

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on August 14, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman

CASE 14-T-0017 - Proceeding on Motion of the Commission to  
Develop an Expedited Process for Siting  
Transmission on Existing Rights-of-Way.

ORDER ESTABLISHING POLICY STATEMENT  
ON EXPEDITED PROCESS FOR SITING TRANSMISSION

(Issued and Effective August 15, 2014)

BY THE COMMISSION:

INTRODUCTION

The Commission instituted this proceeding to establish an expedited process for Article VII applicants who propose to construct major electric transmission facilities within existing utility or state-owned rights-of-way rather than opening and developing new rights-of-way. The Commission directed Department of Public Service Staff (Staff) to examine how the existing regulations treat this category of projects and to prepare a proposal for an expedited review process.<sup>1</sup> Staff developed a draft policy proposal and hosted a technical conference on April 11, 2014, to receive feedback from

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<sup>1</sup> Case 14-T-0017, Proceeding on Motion of the Commission to Develop an Expedited Process for Siting Transmission on Existing Rights-of-way, Order Instituting Proceeding (issued February 21, 2014), p. 2.

stakeholders. On May 2, 2014, Staff filed a revised policy proposal with the Secretary describing a process for review of certain Article VII electric transmission applications within a ten-month period, eligibility criteria, application requirements, and procedural processes. A Notice Soliciting Comments was issued the same day requiring comments to be submitted by June 2, 2014. Three comments were received.

COMMENTS

Environmental Energy Alliance of New York

The Environmental Energy Alliance of New York, LLC (EEANY) states that its members own and operate transmission, distribution and electric generating facilities throughout the State. EEANY describes its support for the effort to develop an expedited review of major electric transmission projects where there is not likely to be a significant environmental impact. However, it recommends clarifications and modifications to the proposed policy.

First, EEANY suggests modifying the proposed policy to indicate specific criteria for removing an application from the fast track review process. It asserts that without more specificity, the result may be "ambiguous determinations for removal, thus creating uncertainty for transmission line project development." EEANY recommends identifying a reasonable time frame in which expedited review could be revoked to reduce such uncertainty.

EEANY recommends certain modifications to the section of the Staff proposal describing the policy provisions. It suggests that more specific criteria be given to define which proposals are not likely to have significant environmental impacts. EEANY also recommends changing the eligibility criteria, alleging that the "de minimus" language included in

the Staff proposal is ambiguous, will create uncertainty, and suggests that a set of criteria be established. It proposes that, for a change to be de minimus, there could be no substantial modification to existing vegetative cover on the right-of-way and the height of a new tower could not exceed the height of a replaced tower by ten feet. Additionally, it proposes that the Commission could identify a percentage of structure height increase or percentage of right-of-way width expansion that would still allow a project to be eligible for expedited review. EEANY also recommends that de minimus changes accommodate any height changes designed to comply with contemporary National Electric Safety Code (NESC) standards. It seeks confirmation that off-right-of-way danger tree rights and off-right-of-way access roads would be considered de minimus deviations of the right-of-way. It further asserts that the eligibility criteria are too narrow, only relevant to a limited number of projects, and urges the Commission to allow expedited review of rebuild projects, new lines within existing rights-of-way or along existing roads, and proposals located on existing rights-of-way that include taller structures.

Finally, EEANY also requests that the Commission address: how the review process would be reduced for expedited proceedings, and suggests best management practices (BMPs) or memorandums of understanding (MOUs) with interested agencies so that the agencies would not have to review the detailed applications; how off-right-of-way danger tree rights or off-right-of-way access roads would be treated for the purpose of meeting the eligibility requirement, and whether they would be considered permissible de minimus exceptions to the eligibility criteria; adding guidance as to the development of an application, including the submission of an Environmental Management and Construction Plan (EM&CP) with the application

and clarification that the EM&CP would be approved within the ten-month review; placing less emphasis on alternatives for rebuild projects in consideration of less environmental impact because projects would be using existing rights-of-way; and, whether projects involving voltage upgrades would qualify for expedited review.

Iberdrola USA, Inc.

Iberdrola USA, Inc. (Iberdrola) voices general support for the Staff policy proposal. It states that it is particularly supportive of the eligibility criteria that allow minor deviations from the existing heights and widths of the existing rights-of-way and inclusion of high voltage direct current (HVDC) facilities for which the applicant has secured property rights for the off-right-of-way converter station. Iberdrola identified several benefits it sees of HVDC facilities over alternating current (AC) transmission in several respects, specifically with regards to its use over long distances.

Iberdrola suggests two changes to the proposed policy that it claims would support development of HVDC facilities that would qualify for expedited review. First, it seeks clarification that, for HVDC proposals for which the applicant has secured property rights for the off-right-of-way converter stations, the converter stations not be required to meet the criteria that the facility be no taller than the structures presently located on the existing rights-of-way. Second, it suggests that eligibility for expedited review be expanded to include, in addition to converter stations outside the existing rights-of-way, the AC transmission leads that would connect from the converter stations to the AC transmission grid. Iberdrola argues that all HVDC transmission facilities must have a connection with the AC transmission grid and opines that most

such facilities would not be located within existing rights-of-way.

Boundless Energy NE, LLC

Boundless Energy NE, LLC (Boundless) submitted comments in support of the Staff policy proposal. Boundless opines that, with new technologies, more proposed facilities may meet the objective of energy development without adverse affects to the public. It lauds the policy proposal in that it believes it would allow the developer of projects meeting the eligibility criteria to be on a review schedule comparable to developers of transmission projects that are upgrades or rebuilds of existing facilities. Boundless suggests by adopting such policy, the transmission development policy in New York would not implicitly favor fast-to-develop rebuild projects, and that it would allow new participants and newer technologies to be competitive.

DISCUSSION

The Commission appreciates the comments of the parties and their support for an expedited Article VII review process. The parties suggested several modifications to the eligibility criteria and process for revocation of expedited treatment and requested clarification of several other matters that will be discussed below.

EEANY suggests modifying paragraph II(A) of the Staff proposal to further describe an application not likely to have significant environmental impacts. It is not necessary to further define such projects because Section II(A) already references the eligibility criteria in Section II(B) that clearly defines what projects would be eligible for expedited treatment; these are the applications deemed unlikely to have significant environmental impacts.

Both EEANY and Iberdrola made recommendations with regards to the eligibility criteria in Section II(B) of the Staff proposal. With regards to EEANY's suggestions to create criteria defining de minimus and to include height changes designed to meet contemporary engineering clearance standards, at this time no such changes will be made. It should be noted that EEANY suggested two criteria (no substantial modification to vegetative cover, and new towers not exceeding the height of existing towers by ten feet) that derive from Part 102 regulations used to exclude projects from the need to consider the potential for underground construction. While the Commission will not formally adopt those criteria as to what will be considered de minimus, the parties are free to advance arguments that their changes should be considered de minimus if they meet such criteria. Allowing applicants to put forth their arguments as to why particular changes are de minimus in nature adds flexibility to this process. Strictly defining de minimus and pre-judging what it would encompass may unnecessarily limit the number of eligible applicants for expedited review. For example, we would not want to adopt a percentage of taller structures or expanded right-of-way because any standard we would adopt would not be appropriate in all situations given the variability of projects. While the Commission is not adopting specified criteria, applicants should expect that reasonable arguments as to what is de minimus will not be rejected. In addition, the proposed policy will be modified to ensure that in determining that a proposed change is de minimus, there be consideration as to whether the change is necessary to accommodate advanced technologies that will increase the throughput of the electric facility, thereby potentially avoiding the need for other additional transmission facilities.

While the Commission is clearly interested in supporting compliance with the NESC, no pre-determination will be made at this time that height changes attributable to meet NESC clearance standards will always be considered de minimus. Some existing facilities on rights-of-way date back to the early 20th century. New structures designed to comply with NESC standards may need significant height increases that could seriously impact the viewshed of surrounding communities. In such instances, it may not be appropriate to review those projects on an expedited basis.

EEANY requested clarification of the eligibility criteria to ensure that rebuilds, new lines on existing rights-of-way, and new lines on existing roads are eligible. As drafted, Staff's proposed policy statement allows consideration of such projects so long as they otherwise meet the eligibility criteria. EEANY also seeks eligibility for taller structures installed within existing rights-of-way. Such projects will not be eligible for expedited treatment because they may have significant environmental impacts such that expedited review would be insufficient.

Iberdrola requested modification of the eligibility criteria to be inclusive of off-right-of-way AC transmission leads. The AC transmission leads that bring power from converter stations to the AC grid may be relatively short in length or may span miles and wind through residential or other sensitive areas. Because such facilities may have a marked impact on communities and the Commission wishes to afford potentially affected communities ample opportunity to participate in the proceedings, not all such proposals will be eligible for expedited review. However, the proposal is hereby modified to allow expedited review for HVDC facilities complying with the eligibility criteria that, in addition to having

already secured property rights for converter stations, have also already secured property rights for the required AC transmission leads provided they are less than one mile in length. This will encourage applicants to minimize the length of AC transmission leads and will avoid situations where the AC transmission lead would qualify on its own as an Article VII facility on a new right-of-way for which expedited treatment would not be consistent with this policy. Applicants that have not yet acquired such property rights for AC transmission leads, that must use eminent domain procedures to acquire such properties, or whose AC transmission leads are a mile or more in length will not be eligible for expedited Article VII review pursuant to this policy.

Iberdrola requests clarification regarding height requirements for HVDC converter stations. A HVDC converter station is a specialized type of substation which forms the terminus of a HVDC transmission line. At the converter station, direct current is converted to alternating current, or the reverse. A converter station typically contains the converter, switch gear, transformers, capacitors, and electronic filters. The converter itself is usually installed wholly inside a building. To qualify for expedited treatment, the equipment in the converter station outside of the building must be no taller than the structures on the existing right-of-way. The building height should be determined by the minimum height necessary to house the converter, and not be determined by the height of the structures on the existing right-of-way. As Iberdrola correctly notes, off-right-of-way converter station property was not contemplated to comply with existing right-of-way width. The converter station footprint should be determined by the minimum footprint necessary to safely accommodate the converter station



while facilitating appropriate environmental mitigation measures.

EEANY asked for modification of the Staff policy proposal to impose further criteria for removing a project from the expedited review process. It suggests a limited time frame in which to make the judgment that an application should no longer be reviewed on an expedited basis. The Staff policy proposal describes a process for revocation of expedited treatment and provides two bases for the commencement of the process: that the applicant is not meeting the adopted schedule in the proceeding, or that the expedited process is not in the public interest. Further specifying criteria for removing a project from expedited review or limiting the period of time that the Commission, or the assigned Administrative Law Judge, could remove the proceeding from expedited review would run contrary to the goal of ensuring both efficient process and protection of the public interest in these proceedings. The issues that may arise during an expedited proceeding cannot be predicted. The language in the statement of policy provides the Commission with the flexibility to ensure protection of the public interest; the proposed modifications would curtail that authority and we will not adopt them. However, as a practical matter, a decision to remove the proceeding from expedited review would likely only occur during the evidentiary phase of the proceeding as the purpose of extending the review would likely be to obtain more evidence or information for the record.

EEANY requested clarification of a variety of issues and made several miscellaneous suggestions. With regards to the review process, Commission review pursuant to Article VII facilities will not be reduced, but it is expected the scope of contested issues will be more limited than in a traditional Article VII proceeding. The expedited review process will

compress the time in which the application is reviewed, but analysis of the project proposal and the findings the Commission is required to make remain the same. The expedited process will be further strengthened by a requirement that a ruling determining whether the application meets the eligibility criteria for expedited treatment be issued within ten days of the early hearing held to consider that question. In regards to off-right-of-way danger tree rights or off-right-of-way access roads, if an Article VII applicant requires additional land rights, the facility would not be determined to be located wholly within existing transmission rights-of-way. However, depending on the facts of a particular case, such as rights for a limited number of off-right-of-way danger trees or additional off-right-of-way access ways, an applicant may consider arguing the rights needed are de minimus deviations that would qualify it for expedited review. As for upgrading voltage levels of existing facilities, so long as the facilities envisioned meet the eligibility criteria described in Section II(B) of the policy statement, applicants proposing such facilities may request expedited treatment.

The Commission agrees with EEANY that BMPs and MOUs may be useful tools in expediting Article VII proceedings and applicants are encouraged to file them with their applications. However, development of BMPs and the use of MOUs would necessarily require input or collaboration from other state agencies. The Commission encourages their use as they may expedite Article VII proceedings.

With regards to EEANY's request for guidance on what application materials to file, applicants may always seek to streamline review of their projects by submitting an EM&CP or other information they believe may aid review of their proposed facilities. Applicants are encouraged to reach out to State

agencies and local municipalities prior to filing an application and to include information that may assist the agencies and municipalities in their review. While such consultations and materials are not required to be conducted or filed with the applications, applicants are always welcome, and encouraged, to do so. Filing an EM&CP with the application materials may allow for concurrent review and may therefore remove an additional process step.

With regards to the alternatives analysis, as stated above, the expedited review process is not meant to reduce or limit the review process. Applicants are obligated to provide the information required by the statute and Commission regulations with regards to alternatives. However, applicants are reminded that Public Service Law Section 122 requires a description of reasonable alternate locations for the proposed facility; the applicant should use its judgment in determining how broadly to look at alternate locations. As a practical matter, it is often true that use of existing rights-of-way, where appropriate, may cause there to be less focus on alternate locations.

The proposed policy will promote the construction of major electric transmission facilities within existing utility or state-owned rights-of-way. In establishing this policy, the Commission is providing the clarity that developers need to make meaningful the incentive to use existing rights-of-way instead of opening and developing new rights-of-way. By clarifying in advance which projects will be eligible for expedited treatment, the Commission is ensuring that developers can plan their projects with a level of certainty that will facilitate the building of needed transmission infrastructure. The policy statement is adopted with the modifications discussed in this order and is attached hereto as Appendix A. It is the

Commission's hope that the policy will encourage innovation and the use of existing rights-of-way so that the State experiences smart growth of the electric grid with the least impact to the environment and our communities.

It is ordered:

1. The Statement of Policy Concerning the Expedited Review of Certain Article VII Applications, attached hereto as Appendix A, is adopted.
2. This proceeding is closed.

By the Commission,

KATHLEEN H. BURGESS  
Secretary

STATEMENT OF POLICY  
CONCERNING THE EXPEDITED REVIEW  
OF CERTAIN ARTICLE VII APPLICATIONS

I. General Policy

The Commission will make available a ten-month expedited review process for Article VII applicants whose proposals are not likely to have significant environmental impacts. The Commission's expedited review process will ensure the creation of a complete record while meeting the goal of processing applications within a ten-month period. Critically, the process also includes provisions to remove an application from the fast-track review process if it proves not to be in the public interest to proceed on an expedited basis.

II. Provisions

A. Expedited Review. An expedited review process is available to Article VII applicants whose proposals are not likely to have significant environmental impacts, as defined in subsection B, below. The expedited process will allow the Commission to render a decision within ten months of the receipt of an application that complies with Public Service Law (PSL) Section 122.

B. Eligibility. Applicants proposing a major electric transmission facility as defined by PSL Section 120 may request that the application be reviewed on an expedited schedule provided: (1) the facility is proposed to be located wholly within existing transmission rights-of-way and/or buried within existing state-owned rights-of-way except for any de minimus deviations; (2) the facility would not result in structures taller than those presently located on the existing rights-of-way or the change in height is de minimus; (3) the facility would not require expanding the width of the existing rights-of-way or the change in width is de minimus; and, (4) the applicant is not requesting waiver of any application filing requirements described in the Commission's rules or has already received such waivers in advance of submitting the application. A consideration in determining that a proposed change is de minimus is whether the change is necessary to accommodate advanced technologies that will increase the throughput of the electric facility, thereby potentially avoiding the need for other additional transmission facilities. Applicants proposing High Voltage Direct Current (HVDC) transmission facilities that meet the above-listed criteria are eligible for expedited review provided they have: (a) already secured property rights for converter stations and alternating current transmission (AC) lead lines; (b) the associated AC transmission lead line is less

than one mile in length; (c) the structures for the associated AC transmission lead line are no taller than those presently located on the existing rights-of-way; and (d) the equipment in the converter station outside of the building housing the converter is no taller than the structures on the existing right-of-way. The height of the building housing the converter should be determined by the minimum height necessary to house the converter. The converter station footprint should be determined by the minimum footprint necessary to safely accommodate the converter station while facilitating appropriate environmental mitigation measures.

C. Requesting Expedited Treatment. Persons seeking expedited review of an application must request such review at the time the application is filed by including a statement of such request in Exhibit 1 of the application.

D. Application Materials. The application must demonstrate that the facility meets the eligibility criteria listed above. The applicant shall include an index within Exhibit 1 citing each specific part of the application that demonstrates compliance with the criteria.

E. Notice. Expedited treatment will only be available if all required published notices include, in addition to the information required by PSL Section 122 and its implementing regulations, a statement that the applicant is seeking expedited review. Such notices must describe that the Commission may render a decision within ten months if such expedited review is granted.

F. Hearing on Expedited Treatment. If expedited treatment is requested, a hearing will be held no less than 14 and no more than 45 days after receipt of an application that complies with PSL Section 122 to determine whether the application meets the eligibility criteria for expedited treatment. Parties may offer objections at the hearing. A ruling determining whether the application meets the eligibility criteria for expedited treatment will be issued within ten days of the hearing.

G. Schedule. If a ruling is issued granting expedited treatment, a procedural schedule shall be established that will permit the Commission to render a decision within ten months of the receipt of an application that complies with PSL Section 122.

H. Revocation of Expedited Treatment. The proceeding will not continue on an expedited schedule if the Administrative Law Judge or the Commission determines: (1) the applicant is not meeting the adopted schedule; or, (2) that the expedited process is not in the public interest. For example, the Administrative Law Judge or Commission may remove an application from expedited review if a large amount of unanticipated comments are received from landowners/interest groups that require further investigation and the Administrative Law Judge or Commission conclude that the ten-month process would not allow adequate time for the creation of a complete record.

I. Appeals. Rulings granting or revoking expedited treatment may be appealed to the Commission. The proceeding will continue on any schedule set out by ruling unless and until the Commission renders a contrary determination.