

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

SUMMARY OF THE JOINT PROPOSAL

Introduction

On June 30, 2021, in accordance with Article VII of the New York Public Service Law (the PSL) and the Department of Public Service's rules and regulations, Empire Offshore Wind LLC (Empire or the Applicant) applied (the Application) to the New York State Public Service Commission (the Commission) for a Certificate of Environmental Compatibility and Public Need (CECPN) to construct, operate and maintain the New York portion of the transmission facilities (the Project) required to interconnect the Applicant's proposed 816 MW Empire Wind 1 Offshore Wind project (EW 1). The Application was deemed in compliance with PSL § 122 as of January 24, 2022. The parties to this proceeding include the Applicant, the Staff of the New York State Department of Public Service designated to represent the public interest in this proceeding (DPS Staff), the New York State Department of Environmental Conservation (NYSDEC), the New York State Department of State (DOS), the New York State Department of Agriculture and Markets (NYSAGM), the New York State Office of General Services (NYSOGS), the City of New York (City), the Consolidated Edison Company of New York, Inc. (Con Edison), and the Long Island Commercial Fishing Association (LICFA).¹

As described in more detail in Appendix B to the Joint Proposal, the Project consists of: (i) two three-core 230-kilovolt (kV) high-voltage alternating current (HVAC) submarine export cables (submarine export cables) from the boundary of New York State waters 3 nautical miles (5.6 kilometers) offshore to the cable landfall in Brooklyn, New York; (ii) two three-core 230-kV HVAC Empire Wind 1 onshore export cables buried underground from the cable landfall either directly to the cable terminations or to a vault within the onshore substation (onshore export cables); (iii) an onshore substation located at the South Brooklyn Marine Terminal (SBMT) (onshore substation), which will step up the voltage to 345-kV for the onshore interconnection cables; and (iv) two 345-kV cable circuits, each with three single-core HVAC onshore interconnection cables (interconnection cables), buried underground from the onshore substation to the Point of Interconnection (POI) operated by Con Edison.

The Joint Proposal

On April 1, 2022, the Applicant filed a notice of impending settlement negotiations, pursuant to 16 NYCRR § 3.9. Twenty-five settlement discussions were held on May 18, 2022, June 1, 2022, June 15, 2022, June 29, 2022, July 13, 2022, August 10, 2022, August 24, 2022, September 7,

¹ The following parties are signatories to the Joint Proposal filed in this proceeding: Empire Offshore Wind LLC, DPS Staff, NYSDEC, DOS, NYSAGM, the City of New York, and LICFA (together, the Signatory Parties). At present, no Party opposes the Joint Proposal.

2022, October 5, 2022, October 19, 2022, November 16, 2022, November 30, 2022, December 14, 2022, January 11, 2023, January 25, 2023, February 8, 2023, February 22, 2023, March 8, 2023, March 22, 2023, April 5, 2023, April 19, 2023, May 3, 2023, May 17, 2023, June 16, 2023, and June 29, 2023.

After 13 months of bi-weekly settlement meetings and various technical sessions, the Signatory Parties agreed to the terms of this Joint Proposal dated August 15, 2023. The Joint Proposal, which includes 12 detailed appendices, resolves all issues among the Signatory Parties.

The Joint Proposal, including the numerous proposed Certificate Conditions included as Appendix D, contain safeguards that, taken together, avoid or minimize to the extent practicable significant adverse environmental impacts that may result from the Project's construction and operation. Further, the Joint Proposal prescribes guidelines and requirements for an Environmental Management and Construction Plan (EM&CP) in Appendices D and E that are acceptable and appropriate for the Project and protective of the public interest and environmental resources.

Primary Changes to the Project Reflected in the Joint Proposal

The Joint Proposal does not significantly or materially change the Project's location or operation from that which was originally proposed. The changes that were made from the Application were discussed at great length over the course of the settlement negotiations, reflect the input of the settlement parties, and provide additional measures that are designed to, and will, minimize impacts to the environment, public health and safety, local residents, businesses, and commercial and recreational mariners. The most significant differences between the Application and the Joint Proposal are as follows:

- To protect endangered and threatened species from take, a commitment to confine work in the New York Harbor and abide by the time of year restriction for sturgeon to the maximum extent practicable (no work from March 1-June 30 and from October 1-November 30).
- A commitment to abide by an Avoidance, Monitoring, and Impact Minimization Plan and a Net Conservation Benefit Plan for Atlantic and shortnose Sturgeon.
- A commitment to use mechanical dredging for dredging operations from the cable landfall to the edge of the Bay Ridge Channel, at approximately kilometer post (KP) 0.6. From the Bay Ridge Channel to the New York State boundary offshore, the Applicant will minimize dredging activities and shall use mass flow excavation for pre-sweeping and utility crossing preparation to the extent practicable.
- Extensive measures to achieve and maintain cable burial depth and minimize cable protection.
- Extensive measures to minimize impacts to navigation and navigational channels.
- Comprehensive notices to be distributed to all NYSDEC-licensed commercial fisherman to minimize confliction between the Project and the commercial fishing industry.

The Commission's Review Of the Joint Proposal

Pursuant to PSL § 126, the Commission may grant a CECPN to construct or operate a major utility transmission facility if it finds and determines:

1. The basis of the need for the facility;
2. The nature of the probable environmental impact;
3. That the facility avoids or minimizes to the extent practicable any significant adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations, including, but not limited to, the effect on agricultural lands, wetlands, parklands, and river corridors traversed;
4. That the facility avoids or minimizes to the extent practicable any significant adverse impact on active farming operations that produce crops, livestock, and livestock products considering the state of available technology and the nature and economics of various alternatives, and the ownership and easement rights of the impacted property;
5. What part, if any, of the line shall be located underground;
6. That such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving New York and interconnected utility systems, which will serve the interests of electric system economy and reliability;
7. That the location of the facility as proposed conforms to applicable State and local laws and regulations issued thereunder, all of which shall be binding upon the Commission, except that the Commission may refuse to apply any local ordinance, law, resolution, or other action or any regulation issued thereunder or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality; and
8. That the facility will serve the public interest, convenience, and necessity.

The Joint Proposal with its appendices, which represents months of diligent efforts and significant compromise among the Signatory Parties, supports each of these statutory and other findings, as detailed in Appendix C to the Joint Proposal.

Conclusion

For the reasons set forth herein and detailed in the Joint Proposal, the Signatory Parties support the Joint Proposal and respectfully request that the Commission adopt it without modification.