, or their designee of the Office of Electric, Gas and Water.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary