STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 22-T-0654 - Petition of Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for its Lockport-Batavia Line 112 Rebuild Project in Niagara and Genesee Counties.

ORDER ADOPTING TERMS OF A JOINT PROPOSAL, WITH CONDITIONS

Issued and Effective: September 24, 2024

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STATE OF NEW YORK
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At a session of the Public Service Commission held in the City of Albany on September 19, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 22-T-0654 – Petition of Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for its Lockport-Batavia Line 112 Rebuild Project in Niagara and Genesee Counties.

ORDER ADOPTING TERMS OF A JOINT PROPOSAL, WITH CONDITIONS

(Issued and Effective September 24, 2024)

BY THE COMMISSION:

I. INTRODUCTION

In this Order, the New York State Public Service Commission (Commission) adopts the terms of an unopposed Joint Proposal filed on April 29, 2024, proposing the issuance of a Certificate of Environmental Compatibility and Public Need (Certificate) pursuant to pursuant to Public Service Law (PSL) Article VII authorizing Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to rebuild, construct and operate a portion of the Lockport to Batavia transmission line known as Line 112 (the Project). The parties to the Joint Proposal include National Grid, trial staff of the New York State

Department of Public Service (Staff), the New York State Department of Environmental Conservation (DEC), and the New York State Department of Agriculture and Markets (AGM) (collectively, the Signatory Parties).

As discussed in more detail below, the Commission finds that the Joint Proposal complies with the applicable statutory and regulatory requirements and is in the public interest. The Commission adopts the Joint Proposal and the following associated Appendices: Appendix B (Project Description and Location); Appendix E (Environmental Management and Construction Plan); Appendix F (Wetlands and Waterbodies Specifications); and Appendix G (Invasive Species Management Plan Specifications).[1]

II. BACKGROUND

A. Description and Location of the Project

On November 18, 2022, National Grid filed a petition with supporting documentation seeking an Article VII Certificate to rebuild 21.7 miles of the existing 35-mile-long 115 kilovolt (kV) Lockport to Batavia transmission line, between existing Structure 1-2 and existing Structure 211. The transmission line segments to be rebuilt are Segments 1 to 5 and Segment 7, beginning near the Lockport Substation and ending at DEC's John

[1] Evidence admitted to the evidentiary record is included in the Final Revised Exhibit List filed in the Department's Document and Matter Management (DMM) system on September 9, 2024, and varies in part from Appendix A to the Joint Proposal. We therefore decline to adopt Appendix A. The Commission includes its own Findings and Conclusions in this Order and makes certain minor modifications to the proposed Certificate Conditions, rather than adopting Appendices C and D to the Joint Proposal.

White Wildlife Management Area in the Town of Alabama.[2] The Project is located substantially in the existing right-of-way, running through the Towns of Lockport and Royalton in Niagara County, and the Town of Alabama in Genesee County.[3] The Project will continue to serve a portion of National Grid's Western New York Service Territory.

National Grid asserts that the Line 112, which the Project will address in part, is more than 110 years old and has reached the end of its useful life.[4] The Joint Proposal recites that Line 112 does not meet the current National Electrical Safety (NES) Code or the Commission's requirement to comply with the NES Code.[5] National Grid asserts that the Project will bring Line 112 up to current Code requirements, consistent with standard industry practice.

National Grid proposes to replace 178 existing single-circuit steel tri-leg "aeromotor" towers with new single-circuit galvanized tubular steel pole structures.[6] Single-circuit

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[2] Segment 6 of National Grid Line 112 is not part of the proposed Project here. Segment 6 is located on the Western New York Science and Technology Advanced Manufacturing Park and previously was rebuilt as part of a separate project developed by the Genesee County Economic Development Center. Joint Proposal, Appendix B, p. 1.

[3] Niagara Mohawk's Application indicates that six segments of the existing transmission line will be affected. Exhibit 10 (Application Exhibit E-1), p. E-1-1.

[4] Joint Proposal ¶¶ 13-14, pp. 7-8. National Grid's Application outlined the deteriorating, corroded, and weakened condition of Line 112, which has limited transmission capacity, resulted in customer outages, or required frequent maintenance, sometimes on an emergency basis.

[5] Joint Proposal ¶ 15, p. 8.

[6] Joint Proposal ¶ 13, p. 7. Appendix B of the Joint Proposal provides the Project's details and specific components.

suspension structures will be directly embedded into native soils and single-circuit dead-end structures will be set on foundations. The Project will be rebuilt along the centerline of the existing right-of-way, with the exception of Segment 4, which will be relocated to, and constructed along, a new 100-foot right-of-way.[7] The relocation of Segment 4 to a new 100-foot right-of-way is being done "to ensure conformance with" National Grid's transmission right-of-way management plan and the Commission's electromagnetic field standards, among other things, and will be further detailed in the Environmental Management and Construction Plan (EM&CP) compliance filing.

The existing Line 112 currently shares the double-circuit lattice tower at Structures 2, 3, and 4 with National Grid's 115 kV T1530 Lockport-Mortimer Line 111. The shared three structures will be replaced with single circuit galvanized tubular steel pole dead-end structures set upon foundations. The Project will utilize 48-count fiber optic ground wire over the full length, except in instances when the Project line crosses existing transmission lines, in which case National Grid may use, at the Company's option, all-dielectric self-supporting cable (buried in conduit) to ensure continuity of the fiber optic cable.[8]

New operational easements will be required for the Project to maintain required clearances and minimize environmental impacts.[9] In addition, National Grid will be required to acquire additional easements and property rights outside of the right-of-way to selectively address trees that

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[7] Joint Proposal, Appendix B, p. 4.

[8] Joint Proposal, Appendix B, p. 5. The details of this aspect of the Project will be detailed in a compliance filing.

[9] Joint Proposal, Appendix B; Exhibit 2 (Application Exhibit 2), p. 2-10.

pose a danger to the transmission line.[10] As part of the Project, National Grid will install stormwater management features, establish one or more construction marshalling yards, and construct and/or improve access roads.

B. Joint Proposal's Revisions to Original Application

To improve the Project, the Signatory Parties agreed to the following changes from those National Grid initially proposed:

Brace-Post Insulator Structures: Brace-post insulator structure design will be used for all suspension structures (rather than davit arms for certain structures) to provide more working clearances between conductors and to allow work with live-line methods for quicker restoration times in the event of outages.

Offset of 25 to 35 Feet: New structures associated with Rebuilt Line 112 (except for Segment 4) will have 25- to 35-foot offsets (rather than 10-to-15-foot offsets) ahead or behind of existing structure replacements along the existing centerline to eliminate the risk of contact with a below grade limb of a tri-leg structure when drilling holes for new replacement structures.

Permanent Access Roads: Access roads needed on the right-of-way owned by National Grid abutting agricultural lands (between structures 77-86, 93-96, and 97-116) will be permanent rather than temporary, as initially indicated in the Application, to allow for easier access and to eliminate the need for future matting when working in the right-of-way shared by Lines 107, 108, 111, 113, and 114.

Single-Circuit Lines 111/112: Replace existing double-circuit structures for Line 111 and Line 112, specifically

[10] Joint Proposal, Appendix B, pp. 7-8.

Structures 2, 3, 4, 15, and 92, with single-circuit monopoles (rather than with double-circuit monopoles) to reduce the risk of losing both lines in the event of a double-circuit tower failure, to provide more spacing between the Line 111 and Line 112 conductors, and to allow for additional working clearances between the lines for future outage flexibility.

C. Estimated Project Cost.

National Grid estimates in 2022 dollars the total capital cost of the Project to be $87.87 million, which includes materials, transportation, labor, administrative overhead, legal fees, specialized services fees, right-of-way acquisitions, contingencies, and interest.[11] These costs will be passed on to ratepayers in the Company's service territory.

D. Project's Environmental Impacts

The Joint Proposal separately details the Project's environmental impacts, including to land use, visual and cultural resources, wildlife, including threatened and endangered species, agricultural lands, wetlands and water resources, topography and soils, noise, invasive species, transportation, communications, and electric and magnetic fields.[12]

National Grid agrees in the Joint Proposal that the Project is designed in compliance with applicable local, State, and Federal laws and regulations and will be constructed, operated, and maintained consistent with the Application, the

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[11] Exhibit 9 (Application Exhibit 9), p. 9-1, n. 2. The highest percentage of the Project's estimated cost are for labor ($34.1 million), materials ($11.8 million), and administrative overhead ($19.39 million).

[12] Joint Proposal ¶ 19, p. 9.

Joint Proposal, Certificate Conditions, and other Appendices.[13] National Grid asserts that the Joint Proposal represents a series of inter-related compromises and should be judged as a package.

III. PROCEDURAL HISTORY

After National Grid filed its November 18, 2022 Application, the Secretary to the Commission issued a letter advising the Company that the Application was not in compliance with PSL Section 122. On February 17, 2023, National Grid supplemented the Application, revising certain Application Exhibits (Exhibits 3, 4, and 7). In an August 1, 2023 letter, the Secretary found that the Application complied with the requirements of PSL Section 122 as of July 21, 2023.

With its Application, National Grid filed a motion seeking a waiver of certain regulatory requirements, including submission of: (1) Department of Transportation maps required by 16 NYCRR Section 86.3(a)(2); aerial maps required by 16 NYCRR Section 86.3(b)(2); and system reliability impact and associated system studies required by 16 NYCRR Section 88.4(a)(4). The waiver motion was publicly noticed and published in the State Register on May 3, 2023 (22-T-0654SP1) pursuant to the State Administrative Procedure Act (SAPA). No public comments related to National Grid's waiver requests were received in response to the SAPA notice. The Commission granted National Grid's waiver motion in a July 21, 2023 Order (22-T-0654SA1).[14]

On August 9, 2023, the assigned Administrative Law Judge (ALJ) held a procedural conference for the purpose of establishing a procedural schedule and setting the deadlines for

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[13] Joint Proposal, Appendix B, p. 6.

[14] Order on Waiver Requests (issued July 21, 2023).

filing testimony and commencing the evidentiary hearing. At the conference, the parties expressed an intention to settle disputed issues in the proceeding.[15] At the conference, Niagara Mohawk indicated that it would not be filing further corrections or updates to its Application. Following the procedural conference, the ALJ issued a ruling establishing a procedural schedule for the filing of testimony and commencing an evidentiary hearing.[16] The ruling established dates for the submission of testimony (January 26, 2024) and rebuttal testimony (February 16, 2024), and commencement of the evidentiary proceeding (March 4, 2024), among other things.

On August 30, 2023, National Grid filed a Notice of Impending Settlement Negotiations. The parties thereafter engaged in settlement negotiations over approximately an eight-month period.

On October 26, 2023, the Secretary issued a notice informing the public of information forums and inviting the public to comment on National Grid's Application at two public statement hearings to be held on November 28, 2023. At the information forums, National Grid provided details regarding the Project. At the public statement hearings immediately following the information forums, no speakers presented comments about the Project.

On December 5, 2023, the ALJ held a status conference at which the parties advised that a settlement had not yet been reached. Staff requested relief from the August 24, 2023 procedural ruling and postponement of the dates for submission

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[15] In an August 2, 2023 email, the ALJ had asked the parties to propose a consensus procedural schedule at the August 9, 2023 conference, but the parties declined to do so.

[16] Ruling Establishing Procedural Schedule (issued August 24, 2023).

of testimony and commencement of the evidentiary hearing, which the ALJ declined to grant at that time.

On December 12, 2023, the parties collectively requested appointment of a separate ALJ to oversee the settlement process. On December 20, 2023, Staff filed a motion for interlocutory review of the ALJ's oral ruling declining to adjourn the dates for filing testimony and commencing the evidentiary hearing. In a December 20, 2023 ruling, the ALJ adjourned the procedural schedule for filing testimony and commencing the evidentiary hearing.

On April 29, 2024, National Grid filed the Joint Proposal and the following Appendices:

Evidentiary Record (Appendix A)
Project Description and Location (Appendix B)
Proposed Commission Findings (Appendix C)
Proposed Ordering Clauses (Appendix D)
Environmental Management and Construction Plan (EM&CP)
Specifications (Appendix E)
Wetlands and Waterbodies Specifications (Appendix F)
Invasive Species Management Plan (Appendix G)

The Joint Proposal also included three additional evidentiary exhibits:

Ledge Road Marshalling Yard (Exhibit 28)
Proposed Permanent Roads On Right-of-Way Abutting Agricultural Lands (Exhibit 29)
Cross-Section Drawings (Exhibit 30)

On June 10, 2024, the ALJ requested the parties' input on establishing a schedule for submission of statements in support of the Joint Proposal. On June 13, 2024, the ALJ issued a ruling establishing a procedural schedule for consideration of the Joint Proposal consistent with the parties' suggested schedule, including deadlines for filing statements in support and for commencement of an evidentiary hearing (subject to the parties' request to waive the hearing). The ruling specifically required National Grid and Staff to file "witness affidavits

adopting the factual statements made in the Joint Proposal and in their respective Statements in Support and Replies (as applicable)."[17]

On July 19, 2024, and July 22, 2024, National Grid, Staff, DEC, AGM, filed statements in support of the Joint Proposal. No statements in opposition to the Joint Proposal were filed. On July 19, 2024, National Grid also filed affidavits adopting their testimony and the factual statements in the Joint Proposal and submitted a letter to the ALJ on behalf of all parties waiving and otherwise requesting cancellation of the evidentiary hearing because no issues were in dispute, no party intended to conduct cross-examination of any witnesses, and there was no opposition to the Project. On July 25, 2024, the ALJ issued a ruling canceling the evidentiary hearing.

On August 8, 2024, Staff filed witness affidavits that recited their review of the Application and participation in settlement discussions. Staff asserted that the record was adequate and that the Joint Proposal was in the public interest but did not adopt the factual statements set forth in the Joint Proposal or in Staff's statement in support, as required by the June 13, 2024 procedural ruling.

On August 16, 2024, the ALJ issued a Ruling Admitting Evidence to the record, as contained in a consensus Exhibit List submitted by National Grid on behalf of the parties. On September 9, 2024, a Revised Final Exhibit List was duly filed in DMM.

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[17] Ruling Establishing Procedural Schedule for Consideration of the Joint Proposal (issued June 13, 2024), p. 3.

IV. PUBLIC NOTICE AND COMMENT

National Grid caused to be published a Public Notice of the filing of its Article VII Application in the Lockport Union-Sun & Journal and in The Daily News Batavia once per week for two consecutive weeks prior to the Application's filing.[18] National Grid also contacted local municipal officials in the Project area to advise of the Application. National Grid sent abutting landowners notification letters about the Project in August 2019, February 2021, November 2021, August 2022, and November 2022. In addition, when the Application was filed, National Grid sent landowners a notice informing them that the Project could impact their property.

The ALJ held two virtual public statement hearings on November 28, 2023. No public comments were received at the hearings. No public comments about the Project have been filed in DMM during the pendency of the proceeding.

National Grid held informational meetings on August 22, 2023, and October 19, 2023, but no members of the public made a statement at the meetings. The Company circulated Project Fact Sheets at the meetings and established a phone number for those seeking additional information about the Project.

On June 4, 2024, the Secretary issued a notice of the filing of the Joint Proposal and solicited public comments by June 24, 2024. No comments pertaining to the Joint Proposal were received in response to the Secretary's notice.

National Grid indicates in the Joint Proposal that it will notify adjacent landowners of the commencement of

[18] Joint Proposal ¶ 143-148, pp. 51-52.

construction and include safety information and a phone number to obtain additional information.[19]

V. STATUTORY AND REGULATORY FRAMEWORK

Pursuant to PSL Section 126, the Commission may grant a Certificate for the construction or operation of a major electric transmission facility if it determines: that there is a basis for the need of the Project; that the nature of the facility's probable environmental impacts are identified and have been avoided or minimized to the extent practicable; that adverse impacts on active farming operations are avoided or minimized to the extent practicable; that the facility conforms to the long-range plan to expand the electric grid; that the location of the facility as proposed conforms to applicable state and local laws and regulations unless such provisions, if applied to the Project, are unreasonably restrictive considering existing technology, factors of cost or economics, or of the needs of consumers; and that the facility is in the public interest, convenience, and necessity.

The Climate Leadership and Community Protection Act (CLCPA) imposes a requirement on all State agencies to consider, in the context of issuing permits, licenses, administrative approvals, and decisions, "whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits" established by the DEC under the CLCPA.[20] If such administrative approvals or decisions are found to be inconsistent or to interfere with those limits, agencies "shall provide a detailed statement of justification as to why such limits/criteria may not be met, and

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[19] Joint Proposal ¶ 149, p. 52.

[20] L. 2019, ch. 106, §7(2)-(3) (effective January 2020).

identify alternatives or greenhouse gas mitigation measures to be required where such project is located."[21] In addition, Section 7(3) of the CLCPA requires all State agencies to ensure that their decisions will not "disproportionately burden disadvantaged communities" and further requires agencies to "prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities."

The Commission's Guidelines for Settlement provide that all decisions, including those adopting the terms and conditions of a joint proposal, must be just and reasonable and in the public interest. The following considerations pertain to this determination: whether the joint proposal is consistent with the law and with regulatory, economic, social, and environmental State and Commission policies; whether the terms of the joint proposal compare favorably with the likely result of a fully litigated case and produce a result within the range of reasonable litigated outcomes; and whether the joint proposal provides a rational basis for the Commission's decision.

VI. DISCUSSION

The Joint Proposal details the basis for the Commission's adoption and reflects the Signatory Parties' position that it meets the foregoing statutory and regulatory criteria and the Commission's Settlement Guidelines. The terms and provisions of the Joint Proposal will be outlined below, followed by the Commission's findings.

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[21] Id.

A. Project's Environmental Impacts

National Grid's Application, exhibits, and testimony indicate that the Project will have the following environmental impacts:

(a) construction impacts on active agricultural and other land uses;

(b) additional visual impacts from the reconstruction of the existing line primarily along the existing centerline;

(c) construction impacts on certain State-regulated wetlands, streams and waterbodies;

(d) clearing of trees and brush on some segments of the Project rights-of-way as well as removal of danger trees located in proximity to the Project right-of-way;[22]

(e) impacts to wildlife and listed protected species.

(f) construction impacts resulting from noise and debris; and

(g) additional electromagnetic field impacts at the edge of the Project rights-of-way.[23]

These impacts are discussed in detail in the Joint Proposal and are summarized below along with appropriate avoidance and minimization measures to the maximum extent practicable.

1. Land Use

The Joint Proposal notes that agricultural land is the most prevalent land use near the Project, which is estimated to

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[22] Danger trees are defined in the Application as those that in the opinion of National Grid may jeopardize the integrity or safe and reliable operation of the transmission facilities. Exhibit 2 (Application Exhibit 2), p. 2-10.

[23] Exhibits 41-42, 44, 47 (Affidavits of National Grid witnesses Mary E. Bitka, David P. Gentile (2), and Ryan M. Shene).

comprise about one third of the total study area.[24] The Joint Proposal indicates that land use impacts will occur during construction primarily in the right-of-way, will be of a relatively short duration, and will not change State, local, or regional land use patterns or plans.[25] National Grid asserts that it has reviewed the Town's local laws and confirmed that Project activities can be conducted in accordance with local requirements. The Joint Proposal notes that due to the removal of old transmission structures and the construction of new structures, "there will be some limited permanent changes to existing land use associated with the construction of the Project," but overall impacts "will be minimal," with the overall land use remaining the same except for areas of clearcutting trees and bushes.[26]

The Joint Proposal indicates that the Project will result in additional clearing and widening of the right-of-way in Segment 3, Segment 5, and Segment 7, and new right-of-way will be established in the relocated Segment 4, with trees and shrubs mowed or cleared before construction of several new transmission structures.[27] Both the existing and new Segment 4 and a portion of Segment 5 will cross the Tonawanda Wildlife Area.[28]

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[24] Joint Proposal ¶ 22, p. 10. Residential land use is the second most common land use near the Project, comprising a quarter of the Project study area.

[25] Joint Proposal ¶¶ 21-29, pp. 9-13.

[26] Joint Proposal ¶ 27, pp. 12-13.

[27] Joint Proposal ¶ 42, p. 18.

[28] Exhibit 2 (Application Exhibit 2, Location of Facilities), Fig. 2-3; Exhibit 3 (Application Exhibit 3, Alternatives), Replacement Fig. 3-2.

The Joint Proposal indicates that the Project right-of-way intersects and runs perpendicular to the recreational Erie Canal biking and walking path in the Town of Lockport.[29] The Joint Proposal notes that National Grid reviewed the local land use plans and policies in the towns crossed by the Project and that Staff, "on its review of the evidence," determined that the Project will not adversely change this recreational use because the Project will be located within the existing right-of-way.[30] The Joint Proposal also notes that a portion of the Project (Segment 4) has been relocated from the existing right-of-way to a new area that remains in the Tonawanda Wildlife Area and that there will be some permanent changes to existing land use there.[31] A second portion of the Project (Segment 7) is being rebuilt in the existing right-of-way, which will cross the JW Wildlife Area.[32]

The Joint Proposal notes that land use will also be impacted by the Project's planned marshalling yards that will be used to store poles, hardware, conductors, and other Project materials. The Joint Proposal refers to and incorporates only one marshalling yard on which the parties have agreed, which is located on Ledge Road in the Town of Alabama.[33] The Ledge Road Marshalling Yard is located in an industrially zoned district and is approximately 27.6 acres in size. It would repurpose a historic, now-vacant mining site.[34] It would have fencing,

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29 Joint Proposal ¶ 23, p. 11.

30 Joint Proposal ¶ 25, p. 12.

31 Joint Proposal ¶ 27.

32 Joint Proposal ¶ 24.

33 Exhibit 38 (Joint Proposal Exhibit 28, Ledge Road Marshalling Yard).

34 Id.

lighting, and storm water controls. The Joint Proposal states that National Grid may propose other marshalling yards in its EM&CP and provides that any additional proposed yards may be sited on previously undisturbed land but may not be sited near wetlands or streams and must be restored to pre-construction conditions with affected landowner input.[35] The additional marshalling yards will result in additional impacts that are not evaluated in the Joint Proposal.

2. Topography, Geology, Soils, and Groundwater

The Project is located in the Erie-Ontario Lowlands comprised of glacial till deposits and mantled, clay or silt soils.[36] Depth to bedrock is approximately 40 to 60 inches. The topography in most of the Project area is fairly level, with elevations ranging from approximately 590 feet to approximately 770 feet above sea level. Steeper valleys and hills are in the southern portion of the Project, although the right-of-way avoids high points, ridge lines, and steep slopes. The Joint Proposal notes that National Grid will employ grading operations for access roads and for structure work that is designed to protect soils from erosion, compaction, and soil mixing.[37] Work areas will be laid out structure-by-structure, considering soil type and slope, with soil temporarily stockpiled and protected from erosion and stormwater runoff.[38] In addition, during construction, erosion control measures outlined in the Project's Stormwater Pollution Prevention Plan (SWPPP) and EM&CP will be used to reduce the risk of soil erosion, runoff, and fugitive dust. Clearcutting will be prescribed site-by-site and

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[35] Joint Proposal ¶¶ 28-29, p. 13

[36] Joint Proposal ¶¶ 82-84, pp. 29-30.

[37] Joint Proposal ¶ 86, p. 31.

[38] Joint Proposal ¶ 87, p. 31.

disturbance of sensitive or unstable soils minimized using low ground pressure equipment and mats, which will be detailed in the EM&CP.[39] The Joint Proposal concludes that the topography in the Project area will not appreciably change, that there are no unique geological or topographical features permanently impacted, and that soil-related impacts are minimized.

We agree with the Signatory Parties' assessment that the Project is not expected to have any permanent significant impacts on topography, geology, or soils.[40] Neither National Grid's Application nor the Joint Proposal address whether there are groundwater impacts associated with the Project.

3. Agricultural Impacts

The Project crosses active agricultural lands designated in the State's Agricultural Districts (Segments 2, 3, 5, and 7). These districts promote the use of such lands for production of food and other products.[41] Agriculture is the most prevalent land use within approximately one-third of the Project's affected land area. The Joint Proposal notes that the Project's construction activities may result in disruption of one growing season.[42] Permanent impacts would be realized from changes to access roads in or near agricultural fields.

The Joint Proposal recites the Signatory Parties' agreement that the Project's impacts to agricultural land and active farming operations have been identified and minimized.[43] Specifically, the Project's design avoids or limits placement of structures in agricultural lands or, where a structure's

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[39] Joint Proposal ¶ 88, p. 32.

[40] Joint Proposal ¶ 89, p. 32.

[41] Joint Proposal ¶ 52, p. 23.

[42] Joint Proposal ¶ 53, p. 24.

[43] Joint Proposal ¶ 54, p. 24.

location on agricultural land is unavoidable, "National Grid will endeavor to site the structure in a location that minimizes impact to normal farming operations."[44] In addition, when existing structures (guy anchors, concrete foundations, steel structures) are removed from agricultural fields, the removal will be to a minimum depth of 48 inches; the immediate area will be restored to be compatible with agricultural production; and the debris associated with the removal of existing structures and the installation of new structures will be thoroughly cleared and removed.

National Grid agrees in the Joint Proposal to monitor the agricultural fields for two growing seasons in order to identify any additional impacts requiring mitigation and remediation and to address such impacts.[45]

The Joint Proposal requires National Grid to retain an Agricultural Inspector on a part-time basis, at a minimum, to perform monitoring and remediation of agricultural impacts.[46] It also requires National Grid to employ at least four additional inspectors (or fewer at National Grid's discretion), as follows:

> (a) at least one environmental inspector employed full-time.
>
> (b) at least one construction inspector employed full-time.
>
> (c) at least one safety inspector who will inspect the work site; and
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> (d) at least one quality assurance inspector who will inspect the work site.[47]

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[44] Joint Proposal ¶ 55, pp. 23-24.

[45] Joint Proposal ¶ 57-59, p. 24.

[46] Joint Proposal ¶ 60, p. 25.

[47] Id.

In its Statement in Support, AGM notes that the Joint Proposal addresses its concerns regarding the potential for agricultural impacts associated with the Project by siting the Project in areas that will avoid or minimize such impacts to the greatest extent practicable.[48] AGM notes that National Grid has agreed in the Joint Proposal to adhere to AGM's "Guidelines for Electric Transmission Right-of-Way Projects" during all phases of Project construction. AGM states that it is confident that the Project represents the minimum adverse impact on agricultural lands, considering the state of available technology and other pertinent considerations, as required by Section 126(c).

We agree that the Project's identified agricultural impacts are identified in the Application and are avoided or minimized to the extent practicable in the Joint Proposal. Of note are the details set forth above for limiting placement of structures on agricultural lands, for restoring disturbed areas, for monitoring productive fields, and for retaining an agricultural inspector to ensure adherence to the Joint Proposal's provisions.

4. Visual Impacts

The Joint Proposal asserts that National Grid examined the aesthetic, scenic, historic, recreational, and visual resources in the Project area, defined as extending one-mile from the Project's right-of-way.[49] It also asserts that National Grid prepared an inventory of significant visual resources consistent with DEC's Visual Impacts Policy,[50] using geographic

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[48] AGM Statement in Support, pp. 3-4.

[49] Joint Proposal ¶ 30-34, pp. 14-15.

[50] Joint Proposal ¶ 31, p. 14; DEC Program Policy "Assessing and Mitigating Visual and Aesthetic Impacts" (December 13, 2019).

information system databases, State and Federal agency information, and Town master plans and other documents. DEC's Visual Impacts Policy stresses the importance of enforcing visual impact mitigation measures, which should be identified in appropriate plans subject to DEC review and approval, and which should become enforceable conditions to a permit or other authorization.[51]

The Joint Proposal recites that National Grid prepared comparative photographic simulations, focusing on road crossings, commercial areas, the two Wildlife Management areas and the relocated Segment 4, for purposes of evaluating visual changes associated with the Project. It notes that some vegetation will be removed for the Project, causing an increase in visual impacts; that views of Line 112 "will be different due to the new structure types;" and that the Segment 4 new structures "would result in a greater visual impact because of the relocation of the line closer to Lewiston Road" that will be seen by both local and regional viewers.[52] The Joint Proposal nevertheless concludes that the visual impacts from the Project will be minimal, as agreed by the Signatory Parties.[53]

We find that the additional identified visual impacts associated with the Project are not sufficiently significant to warrant additional mitigation measures. This is a transmission rebuild Project, with existing structures now evident in the viewshed. The new structures are not likely to appear so significantly different than those that are seen now.

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51 Id., p. 14.

52 Joint Proposal ¶¶ 32-33, pp. 14-15.

53 Joint Proposal ¶ 34, p. 15; see also Joint Proposal ¶ 27, pp. 12-13.

5. Cultural Resource Impacts

National Grid asserts that it consulted with the State Office of Parks, Recreation and Historic Preservation (OPRHP), State Historic Preservation Office (SHPO), examined information in the New York State Cultural Resource Information System, and submitted Project details for review.[54] With respect to cultural and historic resources, the Joint Proposal indicates that the Pound Hitchins House in the City of Lockport and the New York Barge Canal are listed on the National Register of Historic Places (National Register), with five other historic properties eligible for listing.[55] The Company identified 53 archeological and historic sites within the Project area, but noted either that none are listed or eligible for listing on the National Register of Historic Places or that the properties' eligibility is undetermined.[56]

OPRHP initially requested additional information from National Grid, noting that Area 7 (Site 1) had been identified in the Phase IB archeological survey and testing results for the Lockport/Mortimer Line 111 Rebuild Project as a Precontact Site that should be avoided.[57] In a March 11, 2022 letter, OPRHP acknowledged receipt of National Grid's Site Avoidance Plan for Area 7 and confirmed that an access route had been changed to

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[54] Joint Proposal ¶ 35, p. 15. The Joint Proposal notes that there are 15 cultural resources intersecting the Project area; more than 25 historic properties and 53 archeological sies within 0.6 miles of the Project "area of potential effect." The area off potential effects (APE) for cultural resources is defined as any area that receives direct or indirect impacts from the Project and is influenced by the scale and nature of the activity or undertaking.

[55] Joint Proposal ¶ 37, p. 16.

[56] Joint Proposal ¶ 38, pp. 16-17.

[57] Exhibit 16 (Application Appendix A, Agency Correspondence: February 16, 2021 OPRHP Letter).

terminate outside of Area 7. In a June 22, 2022 letter, OPRHP indicated that Area 7 would not be impacted by new Project structures (Structures 8, 8-1, and 9) and that National Grid would use matting during construction to protect Area 7 from construction impacts.[58] OPRHP therefore concluded that no archaeological or historic resources will be adversely impacted by the Project. National Grid submitted the OPRHP-approved Avoidance Plan to the Secretary seeking confidential treatment in February 2023.

The Joint Proposal (paragraph 35) reflects National Grid's commitment to use matting near Area 7 during construction. Certificate Conditions 88-91 contain the details of National Grid's avoidance or minimization measures for archeological resource impacts but do not identify that compliance with the Avoidance Plan and the use of matting is required. The Joint Proposal notes: that the Company "will not undertake construction in previously undisturbed areas where archeological surveys have not been completed until such time as the appropriate authorities, including OPRHP and Staff, have reviewed the results of any additional historic properties and archeological surveys that are required;"[59] that the Company "will avoid creating adverse impacts on heritage resource sites, archeological sites, and historic structures in the vicinity of the Project by implementing specific Project location, design, vegetation management, resource protection, and construction scheduling measures to be described in the EM&CP;"[60] and that the Signatory Parties "have agreed that National Grid will avoid

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58 Exhibit 16 (Application Appendix A, Agency Correspondence: June 22, 2022 OPRHP Letter).

59 Joint Proposal ¶ 40, p. 17.

60 Id.

creating adverse impact on heritage resource sites, archeological sites, and historic structures in the vicinity of the Project by implementing specific Project location, design, vegetation management, resource protection, and construction scheduling measures to be described in the EM&CP."[61]

OPRHP is not a Signatory Party to the Joint Proposal and it may not review the EM&CP to assure implementation of its recommended avoidance and minimization measures. Consequently, we address it here. We expect the Company to comply with the understanding expressed by OPRHP in its June 22, 2022 letter and we incorporate in the Certificate Conditions the requirement that National Grid comply with the Avoidance Plan, entirely avoiding Area 7, and use matting during construction activities to protect Area 7 (including the appropriate 50-foot buffer) from adverse impacts. In view of this additional requirement, we find that the Project's impacts on cultural resources are avoided or minimized to the maximum extent practicable.

6. Wildlife Impacts

The Joint Proposal indicates that the proposed Certificate Conditions include requirements applicable to threatened and endangered species and their habitat, including nests, hibernaculum, and tree roosts.[62] The Joint Proposal notes that there are 14 State-listed animal or rare plant species, 11 State-listed avian species, two State-listed plant species, and one State-listed fish species located in or near the Project right-of-way.[63] As detailed in the Application and as referenced in the Joint Proposal, the Project is located within parts of

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[61] Joint Proposal ¶ 40, p. 17. Certificate Condition 91 generally recites National Grid's agreement in this respect but does not specifically address Area 7.

[62] Joint Proposal ¶ 44, p. 20.

[63] Joint Proposal ¶ 43, p. 19.

the John White Wildlife Management Area (JW Wildlife Area) and the Tonawanda Wildlife Management Area (Tonawanda Wildlife Area), both of which provide wildlife habitat for a variety of species and are actively managed by DEC.[64] The New York Natural Heritage Program (NHP) indicates that the Project is within the Raptor Winter Concentration Area.[65]

The Joint Proposal states that direct impacts to wildlife are expected to correlate with impacts to vegetative communities, including work done during times when species are breeding and/or wintering.[66] The greatest disturbances will be at each new structure location and along the Segment 4 relocation, but will not result in "significant permanent impacts."[67]

With respect to the JW Wildlife Area, the Joint Proposal recites that DEC actively manages it for habitat conservation, restoration, and protection, and that it is particularly suitable grasslands habitat for breeding and overwintering avian species.[68] Segment 7 of the Project is located within this Area.[69] The JW Wildlife Area is divided into several habitat ecosystems, with grasslands as the predominant habitat type, with differing grass and forb mixes. Many habitat areas are adjacent to wetlands, and, in addition to grassland birds, the JW Wildlife Area is home to various wetland wildlife, waterfowl, and marsh species.

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64 Joint Proposal ¶¶ 21, 41-43, pp. 10, 17-19.

65 Joint Proposal ¶ 43, p. 19.

66 Joint Proposal ¶ 44, p. 19.

67 Joint Proposal ¶ 42, p. 18.

68 Joint Proposal ¶ 41, pp. 17-18.

69 Exhibit 2 (Application Exhibit 2), p. 2-7.

DEC initially advised National Grid that work in and around the JW Wildlife Area should be completed outside of the breeding dates for grassland birds (April 23 – August 15); and should not take place during the wintering period for both the Short-Eared Owl and Northern Harrier (November 1 – April 30), a species which DEC indicated are consistently present.[70] DEC further advised that the wintering restrictive dates could be shortened if the species are determined not to be using the area. DEC also indicated that no known eagles' nests are located in the Project's vicinity and therefore no date restrictions for construction would apply. DEC indicated that it would need to see construction plans and schedules to assess impacts on protected species in order to make a final determination.

With respect to the Tonawanda Wildlife Area, which existing Segment 4 crosses and will be the subject of removal and remediation activities, DEC advised National Grid that:

> There are multiple threatened and endangered species that breed within the wetlands and grasslands of Tonawanda Wildlife Management Area (WMA), including Black Tern, Least Bittern, Pied-billed Grebe, Sedge Wren, Bald Eagle, and Northern Harrier. Therefore, work on the portion of the line that goes through Tonawanda WMA should avoid the breeding period for grassland and marsh birds which runs from April 23 – August 15th.[71]

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[70] Exhibit 16 (Application Appendix A, Agency Correspondence: January 19, 2021 letter from DEC Deputy Regional Administrator, p. 2).

[71] Exhibit 16 (Application Appendix A, Agency Correspondence: January 19, 2021 letter from DEC Deputy Regional Administrator, pp. 1-2). DEC's communication also notes the presence of the Short-Eared Owl and Northern Harrier in the nearby Iroquois Wildlife Refuge in the Project Area.

The Joint Proposal requires National Grid's retention of a "pre-approved qualified bird monitor" to implement preconstruction surveys and continuous monitoring protocols in consultation with DEC and Staff to avoid taking any species. If avoidance and minimization measures are insufficient to avoid the taking of protected species, the Joint Proposal provides that National Grid is required to submit and comply with a Net Conservation Benefit Plan for grassland, marsh, and wintering birds, which must be developed in consultation with DEC and Staff.[72]

The Joint Proposal's Certificate Conditions address observations of threatened and endangered species and require cessation of construction activities, notification to Staff and DEC, consultation with DEC, and detailed record keeping.[73] For certain bat species, National Grid is required to consult and otherwise comply with the State's threatened and endangered species laws and regulations, ECL Article 11 and 6 NYCRR Part 182, and applicable guidance.[74] There are also Conditions governing protection of bald eagles, grassland breeding and wintering birds, and marsh birds, including the requirement that National Grid conduct pre-construction surveys and onsite monitoring plans such species.[75] These surveys are to be developed in the EM&CP, subject to Staff and DEC consultation and approval, and are intended to enable both agencies to determine whether the applicable date restrictions prohibiting construction should apply for any species.

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[72] Joint Proposal ¶ 49, p. 22.

[73] Certificate Conditions 95-96.

[74] Certificate Condition 97.

[75] Certificate Condition 98-101.

The Joint Proposal also includes Conditions that are triggered if avoidance and minimization measures are not sufficient to avoid taking any grassland or marsh species, in which case, as noted above, National Grid is required to submit for approval and comply with a Net Conservation Benefit Plan that meets the substantive requirements of DEC's regulations.[76]

The Joint Proposal gives National Grid the discretion to determine if blasting or helicopter use will be needed for any Project activities, and the EM&CP will address those potential impacts and could include additional appropriate avoidance and mitigation measures for threatened and endangered species.[77]

The Joint Proposal's provisions for certain specific protected species are discussed in further detail below.

Bald Eagles. The record reflects that DEC advised National Grid that no known bald eagle nests are located in the immediate vicinity of the Project and date restrictions to construction activities were not applicable. DEC noted, however, that this could change if new nests were established and that its Region 8 office should be consulted.[78] The Joint Proposal notes that to protect bald eagles and avoid habitat impacts, no construction activities will occur within 0.25 miles of any existing bald eagle nest unless a qualified monitor determines, and DEC has confirmed, that the nest has failed or the nest chicks have fledged and left the area.[79]

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[76] Certificate Conditions 101-102.

[77] Joint Proposal ¶ 50, p. 22; Certificate Condition 103.

[78] Exhibit 16 (Application Appendix A: Agency Correspondence; January 19, 2021 letter from DEC Deputy Regional Administrator).

[79] Joint Proposal ¶ 46, p. 21.

Northern Long-Eared and Other Bat Species. With respect to the protected Northern Long-Eared Bat, little brown bat, and tri-colored bat and their respective habitats (hibernaculum and tree roosts), the Joint Proposal provides that if those species are identified near the Project, National Grid will consult with DEC and Staff and will comply with the substantive requirements of the State's endangered species and other applicable laws and implementing regulations during construction, operation, and maintenance of the Project.[80]

Grassland, Marsh, and Wintering Birds. To protect grassland, marsh and wintering birds in their respective habitats, the Joint Proposal provides that National Grid "will endeavor to schedule construction activities" outside of the specified "time of year" restriction windows in occupied habitat after consulting with DEC.[81] If that is not possible, National Grid has the discretion to put in place minimization measures such as pre-construction surveys and monitoring during construction after consultation with DEC and Staff.[82]

These provisions of the Joint Proposal are intended to provide the Company with a level of flexibility and were agreed to by DEC and Staff. We construe the term "to endeavor" to mean that National Grid will "try" to schedule construction activities outside of the breeding and wintering timeframes in an effort to minimize impacts to the species.

The Joint Proposal states that the Project will avoid and protect of marsh birds, grassland birds and wintering birds in Occupied Habitat, as identified by the Natural Heritage

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[80] Joint Proposal ¶ 47, p. 21.

[81] Joint Proposal ¶ 48, pp. 22-23.

[82] Joint Proposal ¶ 49, p. 22.

Program.[83] We clarify that the term "Occupied Habitat" as used in the Joint Proposal is defined in DEC's implementing regulations to mean any geographic area in which a protected species exhibits "essential behaviors," including breeding, hibernation, reproduction, feeding, sheltering, migration, movement, and overwintering.[84]

Notably, the Joint Proposal provides that National Grid will educate all Project personnel of the potential presence of threatened and endangered species, and must maintain detailed records of observations and notify DEC of any observations of the presence of such species, after which appropriate consultation will be initiated.[85] If species are observed during construction, all activities will cease within 500 feet of the location of observed species until after Staff and DEC authorize recommencement of activities.

With the clarification to the Joint Proposal regarding the term "Occupied Habitat," we find that the Project minimizes wildlife impacts to the extent practicable.

7. Wetlands and Streams

Referring to Application Exhibit 4, the Joint Proposal identifies a variety of field delineated wetland meadows and marshes, scrub wetlands, forested wetlands, and perennial and

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[83] Joint Proposal ¶¶ 48-49, pp. 21-22.

[84] 6 NYCRR Section 182.2(p). Occupied habitat means: "a geographic area in New York within which a species listed as endangered or threatened in this Part has been determined by the department to exhibit one or more essential behaviors. Once identified as occupied habitat, the department will continue to consider that area as occupied habitat until the area is no longer suitable habitat for that species or monitoring has indicated that reoccupation by that species is unlikely."

[85] Joint Proposal ¶ 45, p. 20.

intermittent streams in and near the Project area.[86] It notes that there are 18 Federal protected wetlands, eight protected State wetlands, and 28 "distinct wetland complexes (of approximately 154.32 acres) within the Project area.[87]

The Project also crosses 12 NYSDEC mapped streams, the NYS Barge Canal (Class C), an unnamed minor tributary to Tonawanda Creek (Class B), three unnamed tributaries to Mud Creek (Class C), Mud Creek (Class C), an unnamed tributary to Tonawanda Creek (Class C), two unnamed tributaries to Oak Orchard Creek (Class C), and three Canal feeder tributaries.[88]

The Joint Proposal indicates that, in identifying these environmental resources impacted by the Project, the Company relied on wetland and stream field delineations and utilized DEC's wetlands and hydrogeological maps and Wetlands Delineation Manual, as well as the National Wetlands Inventory and the United States Army Corps of Engineers Wetlands Delineation Manual.[89]

The Joint Proposal states that the re-routing of Segment 4 of the Project will have less impact to wetlands in the Tonawanda Wildlife Area and therefore no mitigation is necessary. In addition, the Joint Proposal appends supplemental specifications for wetlands and waterbodies to guide the EM&CP's details, including avoidance, minimization, and restoration

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[86] Joint Proposal ¶¶ 62, 65, p. 25.

[87] Joint Proposal ¶¶ 62-65, pp. 25-26.

[88] Joint Proposal ¶ 70, pp. 28-29.

[89] Joint Proposal ¶ 61, p. 25.

measures for these resources.[90] We find these provisions to adequately minimize impacts to wetlands and waterbodies.

8. Invasive Species

To minimize the spread of invasive species arising from the construction, operation and/or maintenance of the Project, the Joint Proposal includes Invasive Species Management (ISM) Plan Specifications, which form the basis for a more detailed Plan National Grid will submit as a compliance filing.[91] The ISM Plan will identify invasive species in the Project area and describe the methods that will be used to minimize the spread or expansion of such species. This includes conducting a pre-construction baseline survey during the growing season; defining the Project's limits of disturbance; preparing an Adaptive Management Plan; employing best construction management practices; preventing species propagation and spread; performing post-construction surveying and monitoring; and filing a report with DPS, DEC and AGM discussing whether the objectives of the ISM Plan were achieved.

Staff will determine whether the ISM Plan objectives have been achieved, in consultation with the other agencies, and whether an Adaptive Management Strategy Plan and further measures should be implemented. The details of the Adaptative Management Strategy Plan are also outlined in the ISM Plan Specifications.

We find that these provisions of the Joint Proposal meet the standards set forth in DEC's regulations, 6 NYCRR Part

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[90] Joint Proposal, Appendix F (NYSDEC Supplemental Specifications for Wetlands and Waterbodies). These Specifications are in addition to those otherwise outlined for the EM&CP in Appendix E.

[91] Joint Proposal, Appendix G (Invasive Species Management Plan).

575, and will adequately avoid or minimize non-native invasive species from propagating and expanding in the Project area, including within the limits of disturbance created by construction activities.

B. Electric and Magnetic Fields

Electric and magnetic fields (EMF) are produced by transmission lines carrying electricity and can result in adverse health impacts. National Grid's EMF Study was prepared by a licensed professional engineer and indicates that the maximum calculated electric and magnetic fields of the Line 112 Rebuild Project meet the Commission's standards.[92] The EMF Study reviews circuit ratings, calculations of electric and magnetic fields, and value comparisons. It discusses the Commission's applicable EMF standards, which were established in 1978 and 1990, and concludes that the electric field at the right-of-way edges will remain below the limit of 1.6 kilovolts per meter and the magnetic field will remain below the limit of 200 milligauss based on the expected circuit phase currents in the Winter Normal conductor rating.[93]

The Joint Proposal indicates that the electric field will not significantly changes from the existing Line 112 field, except for certain segments, and that the magnetic field will decrease.[94] The Joint Proposal requires National Grid to design,

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92 Exhibit 18 (Application Appendix D). The EMF Study also includes Tables showing both existing and proposed Project conditions.

93 Id., pp. 2-1, 4-1; Joint Proposal ¶¶ 112-114. The Commission's electric field strength standards are established in Opinion No 78-13 (issued June 19, 1978); and its magnetic field standards are established in the "Interim Policy Statement on Magnetic Fields (issued September 11, 1990).

94 Joint Proposal ¶ 115, pp. 39-40.

engineer, construct, and operate the Project and the Facility in compliance with the Commission's electric and magnetic standards.[95] No additional monitoring or other measures are required in the Joint Proposal.

C. Alternative Routes and Configurations

The Application indicates that National Grid evaluated alternative Project relocation routes and concluded that none were available that would avoid significant impacts to existing residential developments, agricultural lands, and/or commercial and industrial areas.[96] Both the Application and the Joint Proposal justify the proposed Project route on the basis that National Grid already has the property rights needed to rebuild the Project along the existing right-of-way and that following the existing transmission corridor has the least adverse environmental impacts.[97]

There are two exceptions in the Joint Proposal to the Project's construction along the existing right-of-way that are identified in the Joint Proposal. First, the Joint Proposal discusses the need to acquire an additional right-of-way for the Project through acquisition of a residential parcel between Structures 195 and 200.[98] Unless the landowner agrees to National Grid's acquisition of this residential property, it apparently will be subject to acquisition via eminent domain.

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[95] Certificate Condition 13, p. 2. The Joint Proposal also requires National Grid to construct the Project so that it is fully compatible with all nearby electric, gas, telecommunications, water, sewer, and related facilities, which shall be detailed in the EM&CP. Certificate Condition 14, pp. 2-3.

[96] Exhibit 3 (Application Exhibit 3), pp. 3-8 – 3-16.

[97] Joint Proposal ¶¶ 118, 122.

[98] Joint Proposal ¶ 119. See Exhibit 2 (Application Exhibit 2), p. 2-7.

Second, as previously discussed, a 1.8-mile section known as Segment 4, which is located in the Tonawanda Wildlife Area, will be relocated to a new right-of-way that is still located within that Area. The Joint Proposal notes that the Segment 4 relocation is necessary to provide better transmission line access for maintenance and storm restoration and to avoid "as much as possible" large wetland areas with sensitive plant and wildlife species and one stream.[99]

As noted in the Joint Proposal, DEC agreed to the Segment 4 relocation but requested that National Grid leave "one or more" of the existing Segment 4 structures in place in order to provide nesting sites in the existing Segment 4 location. As noted in the Joint Proposal, "[b]ased on further study and analysis," National Grid found this "inadvisable" based on the structures' "poor physical condition" and will be removing the existing Segment 4 structures.[100]

National Grid analyzed alternative Project configurations and determined that increasing the right-of-way width in Segment 3 would address Line 112's current non-conformance with the Commission's Electric Field Guidelines.[101] The Joint Proposal implements this increase thereby bringing Segment 3 into compliance with the Commission's Guidelines.[102]

National Grid's Application also analyzed the alternative to construct Line 112 underground but rejected that approach based on operational disadvantages, environmental impacts, and cost, which is estimated to be at least $306.25

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[99] Joint Proposal ¶¶ 121-122.

[100] Joint Proposal ¶ 123. The Joint Proposal provides that National Grid will remove all structures unless an "active osprey nest" is evident.

[101] Exhibit 3 (Application Exhibit 3), p. 3-17 – 3-18.

[102] Joint Proposal ¶ 124, p. 43.

million.[103] The Application contains a non-wires alternative (NWA) analysis and, after applying National Grid's NWA suitability criteria, concludes that an NWA project would not be feasible and would not improve the condition and reliability of existing Line 112.[104] In support, the Joint Proposal cites the November 2018 Supplemental Distributed System Implementation Plan (SDSIP), which notes that NWAs are not likely to improve existing transmission assets, such as energy efficiency, demand response, and distributed generation, which must be implemented with repair or replacement of existing transmission assets.[105]

The Joint Proposal asserts that alternatives to the proposed Line 112 Project components were also assessed, specifically, the use of steel versus wood poles.[106] The Joint Proposal asserts that in choosing steel poles, National Grid ensures that modifications to adjacent circuits and incidences of "conductor blow-out" were minimized.[107]

We agree with the Signatory Parties' assertion in the Joint Proposal that the Project's route, configuration, structure, and components will have the least environmental impacts and cost and therefore are preferable to the alternatives analyzed in the Application.[108] We also agree with the Joint Proposal's rejection of the "no action" alternative,[109]

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103 Exhibit 3 (Application Exhibit 3), pp. 3-19 – 3-23.

104 Exhibit 3 (Application Exhibit 3), p. 3-26.

105 Joint Proposal ¶ 135 (citing Case 16-M-0411, Matter of Distributed System Implementation Plans, Joint Utilities SDSIP.

106 Joint Proposal ¶¶ 126-127, pp. 44-45.

107 Conductor blow out occurs when strong winds cause the transmission line to sway and contact an adjacent 115kV line.

108 Joint Proposal ¶ 130.

109 Joint Proposal ¶ 132-133.

which is untenable in light of the age and condition of existing Line 112 and the reliability needs of National Grid's customers. Similarly, we concur with the Joint Proposal's rejection of alternative transmission line technology and the use of direct current electric transmission because it would require construction of a new power conversion facility interconnecting two substations, which the Company asserts would be cost-prohibitive.[110]

D. Consistency With Long Range Plans/System Impact

The Joint Proposal indicates that the Project conforms to the planning objectives of the New York Independent System Operator (NYISO) as well as National Grid's long-range plans to expand its transmission facilities.[111] The Joint Proposal states that the NYISO has indicated that the Project will not adversely impact the transmission system because the Project's transfer capacity is less than 10 megawatts and therefore no system impact study is required.[112] The Joint Proposal asserts that the Project will serve system reliability.

In addition, National Grid's Application shows that the Commission's approval of the Project is not inconsistent with and will not interfere with the CLCPA's emission reduction goals.[113] The Joint Proposal acknowledges that the Project will cross identified disadvantaged communities but asserts that "no

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[110] Joint Proposal ¶ 134, pp. 46-47. The two existing substations are designed to handle only alternating current.

[111] Joint Proposal ¶ 136.

[112] Joint Proposal ¶ 138. National Grid's motion to waive the requirement for a system impact study also documents the NYISO's determination.

[113] Exhibits 5 and 10 (Application Exhibit 5: Design Drawings; and Application Exhibit E-1: Description of Proposed Transmission Facilities); Joint Proposal ¶ 137.

increased adverse impacts are anticipated in these locations because the Project is the rebuild of an existing electric transmission line predominantly within the same ROW."[114]

We agree with the Signatory Parties that rebuilding Line 112 will serve the electric grid's reliability and will support the overall long-term planning to modernize and expand electric transmission systems throughout the State. We find that the Project will serve the interests of electric system reliability and will advance New York's efforts to achieve the renewable energy goals established in the CLCPA.

E. State and Local Law Compliance and Local Law Waivers

Public Service Law Section 126 requires National Grid to comply with the substantive provisions of applicable State and local laws and regulations issued thereunder. It also authorizes the Commission to refuse to apply any local laws or regulations that, as applied to the Project, the Commission finds to be unreasonably restrictive in view of the existing technology, or factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality.[115]

The Signatory Parties assert in the Joint Proposal that the Project will fully comply with the substantive provisions of all applicable State laws.[116] We agree. The terms of the Joint Proposal, proposed Certificate Conditions, and the

[114] Joint Proposal ¶ 137.

[115] PSL Section 126(1)(g).

[116] Id.

EM&CP compliance filing requirement demonstrate that the Project will conform to applicable State laws and regulations.[117]

With respect to local laws, National Grid's Application describes the town and county laws that are applicable to the Project and indicates that the Company will comply with these laws, with 15 exceptions. These exceptions are for laws in effect in the Towns of Alabama, Lockport, and Royalton; the City of Lockport; and the County of Genesee.[118] National Grid requests that the Commission waive the following substantive local laws as unreasonably restrictive in view of existing technology, factors of costs or economics, or the needs of consumers:

A. Time restrictions on construction activities and restrictions on noise levels because exceptions from the restrictions may be required for safety or continuous operational requirements.

B. Minimum lot width, frontage, and depth requirements, because these requirements have no nexus or relevance when considered with the Applicant's contiguous linear right-of-way;

C. Utility use prohibitions because compliance is technologically impossible;

D. Maximum height requirements because compliance is technologically impossible; and

E. Landscaping and screening requirements and prohibitions on cutting existing vegetation

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[117] Under PSL Section 130, with certain limited exceptions, procedural requirements to obtain any State or local approval, consent, permit, certificate or other condition for the construction or operation of the Project are inapplicable.

[118] Exhibit 7 (Application Exhibit 7: Local Ordinances), Table 7.1.1, pp. 7-2 to 7-4.

> because of inconsistency with the EM&CP and the Right-of-Way Management Plan.[119]

The Joint Proposal justifies the waiver of these local laws for the reasons stated above, which are further detailed in the Application.[120] The Joint Proposal asserts that waiver of these laws is appropriate because none of the affected local jurisdictions filed objections to the waiver requests.[121] It notes that the Signatory Parties have agreed that the Application contains sufficient basis for waiving such laws.

We agree that the Application contains sufficient reasons to waive most of the identified local laws. Some laws are duplicative of the State laws considered in this proceeding, such as the wetlands laws considered here pursuant to ECL Article 24 and the implementing regulations, which the laws of Niagara County and the City of Lockport law appears to duplicate. Some local laws have the potential to interfere with the design, planning, and construction of the Project, including the laws governing land use, set back, and zoning requirements. It also appears that National Grid's right-of-way vegetative clearing and management practices are consistent with the local laws governing vegetation clearing and fire prevention.

With respect to local laws in the Towns of Lockport and Royalton governing noise, National Grid states in its Application that for nearby residents, construction noise levels will at times exceed ambient levels, depending upon the location of the residential building, the intensity of work activity, and

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[119] Joint Proposal ¶ 140.

[120] Exhibit 7 (Application Exhibit 7: Local Ordinances).

[121] Joint Proposal ¶ 141.

the type of equipment or noise source.[122] National Grid claims that it "will implement noise mitigation measures during the course of the proposed Project" as identified and detailed in Section 4.9 of Exhibit 4.[123] But this referenced section of Exhibit 4 does not contain noise mitigation measures, other than the notation that contractors are required to maintain functional mufflers on their equipment. Although we waive these local laws governing noise because National Grid states that it will implement noise mitigation measures, we require the Company to propose such measures in the EM&CP, which are to be implemented in response to any noise complaints in the Towns of Lockport and Royalton.

We are satisfied that National Grid is unlikely to violate the local laws limiting construction hours to 7:00 a.m. to 7:00 p.m. and limiting construction activities to Mondays through Saturdays. The Company has expressed the intention to comply with those restrictions. If construction activities will occur outside those periods, we require National Grid to notify Staff, the appropriate local government, and potentially affected area residents, at least two days before such activities, with the reasons justifying the extension of construction hours.

Finally, we limit our waiver of the Town of Lockport's property maintenance law (Chapter 132), which prohibits outdoor storage of inoperable equipment and the disposal of solid waste, debris and rubbish resulting from construction, excavation, and structure repair. The Joint Proposal has failed to justify allowing National Grid to store inoperable equipment and to

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[122] Exhibit 4 (Application Exhibit 4 Replacement: Environmental Impacts), pp. 4-103 - 4-104.

[123] Exhibit 7 (Application Exhibit 7:Local Ordinances), pp. 7-13, 7-20.

dispose of solid waste and other waste materials indefinitely in the right-of-way in Lockport - or in any other municipality that the Project crosses. National Grid is required to maintain the Line 112 right-of-way free of inoperable equipment, solid waste, debris, and rubbish. Accordingly, we decline to waive this law except during the time frame that Line 112 construction activities are ongoing in Lockport. Thereafter, National Grid is required to comply with this local law.

Except as otherwise noted above, we waive all local laws applicable to the Project, as noted in the Application, on the grounds that they are unreasonably restrictive in view of existing technology, cost or economics, or the needs of consumers.[124]

F. Impacts to Transportation

The Application identifies and discusses potential Project impacts to transportation, including the right-of-way's proximity to three nearby airports.[125] The Joint Proposal states that an obstruction evaluation is being performed pursuant to Federal Aviation Administration (FAA) criteria, which will be submitted upon completion and evaluated by the FAA.

The Joint Proposal notes that the Project crosses the Erie Canal and the adjacent biking and walking path. It will be subject to Canal Corporation as well as U.S. Coast Guard approval if work is being performed that may interfere with navigation of the Canal.[126] For the Canal biking and walking path, the Joint Proposal also provides that National Grid will

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[124] PSL Section 126(1)(g).

[125] Exhibit 15 (Application Exhibit E-6: Effect on Transportation). These airports are the North Buffalo Suburban Airport and the Bassett Field Airport in Lockport, and the Gasport Royalton Airport in Royalton.

[126] Joint Proposal ¶ 102-103.

implement construction safety measures, such as temporary barricades and fencing to protect pedestrian traffic, which will be identified in the EM&CP.

The Project also crosses 27 roadways from which the right-of-way may be accessed and, accordingly, the Joint Proposal requires National Grid to develop for each location a Maintenance and Protection of Traffic Plan to be included in the EM&CP.[127] The Joint Proposal and Certificate Conditions also recite minimization measures National Grid has undertaken in the design of the Project, including locating structures as far from road crossings as feasible; limiting construction crew trips; and parking construction and other vehicles in areas that do not impede traffic.[128] National Grid will also submit a Utility Work Permit Application to the State Department of Transportation and, upon permit issuance, comply with all permit conditions and applicable substantive traffic and safety laws, regulations, and design standards.[129] The Joint Proposal's Certificate Conditions also require National Grid to coordinate with appropriate State and municipal officials, school districts, and police departments for all road work and traffic management.[130]

We find that the Joint Proposal and Certificate Conditions include extensive measures to assure the Project's impacts on transportation are thoroughly avoided and minimized.

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[127] Joint Proposal ¶¶ 104-105.

[128] Id.; Certificate Conditions 18-20, 80-87.

[129] Joint Proposal ¶ 106. The referenced design standards are identified by the American Association of State Highway and Transportation Officials and are included in the Manual of Uniform Traffic Control Devices, the Highway Design Manual, and the Policy and Standards for Entrances to State Highways.

[130] Certificate Condition 9(a)-(b).

G. Impacts to Communication Facilities

The Application identified all existing communications facilities within one mile of the Project right-of-way and notes that buried fiber optic cables are within or adjacent to the existing and proposed right-of-way. National Grid notes that adequate separation between the Project and the cables will be maintained through consultation with third parties retained to define the precise location to avoid impacts.[131] The Joint Proposal incorporates this provision.[132] The Joint Proposal concludes that the Project is not expected to have impacts to communications during construction or operations and that it will comply with the National Electrical Safety Code (NESC) requirements for appropriate spacing between power and communication cables.[133] The Project is also not expected to interfere with radio or television reception because the rebuilt Line 112 facility is similar to the existing facility and no such interference was previously reported.[134]

We find that the Joint Proposal and the record support a finding that the Project will not adversely impact communications facilities.

H. Noise Impacts

National Grid's Application analyzed the Project's noise impacts from the construction and operational maintenance activities and includes a list of residences within 100 feet of

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131 Exhibit 14 (Application Exhibit E-5: Effect on Communication), p. E-5-1.

132 Joint Proposal ¶¶ 108-109.

133 Joint Proposal ¶ 107.

134 Joint Proposal ¶ 109.

the right-of-way that may be impacted by construction noise.[135] The Application also acknowledges that Project construction will result in an increase in noise levels due to the use of construction equipment, which would vary depending on the location of receptors, the construction activities being performed, and the equipment being utilized.

The Joint Proposal acknowledges the Project's noise impacts but states that, as a general matter, temporary noise levels are mitigated by the attenuating effects of distance, the short-term character of the noise, the presence of vegetation, homes and buildings, and the use of mufflers on construction equipment.[136] The Joint Proposal also indicates that nearby roads make it likely that ambient noise levels from the road are higher than the noise resulting from construction. The Joint Proposal states that National Grid will limit construction to between 7:00 a.m. and 7:00 p.m. from Monday through Saturday unless there are "safety or continuous operation requirements." The specific circumstances and frequency of the safety and operation requirements are unclear, although the Company must seek DPS approval to go outside of the day and time restrictions. Based on these provisions, we find that the Joint Proposal adequately minimizes noise impacts.

VII. BASIS OF NEED FOR THE PROJECT

National Grid is developing this Project to fulfill its obligation to provide reliable electric transmission service to its Western Service Territory.[137] The record shows that Line

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[135] Exhibit 4 (Application Exhibit 4: Environmental Impacts), pp. 4-103 – 4-110.

[136] Joint Proposal ¶ 92, p. 33.

[137] Joint Proposal ¶ 12, p. 7.

112 was initially built in the early 1900s and many of the structures are more than 100 years old. The Joint Proposal indicates that the Line's weakened condition has resulted in numerous incidents, including limited transmission capacity or total electrical failures and customer outages.[138] The Joint Proposal also notes that Line 112 has required frequent and extensive maintenance, with structures having been replaced on an as-needed or emergency basis.

Notably, the Joint Proposal recites that Line 112 does not meet the current standards in the NESC or the Commission's requirement that transmission lines adhere to the NESC.[139] It asserts that the Project will improve safety, performance, and reliability of National Grid's transmission system.

The Line's deteriorating condition is of concern to the Company and to us. We conclude that the Joint Proposal and the record supports our finding that the Project is necessary for National Grid's delivery of safe and reliable electricity to its service territory.

VIII. EVALUATION UNDER SETTLEMENT GUIDELINES

The Commission will adopt a Joint Proposal upon a finding that its terms, when viewed as a whole, produce a result that is in the public interest. Under this public interest standard and applying the Commission's Settlement Guidelines, the Joint Proposal's terms and conditions must fall within the

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[138] Exhibit 13 (Application Exhibit E-4: Engineering Justification). National Grid asserts that there are corroded, severed, or significantly weakened anchor bolts; large sections of spalled concrete foundations; and bent or broken cross bracings, some of which are documented by photographs in the record.

[139] Joint Proposal ¶ 15, p. 8.

range of a reasonably likely litigated result, given considerations of reliability and customer needs. The result of any negotiated proposal also should be consistent with the Commission's environmental, social, and economic policies as well as the policies of the State. These considerations are "themselves elements of the public interest standard."[140]

The Joint Proposal achieves a fair balance of interests on the issues presented and is the product of negotiations among several parties, which were properly noticed under the Commission's regulations governing settlement.[141] In addition to National Grid, the Signatory Parties include Staff, DEC, and AGM, which are agency parties with differing interests but whose positions are advanced by the resulting agreement. The Joint Proposal contains mitigation provisions that are protective of the public health and safety as well as the environment, including agricultural soils and farmlands, wetlands and waterbodies, wildlife, and protected species.

Furthermore, the Joint Proposal will benefit customers and improve reliability by modernizing aging transmission infrastructure that had become unreliable and was the subject of multiple outages. The Joint Proposal thereby fosters National Grid's obligations to provide safe and reliable service. It also serves the State's significant interest in upgrading and expanding the electric grid through transmission line improvements for greater efficiency.

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[140] Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992) (Settlement Guidelines), p. 30; Appendix B, pp. 7-9.

[141] 16 NYCRR Section 3.9(a).

Based on the record, we find that the Joint Proposal, with Certificate Conditions and associated Appendices and Exhibits, is within the range of potentially litigated outcomes and strikes an appropriate balance among the interests of the parties. We therefore find that it complies with our Settlement Guidelines and is in the public interest.

IX. CLCPA FINDINGS

We find that our action here in adopting the Joint Proposal is consistent with the CLCPA because it will result in upgrades and modernization of aging electric transmission infrastructure, will improve reliability, and will promote the reduction in greenhouse gas emissions because Line 112 will have the capacity to carry renewable electricity, thereby fostering the State's CLCPA's objectives.

Although a portion of the Project runs through a disadvantaged community, we find that it will not disproportionately burden that community beyond limited temporary impacts associated with construction. Temporary and short-term impacts associated with construction will be avoided or minimized to the extent practicable through adherence to proposed Certificate Conditions and compliance with local laws and regulations. The Project will not increase greenhouse gas emissions in that community. The Project will benefit the community by providing safe and reliable electric service. Accordingly, our decision approving the Line 112 rebuild Project satisfies CLCPA Section 7(2) and (3).

X. PROPOSED CERTIFICATE CONDITIONS

The Signatory Parties' Proposed Certificate Conditions appear in Appendix D to the Joint Proposal. The Conditions cover numerous categories and areas, including: Conditions of

the Order; Description and Location of Project; Laws and Regulations; Public Health and Safety; Environmental Management and Construction Plan Process; Notices and Public Complaints; Construction, Operation, Maintenance, and Restoration; Herbicide Use; Oversight and Supervision; Roads and Highways; Cultural Resources; Terrestrial and Wildlife Resources; Water Bodies and Wetlands; Agricultural Resources; Petroleum and Hazardous Substances; Contractors and Contractor Supplies/Materials; Invasive Species; Water Quality Certification;

As modified by this Order, these Certificate Conditions comprehensively reflect the Signatory Parties' agreements, as set forth in the body of the Joint Proposal, and will adequately protect public health and safety and the environment by minimizing the Project's potential adverse impacts to the extent practicable. We therefore find, based on the record, including the Joint Proposal and Certificate Conditions, that the Project is in the public interest. To the extent that the Joint Proposal contains legal conclusions as agreed by the Signatory Parties, they are not binding on the Commission and are not adopted.

XI. CONCLUSION AND COMMISSION FINDINGS

The Joint Proposal is supported by all parties to the proceeding. We find that the Joint Proposal addresses the requisite statutory and regulatory issues surrounding National Grid's request for a Certificate to rebuild, construct, operate, and maintain the Line 112 Rebuild Project consistent with PSL Article VII. The Joint Proposal identifies the Project's probable environmental impacts and, through its terms, Certificate Conditions, and future compliance, as modified by this Order, details the measures necessary to mitigate impacts to the extent practicable, given currently available technology

and the nature and economics of potential alternatives. The record also reflects that the Project is necessary to continue to deliver reliable electric power to the Company's service territory. We further find that the Joint Proposal meets the Commission's Settlement Guidelines insofar as it falls within the likely outcome of a litigated case. Finally, we find that the Joint Proposal and the issuance of a Certificate for the Project is in the public interest. We therefore grant National Grid a conditional Certificate pursuant to PSL Section 121.

The Commission orders:

1. The terms of the Joint Proposal filed on April 29, 2024 (Attachment A to this Order), including the Certificate Conditions contained in Appendix D, subject to the discussion in the body of this Order, are adopted, incorporated into, and made a part of this Order.

2. Except to the extent outlined in this Order, Niagara Mohawk Power Corporation d/b/a National Grid's request for Commission waiver of certain local laws identified in the Application and in the Joint Proposal is granted.

3. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 22-T-0654 - Application of Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for its Lockport-Batavia Line 112 Rebuild Project in Niagara and Genesee Counties

JOINT PROPOSAL

By:
Niagara Mohawk Power Corporation d/b/a National Grid
Staff of the New York State Department of Public Service
New York State Department of Environmental Conservation
New York State Department of Agriculture and Markets

Dated: April 29, 2024
Albany, New York

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 22-T-0654 - Application of Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for its Lockport-Batavia Line 112 Rebuild Project in Niagara and Genesee Counties

JOINT PROPOSAL

This Joint Proposal, which includes Appendices A through G attached hereto and incorporated herein, is made as of the 29th day of April, 2024 by and among the following (collectively referred to as the "Signatory Parties"): Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or "Applicant"); 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"); and the New York State Department of Agriculture & Markets ("NYSDAM"). The Signatory Parties are all of the parties to this proceeding.

INTRODUCTION

National Grid's existing Lockport-Batavia Line 112 ("Existing Line 112") is a 115 kilovolt ("kV") electric transmission line approximately 35 miles in length that runs between National Grid's Lockport Substation in the City of Lockport, Niagara County, and its Batavia Substation in the City of Batavia, Genesee County. The Lockport-Batavia Line 112 Rebuild Project is National Grid's proposal to rebuild approximately 21.7 miles of Existing Line 112. The western end of the rebuild would be immediately east of the first structure (Structure 1-2)[1] of

[1] All references to structure numbers in this Joint Proposal are intended to refer to the identifying numbers of existing structures, not proposed structure numbers.

the existing line, which is located just outside the Lockport Substation. The eastern end would be at (and include) the line's Structure 211 in the Town of Alabama. Between these two structures, National Grid proposes to rebuild all of Existing Line 112, except for an approximately 1.9-mile section thereof (called "Segment 6") that recently has been rebuilt in a new location on the site of the Western New York Science and Technology Advanced Manufacturing Park (known as "STAMP") as part of a separate project developed by the Genesee County Economic Development Center. Thus, Segment 6 of Existing Line 112 is not part of National Grid's proposal in this Article VII proceeding. (The resulting rebuilt portion of the line is referred to as "Rebuilt Line 112.")

On November 18, 2022, National Grid filed with the New York State Public Service Commission ("Commission") application documents, pursuant to Article VII of the Public Service Law ("PSL") and the Commission's regulations thereunder, for a Certificate of Environmental Compatibility and Public Need ("Certificate") for its Lockport-Batavia Line 112 Rebuild Project.

On February 17, 2023, the Applicant supplemented its application by filing with the Commission a replacement Figure 3-2 to Exhibit 3, a replacement Exhibit 4 and a replacement Exhibit 7, replacing the versions of Figure 3-2, Exhibit 4 and Exhibit 7 that the Applicant filed on November 18, 2022. (The application documents, inclusive of the foregoing replacements and exclusive of the documents they replaced, are referred to as the "Application".)

In a letter dated August 1, 2023, the Secretary to the Commission found that the Application was filed or otherwise in compliance with PSL Section 122 as of July 21, 2023.

National Grid held "Open House" informational meetings for the public on August 22 and October 19, 2023. Two virtual Public Statement Hearings were held before Administrative Law Judge Maureen F. Leary on November 28, 2023. No members of the public registered to

speak or made a statement at either Public Statement Hearing, each of which was preceded by virtual informational sessions conducted by National Grid and DPS Staff.

After thorough discussion of the issues, the Signatory Parties recognized that the parties' various positions could be addressed through settlement and agreed that settlement was feasible. A Notice of Impending Settlement Discussions was sent to all active parties and other interested persons and duly filed with the Commission on August 30, 2023. Settlement conferences were held virtually on October 20, 2023, October 24, 2023, October 31, 2023, November 14, 2023, November 21, 2023, November 28, 2023, December 5, 2023, December 12, 2023, December 15, 2023, December 19, 2023, December 22, 2023, January 9, 2024, January 30, 2024, February 12, 2024, and March 27, 2024. Electronic communications were also utilized to facilitate settlement discussions.

The Signatory Parties believe that this Joint Proposal gives fair and reasonable consideration to the interests of customers, transmission owners, and the public in assuring the provision of safe and adequate service.

TERMS OF JOINT PROPOSAL

I. GENERAL PROVISIONS

1. Each provision of this Joint Proposal is in consideration and support of all the other provisions of this Joint Proposal and is expressly conditioned upon approval of the terms of this Joint Proposal in full by the Commission. If the Commission fails to adopt the terms of this Joint Proposal in full, or adds additional terms, the Signatory Parties shall be free to accept the Commission's terms or to individually pursue their respective positions in this proceeding without prejudice.

2. The Signatory Parties agree to submit this Joint Proposal to the Commission along with a request that the Commission adopt the terms and provisions of this Joint Proposal as set forth herein. The Signatory Parties agree that construction, reconstruction, operation, and maintenance of the project described in this Joint Proposal in compliance with the Joint Proposal including the Proposed Certificate Conditions set forth in Appendix D attached hereto will comply with PSL Article VII and with the substantive provisions of applicable state law referenced in the Proposed Commission Findings set forth in Appendix C attached hereto.

3. All Signatory Parties fully support approval of the Joint Proposal in its entirety. The Signatory Parties recognize that certain provisions of this Joint Proposal contemplate actions to be taken by various parties in the future to fully effectuate this Joint Proposal. Accordingly, the Signatory Parties taking those actions agree to cooperate with all other Signatory Parties in good faith to the extent allowed by their authority.

4. In the event of any disagreement over the interpretation of this Joint Proposal or implementation of any of the provisions of this Joint Proposal which cannot be resolved informally among the Signatory Parties, such disagreement shall be resolved in the following manner:

a. the Signatory Parties shall promptly convene a conference and in good faith attempt to resolve any such disagreement; and

b. if any such disagreement cannot be resolved by the Signatory Parties, any Signatory Party may petition the Commission for resolution of the disputed matter.

5. This Joint Proposal shall not constitute a waiver by the Applicant of any rights it may otherwise have to apply for additional or modified permits, approvals, or certificates from the Commission or any other agency in accordance with relevant provisions of law.

6. This Joint Proposal shall not constitute a waiver of authority by any state agency with respect to the enforcement of applicable laws and regulations that are the subject of its jurisdiction.

7. This Joint Proposal is being executed in counterpart originals and shall be binding on each Signatory Party when the counterparts have been executed.

II. EVIDENTIARY RECORD

8. Appendix A attached hereto lists the testimony, affidavits, and exhibits that constitute the evidence agreed upon by the Signatory Parties to be admitted as record evidence in this proceeding (collectively, the "Evidentiary Record").

III. DESCRIPTION OF PROJECT

9. The Signatory Parties agree that the Description and Location of Project set forth in Appendix B attached hereto accurately describes the proposed location, configuration, and components of the project they recommend be approved by the Commission (the "Project").

10. Appendix B includes the following revisions to the Application to which the Signatory Parties have agreed (the "Settlement Revisions") because, as more fully discussed in this Joint Proposal, they believe that these revisions improve the Project with respect to environmental impacts, reliability, current and future accessibility of Project facilities, and future cost savings and accessibility for other electric transmission facilities in the vicinity:

a. Brace-Post Structures: Use brace-post insulator structure design shown in Sheet 7 of Figure 5-4 of Exhibit 5 for all suspension structures (rather than davit arms for certain structures as indicated in Exhibit 5 and other parts of the Application). Brace-post insulators provide more working clearances between conductors than davit arms and can also be worked on utilizing live-line methods allowing for quicker restoration times.

b. 25-35' Offset: Place the new structures associated with Rebuilt Line 112 (except for Segment 4 Relocated) generally within 25 to 35 feet ahead or back of the existing structure replacements along the existing centerline (rather than 10 to 15 feet ahead or back as indicated in Exhibit E-1 of the Application). This additional offset between new and existing structures eliminates the risk of contacting a below grade limb of a tri-leg structure when drilling the hole for a new structure.

c. Permanent Access Roads: As detailed in Exhibit 29 of the Evidentiary Record, build access routes needed on ROW owned in fee by the Applicant that abuts agricultural lands (*i.e.*, between structures 77-86, 93-96 and 97-116) as permanent access roads (rather than as temporary access roads as indicated in Exhibit 2 of the Application). These permanent roads will allow for easier access to structures and replace the need for future matting when working in this ROW shared by Lines 107, 108, 111, 113 and 114.

d. Single-Circuit Lines 111/112: As detailed in Exhibit 30 of the Evidentiary Record, replace the existing double-circuit structures of Lines 111 and 112 at structures 2, 3, 4, 15 and 92 with single-circuit monopoles (rather than with double-circuit monopoles as indicated in Exhibit 2 and other parts of the Application). Separating Lines 111 and 112 onto individual monopoles will reduce the risk of losing both lines in the event of a double-circuit tower failure. Two separate monopoles will also provide more spacing between the Line 111 and Line 112 conductors, allowing for more working clearances between the lines. Separating the two lines also provides future outage flexibility.

IV. ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

11. The Commission must consider the totality of all relevant factors in making its determination of environmental compatibility and public need. The relevant factors include, without limitation: project need; nature of environmental impacts; minimization of adverse impacts on the environment and on active farming operations; underground and other alternatives; consistency with long-range plans and the Climate Leadership and Community

Protection Act[2]; conformity with substantive state law and applicable local law; and the public interest, convenience and necessity.

A. Need for the Project

12. The Project is needed for National Grid to continue to ensure reliable service to customers in the western portion of its service territory. Line 112 is an important element of National Grid's transmission system in Western New York, where it is part of a 115kV west-to-east network from Lockport to Batavia and Rochester.

13. The Project would include replacing one hundred seventy-eight (178) deteriorating steel tri-legged "aeromotor" structures and all existing conductor along the portion of Existing Line 112 from Structure 1-2, just outside of the Lockport Substation, to the last steel tri-leg structure (Structure 211), with the exception of the recently rebuilt and relocated structures comprising Segment 6. These facilities are over one hundred ten (110) years old and have reached the end of their service lives. (The Applicant does not propose to rebuild the portion of Existing Line 112 from Structure 211 to Batavia Substation because all the structures in that portion are single circuit wood poles that are in acceptable asset condition and not in need of replacement.)

14. Exhibit E-4 of the Application (Exhibit 13 of the Evidentiary Record and referred to herein as "Exhibit E-4") details the asset condition concerns that give rise to the need for the Project. These include the following factors on many steel tri-legged structures: corroded, severed or significantly weakened anchor bolts; large sections of spalled concrete in the

[2] L. 2019, Ch. 106.

foundation piers; and bent or broken cross bracing. The significant deterioration levels of Existing Line 112 have caused numerous incidents resulting in either limited capacity operation or total electrical failures with customer outages; frequent and extensive maintenance has been required on Existing Line 112 over the past several years, including replacement of a number of structures on an as-needed or emergency basis.

15. Exhibit E-4 also states that Existing Line 112, in its current condition, does not meet the current National Electrical Safety Code ("NESC"). The NESC is of a more recent vintage than the original line, which was constructed in the early 1900s. Bringing Line 112 up to current NESC requirements is consistent with (1) standard industry practice, and (2) the requirements of the Commission, which by order dated January 5, 2005 in Case 04-M-0159 mandated adherence to the NESC. With completion of this Project, National Grid will achieve NESC compliance and improve the safety, performance, and reliability of its transmission system.

B. Cost

16. The Applicant's estimated Project cost is set forth in Exhibit 9 of the Application (Exhibit 9 of the Evidentiary Record).

C. Environmental Impact

17. The Evidentiary Record describes the nature of the probable environmental impacts of the Project, which are briefly summarized below. Based on a review of the Evidentiary Record, and National Grid's obligation to comply with the environmental impact protection measures to be specified in the EM&CP, the Signatory Parties agree that

the overall environmental impacts of the Line 112 Rebuild Project are expected to be minimal and generally limited to temporary, construction-related disturbances.

18. Based on its review of the evidence, DPS Staff has determined that the proposed route and configuration are preferred because the Line 112 Rebuild Project: is located primarily along the centerline of Existing Line 112 and deviates from such centerline in Segment 4 Relocation to minimize environmental impacts; avoids or minimizes and mitigates for any disturbance of protected species and important habitat areas; is reasonable in terms of cost; and minimizes impacts on residential, agricultural and commercial properties and activities, environmental resources and traffic.

19. The Project has been reviewed with respect to potential impacts to land uses, visual, cultural, terrestrial and wildlife, agricultural, wetland and water resources, topography and soils, noise, invasive species, transportation, communications, and electric and magnetic fields. Including the Settlement Revisions agreed to by the Signatory Parties and described in paragraph 10 of this Joint Proposal, DPS Staff, based on its review of the evidence, has determined the Project represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.

20. Categorized by type of resource, the following sections address the potential for environmental impacts anticipated to result from the proposed construction, and/or operation and maintenance of the Line 112 Rebuild Project.

A. Land Use

21. The Project's construction activities, which are of relatively short duration, will not impact the local area sufficiently to induce any significant changes in the economic or

local residential, commercial, agricultural or industrial land use patterns. The Signatory Parties agree that the Project minimizes impacts on environmental resources, existing and planned land uses, and the surrounding communities to the maximum extent practicable by utilizing a combination of Existing ROW and adjacent expansion only as necessary (Segments 1-3, Segment 5, and Segment 7), and new ROW to implement a re-route of Segment 4 Existing to Segment 4 Relocated that is less impactful to wetlands and the Tonawanda Wildlife Management Area ("TWMA"). Accordingly, no mitigation is deemed necessary for economic impacts or for changes in residential, commercial, agricultural, or industrial land use patterns in the Project.

22. As noted in Exhibit 4 of the Application (Exhibit 4 of the Evidentiary Record and referred to herein as "Exhibit 4"), within one mile of the Project, agricultural land is the most prevalent adjacent land use at approximately one third of the total study area. Agricultural properties are directly adjacent to the line for a majority of the Project ROW in Segments 2, 3, 4 Existing, 4 Relocated, 5, and 7. Residential land use is the second most common land use at approximately one quarter of the total study area, and Vacant land makes up 13.05 percent of the total land uses. Wild, Forested, Conservation Lands & Public Parks land uses make up approximately 25 percent of the total land uses within the study area. These uses are mostly associated with NYSDEC Wildlife Management Areas ("WMA") near Segments 3, 4 Existing, 4 Relocated, 5 and 7. Public Services land use accounts for approximately 3.0 percent of the total land uses and are largely attributed to the various electric transmission corridors near the Project ROW. Approximately 6.0 percent of parcels were not assigned a classification code and are categorized as Undesignated. Commercial land uses (3.35 percent of the land uses within the study area)

are concentrated more heavily along the western part of Segment 2 as the Project passes through more of an urbanized setting within the Town of Lockport. Recreation and Entertainment, Industrial, and Community Service land uses are located mainly in Segment 1 and the western part of Segment 2 and combined make up approximately 3.26 percent in the total study area.

23. While the Project ROW does not cross any State parks, it does intersect and run perpendicular to the Erie Canal biking and walking path in the Town of Lockport (Segment 1, between Structures 3 and 4).

24. A portion of Segment 3 (including Structures 134-138, 140, and 141) is within the TWMA. In addition, Segment 4 Existing, which is approximately 1.75-miles in length (from Structure 142 to Structure 159) extends through the TWMA. Segment 4 Existing, Structures 141-159, are proposed for removal and replacement per the Segment 4 Relocated, which is along the southside of Lewiston Road (Route 77). The Segment 4 Relocated extends approximately 2.20-miles from Structure 141 to Structure 159-1 and will also be within the TWMA. A portion of Segment 5, from Structure 160 to 169 is also within the TWMA. A portion of Segment 7, from Structures 190 to 197, crosses the John White WMA ("JWWMA"). This is an existing section of the line within the Existing ROW.

25. National Grid assessed the consistency of the Project with the goals of the 2016 New York State Open Space Conservation Plan and the attainment of the statewide greenhouse gas emissions limits of the Environmental Conservation Law ("ECL") established by the 2019 Climate Leadership and Community Protection Act. Local land use plans and policies were reviewed for Niagara and Genesee Counties and for the city and

towns crossed by the Project ROW. Based on its review of the evidence, DPS Staff has determined the rebuild of the Existing Line 112 will not adversely change any State, local or regional land use patterns or land use planning as it will be located within Existing ROW for the majority of its length. Thus, the Project will provide additional and reliable transmission of electricity, including electricity generated from renewable energy sources, within an existing electric transmission infrastructure corridor while minimizing or avoiding conflicts with surrounding land uses.

26. Project construction activities would occur primarily within existing electric transmission ROW, which National Grid holds by a combination of fee ownership and easement rights. The Project will require the acquisition of new ROW for Segment 4 Relocated and additional ROW adjacent to the Existing ROW in Segments 3, 5 and 7 to ensure conformance with the Applicant's Transmission Right-of-Way Management Program ("TROWMP"). Any potential encroachments in the Project ROW that the Applicant determines may contravene the Applicant's property rights will be addressed by the Applicant on a case-by-case basis.

27. Due to removal and relocation of Existing Line 112 from Segment 4 Existing to Segment 4 Relocated, which will remove the old structures from the TWMA and place structures on a new ROW within the TWMA, there will be some limited permanent changes to existing land use associated with the construction of the Project. The Signatory parties agree that the overall land use impacts along Segment 4 Relocated will be minimal, however, and primarily associated with the installation of the structures. The overall land use is expected to remain the same within Segment 4 Relocated, with the exception of a

few select areas where tree clearing will be necessary. As such, no significant impacts to current land use are anticipated to occur as a result of the relocation.

28. During construction, it will be necessary to establish and utilize construction marshalling yards strategically placed at selected locations adjacent to the Project ROW or at selected off-ROW locations. Each area will be of sufficient size to accommodate the materials to be delivered and will serve as a major storage yard for poles, hardware, and conductors delivered from outside the region. Exhibit 28 of the Evidentiary Record identifies the marshalling yard proposed by Applicant that DPS Staff, NYSDEC, and NYSDAM have reviewed and agree is appropriate for the Commission to authorize National Grid to prepare and use for construction upon certification of the Project.

29. Additional marshalling yards may be proposed for approval in the EM&CP. National Grid will provide DPS Staff 5 days' notice of its commencement of preparation of each approved marshalling yard. Marshalling yards constructed on previously undisturbed lands shall not be sited within wetlands, state regulated wetland adjacent areas, or within fifty feet of waterbodies or streams. After completion of construction, the marshalling yards will be restored to conditions comparable to those that existed before construction, unless National Grid agrees to an affected landowner request otherwise.

B. Visual

30. As noted in Exhibit 4 of the Application, in accordance with the NYSDEC Program Policy entitled "Assessing and Mitigating Visual and Aesthetic Impacts" ("NYSDEC Visual Impacts Policy"), the Applicant examined the aesthetic, scenic, historic, recreational, and public view resources within a visual study area, extending one-mile from

the Project ROW, to establish that the Project avoids scenic, recreational, and historic areas and has been sited to minimize its visibility from areas of public view.

31. An inventory of significant scenic and aesthetic resources was conducted as outlined in the NYSDEC Visual Impacts Policy. In addition, GIS databases, federal and state agency information, and master plans were consulted to obtain information on existing visual resources within a one-mile radius of the Project ROW. Master plans and other town documents or online websites for the City of Lockport, Town of Lockport, Town of Royalton, and Town of Alabama were used to evaluate community resources within the one-mile radius. This inventory also investigated the presence of local resources important to the community and includes local points of interest or county/town recreational areas and open space.

32. Representative photograph simulations were created to evaluate anticipated visual changes associated with the proposed Project by comparing the photographic simulations to photos of existing conditions. Evaluation of the simulations indicates that the Project will offer varying levels of visual contrast in comparison to existing conditions. However, while the Project is proposed mostly within an Existing ROW, some vegetation will be removed within the Project ROW. Although the removal of such vegetation may cause an increase in the visibility of the corridor and Rebuilt Line 112, in most instances, vegetation will remain along the ROW edges to backdrop and partially screen the Project. Nearby areas and neighborhoods that currently have views of existing transmission structures will in most cases continue to have views, but these views will be different due to new structure types.

33. Thus, the assessment of visual impacts, including photo simulations showing Existing Line 112 and Rebuilt Line 112, focused on road crossings, commercial areas,

WMAs, Segment 4 Relocated and residents with long-term views that are proximal to the Project.

34. Based on a review of the evidence, the Signatory Parties have determined that visual impacts from most of the Project will be minimal. The new structures in Segment 4 Relocated would result in a greater visual impact because of the relocation of the line closer to Lewiston Road. This is an area of regional and local viewers that would generally have short and long duration views.

C. Cultural Resources

35. As discussed in Exhibit 4, consultation was initiated with the State Office of Parks, Recreation and Historic Preservation ("OPRHP") through the New York State Cultural Resource Information System ("CRIS"), including the submission of Project information and a request for Project review. On February 16, 2021, OPRHP issued a request for additional information, which was provided, and on March 30, 2021, OPRHP issued a letter requesting a Phase IA archeological survey, and a Phase IB archeological testing based on the results of the Phase IA archeological survey. The Phase IA archeological survey and Phase IB archeological testing were conducted and the results were submitted to OPRHP. During consultation with OPRHP, National Grid also submitted an Avoidance Plan for known NGD Area 7 Site 1 and has committed to the use of matting during construction to protect this archaeological site from construction impact.

36. These consultations and evaluations were used to determine the presence, likely presence, or absence of archaeological and historical architectural resources in the Project's area of potential effects ("APE"). The APE is defined as areas that receive direct or indirect impacts from the Project and is influenced by the scale and nature of the undertaking.

Accordingly, the APE for below-ground archeological resources consists of areas involving direct physical ground disturbance by the Project. The APE for above-ground architectural resources includes the area in which the Project may directly or indirectly cause changes in the character or use of historic properties and may extend beyond the Project's limits of disturbance to take into account visual effects in the Project vicinity.

37. Archeological site files maintained by the OPRHP and the New York State Museum, and available cultural resource management ("CRM") reports, were examined using CRIS. Approximately 15 CRM reports have been conducted regarding cultural resources that intersect the Project APE. Additionally, over 25 historic properties are documented within 1.0 km (0.6 miles) of the Project. One historic structure, the Pound-Hitchins House in the City of Lockport, is listed on the National Register of Historic Places ("NRHP") and one historic district, the New York State Barge Canal, is listed on the NRHP. Five other historic properties are also NRHP-eligible. The remaining 18 documented properties are either not eligible or have undetermined status regarding listing on the NRHP.

38. Fifty-three (53) archeological sites have been recorded within 1.0 km (0.6 miles) of the Project APE. In total, forty (40) archeological sites are associated solely with the Precontact Period (before European settlement, about 1609), thirteen (13) sites are related exclusively to the historic period and one site contains both precontact and historic components. None of the archeological sites are NRHP-listed; fifteen (15) exclusively Precontact sites, one exclusively historic site, and one that is both precontact/historic site are eligible for listing on the NRHP. The rest are either not eligible for listing on the NRHP or remain undetermined with regards to their eligibility. The NRHP eligibility of

most of the exclusively historic period sites has yet to be fully evaluated by OPRHP and their eligibility status remains undetermined; three historic sites have been determined not eligible for listing.

39. On June 22, 2022, OPRHP issued an opinion letter stating that "it is the opinion of the OPRHP that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be Adversely Impacted by this project." Thus, the Signatory Parties agree that the Project is not anticipated to have adverse effects on relevant NRHP/State Register of Historic Places listed and eligible historic properties.

40. National Grid will not undertake construction in previously undisturbed areas where archeological surveys have not been completed until such time as the appropriate authorities, including OPRHP and DPS Staff, have reviewed the results of any additional historic properties and archeological surveys that are required. Based on its review of the evidence, the Signatory Parties have determined that National Grid will avoid creating adverse impacts on heritage resource sites, archeological sites, and historic structures in the vicinity of the Project by implementing specific Project location, design, vegetation management, resource protection, and construction scheduling measures to be described in the EM&CP.

D. Terrestrial and Wildlife Resources

41. As discussed in Exhibit 4, the terrestrial ecology that occurs within the Project ROW has been characterized based on a review of orthophotography, agency correspondence, and several days of field surveys in 2019 and 2020. The vegetation within the Project ROW includes shallow emergent marsh, shrub swamps, silver maple-ash

swamp, common reed marsh, purple loosestrife marsh, successional old fields, successional scrub land, cropland (row and field crops), mowed residential lawns with trees, and herbicide-sprayed roadside/pathway. The JWWMA and portions of the TWMA consist of grasslands being managed by NYSDEC for grassland bird habitat conservation, protection and restoration in order to provide suitable habitat for breeding and overwintering. Grassland is the dominant habitat type within the JWWMA consisting of two large fields that are divided into small management units that contain differing grass and forb mixes and have different mowing regimes. The TWMA, within the vicinity of the Project area, consists of several managed grassland fields adjacent to large managed wetland areas and associated wetland ditches. Grassland fields on the TWMA have been planted with various grasses and forbs to improve habitat, and wetland impoundments are managed to provide habitat for wetland wildlife, including waterfowl and protected marsh bird species.

42. Vegetative communities within the Existing ROW will be temporarily disturbed by construction activities and equipment access. Additional clearing and widening of the ROW are expected to occur in Segment 3, Segment 5 and Segment 7 and new ROW will be established in Segment 4 Relocated. Clearing will be kept to a minimum and to meet standards identified in the TROWMP and in compliance with the proposed Certificate Conditions. Within the Project ROW, trees and shrubs will be mowed or cleared to provide unimpeded and safe access to proposed structure work sites. Based on its review of the evidence, DPS Staff has determined that this activity will result in minor, short-term changes to the existing conditions and no significant permanent impacts are anticipated.

43. The successional communities, shrublands, managed wetland and grasslands within the TWMA and JWWMA, as well as the managed Existing ROW, provide wildlife

habitat for a variety of species. Variations in vegetative community types and other conditions, such as topography and land use disturbance, provide a variety of wildlife habitat conditions. The typical wildlife expected to occur within the Project ROW includes generalist species as well as species adapted for early successional meadows, shrub land communities, grasslands, emergent marsh, and the deciduous forest that borders the Project ROW. Based on a review of U.S. Fish and Wildlife Service ("USFWS") database and correspondence received from the New York Natural Heritage Program ("NYNHP"), there are no federally listed plants or animals, and fourteen (14) state-listed and/or rare plant and animal species that may occur within or near the Project ROW, which include eleven (11) state-listed birds, one (1) state listed fish species, and two (2) state-listed plant species. Additionally, NYNHP indicated that portions of the Project ROW are within or near a Raptor Winter Concentration Area.

44. Direct impacts to wildlife are expected to correlate with the impacts to vegetative communities as well as disturbances related to construction noise/activity if work must be done during sensitive time periods (*i.e.*, during breeding and wintering time of year restrictions). Temporary disturbance to plant communities will be minimal with the greatest disturbance occurring at each new structure location and with the establishment of the Segment 4 Relocated. Based on a review of the evidence, the Signatory Parties have determined that the disturbance along the Existing ROW for structure replacements will have a negligible impact on wildlife since each new structure location is in relatively close proximity to an existing structure and construction activities at any single structure location will be short-term. However, portions of the Existing ROW, including sections within two WMAs, contain sensitive habitats occupied by state-listed known threatened or endangered

plant or animal species (collectively, "T&E" species). In these areas, disturbance caused by construction activities as well as routine maintenance may result in impacts to T&E species and their habitat. Based on National Grid's commitment to implement various measures and conditions designed to promote protection and avoidance of known T&E species during construction, operation, and maintenance of the Project, DPS Staff and NYSDEC have determined that the Project will comply with the substantive requirements of the ECL governing the identification, avoidance, protection, impact minimization and, if necessary, compensation for the incidental take of listed T&E species. The proposed Certificate Conditions include measures and requirements generally applicable to T&E species as well as to those particular species in the Project vicinity, including: bald eagles and their nests; the northern long-eared bat, little brown bat, and tri-colored bat, as well as their hibernaculum and tree roosts; and marsh birds, grassland breeding birds, and wintering birds in occupied habitat.

45. National Grid will educate all personnel who work on the Project regarding the presence of T&E species in the area, and notify NYSDEC of any observations of such species, including maintaining detailed records of T&E animal species observations to be provided to NYSDEC within 30 days. If National Grid observes any T&E animal species on the Project ROW during operation and maintenance activities, it will notify NYSDEC as soon as practicable and initiate consultation with NYSDEC in an effort to avoid, minimize, or, if necessary, mitigate for impacts to T&E species and their associated habitat during continued operation and maintenance activities. For T&E species observations that occur during Project construction, National Grid will cease construction activities within 500 feet of the approximate location of the observed listed species until DPS Staff, after

consultation with NYSDEC, authorizes recommencement of activities, unless construction activity is necessary for protection of human life or property.

46. For the avoidance and protection of bald eagles, no construction work will occur during the bald eagle breeding season within 0.25 mile (or 660 feet if there are visual barriers) of any existing known bald eagle nest except as necessary to protect property or human life; provided however, that if monitoring of the nest by a pre-approved qualified bird monitor indicates that the nest has either failed prematurely or the chicks have fledged the nest and left the area, construction work may be performed after NYSDEC confirms that the nest is no longer active, and provided further that if construction work during the bald eagle breeding season within 0.25 miles of an active nest is necessary, such bird monitor shall monitor any active nests within 0.25 miles of the proposed work during all times when construction activities are in progress. If the bald eagle(s) show signs of distress associated with the work, then all work, except work necessary to protect property or human life, must immediately cease and the area shall be avoided until DPS Staff, after consultation with NYSDEC, authorizes construction activities in such area.

47. For the avoidance and protection of the northern long-eared bat, little brown bat and tri-colored bat, as well as their hibernaculum and tree roosts, National Grid will consult DPS Staff and NYSDEC to comply with the substantive requirements of the ECL, and its regulations or other guidance as then applicable, should such species be identified on or near the Project ROW during construction, operation, or maintenance of the Project.

48. For the avoidance and protection of marsh birds, grassland breeding birds and wintering birds in Occupied Habitat (as identified by NYNHP), National Grid will endeavor to schedule construction activities outside of specified Time of Year Restriction

("TOYR") windows and will also endeavor to not schedule operation and maintenance activities in Occupied Habitat within TOYR windows in effect at the time of such activities, following consultation with NYSDEC.

49. For the avoidance of impacts to these bird species , no construction during such TOYR windows specified for each of these species shall occur within Occupied Habitat except as necessary to protect property or human life, provided however, that if these avoidance measures cannot be maintained, then minimization measures in Occupied Habitat consisting of preconstruction surveys and onsite continuous monitoring during construction activities by a pre-approved qualified bird monitor shall be employed. A detailed description of preconstruction survey and continuous monitoring protocols will be developed in consultation with and accepted by NYSDEC and DPS Staff and included in the EM&CP Further , if such avoidance and minimization measures are not sufficient to avoid a take, National Grid may only conduct construction activities in Occupied Habitat during the TOYR windows if the EM&CP includes, and National Grid complies with, a Breeding Grassland, Marsh, and Wintering Bird Net Conservation Benefit Plan developed in consultation with and accepted by NYSDEC and DPS Staff.

50. Should National Grid determine that blasting or helicopter use will be needed for the Project, an appropriate plan for each such activity will be provided in the EM&CP and will detail any further avoidance and mitigation measures for T&E species during construction of the Project.

51. Prior to filing the EM&CP, National Grid will contact the NYSDEC, NYNHP and USFWS to check for any updates or changes of known T&E species or habitat or Significant Natural Communities in the Project area.

E. Agricultural

52. As discussed in Exhibit 4, the Project traverses active agricultural lands and designated New York Agricultural Districts, which encourage improvement and continued use of agricultural land for food and other agricultural products. Based on mapping obtained from agricultural districts boundary data for Niagara and Genesee counties, portions of the Project ROW cross Agricultural Districts in Segments 2, 3, 5, and 7.

53. Agricultural land is the most prevalent adjacent land use at approximately one third of the total one-mile study area. Agricultural properties are directly adjacent to the line for a majority of the Project ROW in Segments 2, 3, 4 Existing, 4 Relocated, 5, and 7. Cropland communities, both row and field crops, are present throughout the Project ROW. During construction, agricultural operations may be disrupted within the ROW. Such disruption is anticipated to last no longer than a single growing season, except for National Grid fee-owned land on which a permanent access road has been installed for the Project.

54. Based on a review of the Record Evidence, the Signatory Parties have determined that National Grid properly has assessed and designed the Project to minimize any potential adverse impacts on active farming operations that produce crops, livestock and livestock products, considering the state of the available technology and the nature and economics of the various alternatives, and ownership and easements rights of the impacted agricultural property.

55. To protect and minimize impacts to these agricultural areas, National Grid has designed the Line 112 Rebuild Project to the extent possible to avoid or limit the placement of structures on crop fields or on other active agricultural land where the structures may significantly interfere with normal agricultural operations or activities. Where the location

of a structure on such agricultural land is unavoidable, National Grid will endeavor to site the structure in a location that minimizes impact to normal farming operations.

56. Structures and guy anchors removed from agricultural areas as part of the construction activities are planned to be removed to a minimum depth of 48 inches below the soil surface. All holes or cavities created by the removal of these structures will be filled to the same level as the adjacent area, plus 6 to 12 inches of additional soil to allow for settling. All material will be slightly mounded to accommodate for settling.

57. Wherever existing structures are removed from agricultural fields, the immediate area will be restored to be compatible with agricultural production. Such restoration will include the removal of concrete foundations and steel structures down to a minimum of 48" below the ground surface, the removal of all vegetation from the structure area, and grading of the ground surface to match the adjacent field. All rocks 4 inches and greater in size shall be removed from the surface.

58. At the end of construction, the ROW and respective work areas, including guying wire assembly and disassembly sites, shall be thoroughly cleared of debris such as nuts, bolts, spikes, wire, pieces of steel, and other assorted items.

59. National Grid will provide a monitoring and remediation period of two growing seasons following completion of ROW restoration in active agricultural areas. The monitoring and remediation phase shall be used to identify any remaining agricultural impacts associated with ROW construction that need mitigation and to implement the follow-up restoration.

60. National Grid will retain the services of an agricultural inspector on at least a part-time basis through the monitoring and remediation period. In addition to retaining an

agricultural inspector during this post-construction period, during construction National Grid will use up to five inspectors (or fewer if the Certificate Holder elects to use the same individual in more than one role and that individual is qualified and has sufficient time and resources to adequately fulfill each role) comprised of: (a) at least one environmental inspector employed full-time on the Project; (b) at least one construction inspector employed full-time on the Project; (c) at least one agricultural inspector employed part-time on the Project; (d) at least one safety inspector who will inspect the work site from time to time; and (e) at least one quality assurance inspector who will inspect the work site from time to time. The environmental inspector may be used to perform agricultural inspections, if they become necessary, and if the person who performs such inspections is qualified to do so and is approved by DPS Staff and NYSDAM.

F. Wetlands and Water Resources

61. As described in Exhibit 4, field studies and review of agency publications, including NYSDEC wetland digital mapping data, NYSDEC hydrological digital mapping data, New York State Freshwater Wetlands Delineation Manual, National Wetlands Inventory ("NWI") data, USACE Wetlands Delineation Manual, and USACE Regional Supplement to the Wetland Delineation Manual, were utilized to assess the location and potential impacts of the Project on wetlands and other water resources.

62. A variety of wet meadows, marshes, scrub-shrub wetlands, and forested wetlands associated with rivers, perennial and intermittent streams, and depressions occur within and adjacent the Project ROW. A total of twenty-eight (28) distinct wetland complexes (totaling approximately 154.32-acres within the Project ROW) were field delineated between August 6 and October 2, 2019, June 16, 2020, and November 12 and 13, 2020

within and adjacent to the Project ROW. The EM&CP will specify the work procedures in wetlands and at stream crossings and appropriate restoration and mitigation measures that will be prescribed on a site-by-site basis.

63. These wetland complexes consisted of cover type components of palustrine emergent, palustrine scrub-shrub, palustrine forested, and open-water wetlands. Some of these wetlands are associated with mapped NYSDEC freshwater wetlands. While some of the delineated wetlands are associated with mapped wetlands in the NWI dataset, only 18 of the delineated wetlands are anticipated to be regulated by the USACE under federal Clean Water Act.

64. These 18 anticipated federal jurisdictional wetlands are considered directly adjacent to or have a surface water connection to other Waters of the U.S. Additionally, there are several areas within the Project ROW that are mapped as NWI wetlands but that did not meet the definition of a wetland using the three-factor approach applied during the field investigations per the Regional Supplement and the NYS Manual.

65. The Project ROW crosses eight mapped NYSDEC freshwater wetland systems or their regulated 100-foot upland adjacent area. Based on a review of NWI maps and field assessment, the Project ROW crosses seventy-nine (79) distinct mapped NWI areas, however, not all of these wetland areas were observed within the field and some are riverine NWIs that correspond to watercourses (streams).

66. Proposed tree and brush clearing in the Project ROW will result in the clearing of forested wetland. Based on the present level of design, it is estimated that approximately 2.6 acres of delineated forested wetlands will be cleared as a result of the Project, of which approximately 2.13 acres of forested wetland will be cleared in a State regulated wetland.

The exact acreages of clearing, as well as a compensatory wetland mitigation plan, will be provided in the EM&CP.

67. Project structures will be located in a manner to avoid wetland areas to the extent practicable. When it is necessary to locate structures within the limits of a wetland, special construction methods and environmental procedures will be employed to minimize adverse environmental effects and protect the individual benefits and functions of the wetland. Wetlands will be individually reviewed to determine the best method of access to each structure and to prescribe the appropriate mitigation measures such as the use of tracked equipment, low-ground-pressure equipment, mats and/or scheduling construction during dry or frozen conditions.

68. In wetlands, temporary construction work pads made of timber mats will be placed at each structure location to provide a level and stable work area to set up and operate the equipment necessary for the installation and erection of the new structures. Details regarding the size and location of each work area as well as the mitigation measures that will be used to minimize impacts on the wetland will be provided in the EM&CP.

69. According to the National Wild and Scenic Rivers database and NYSDEC Wild, Scenic and Recreation Rivers Permit Program no designated Wild and Scenic Rivers or Nationwide Rivers Inventory rivers are crossed by the Project ROW. One waterbody, Tonawanda Creek (lower and main stem), within the vicinity of the Project is listed on the NYS List of Impaired Waters in Genesee County as potentially impaired due to pathogens and phosphorus but further verification is needed as this impairment may or may not extend to the Unnamed Tributaries of Tonawanda Creek that cross the Project ROW.

70. Based on a review of the NYSDEC Environmental Resource Mapper, the Project ROW crosses twelve (12) NYSDEC mapped streams. These are the NYS Barge Canal (Class C), an unnamed minor tributary to Tonawanda Creek (Class B), three (3) unnamed tributaries to Mud Creek (Class C), Mud Creek (Class C), an unnamed tributary to Tonawanda Creek (Class C), two (2) unnamed tributaries to Oak Orchard Creek (Class C), and three (3) Canal feeder tributaries. However, no tributaries to Oak Orchard Creek or Canal feeder tributaries were observed in the field.

71. Due to field observations of surface hydrological connectivity and mapping to other WOTUS and Traditional Navigable Waters, all streams identified within the Project ROW are likely to be considered jurisdictional by the USACE. There are no significant waterbodies (*i.e.*, large ponds, lakes, or reservoirs) located within the Project ROW.

72. Construction of the Project may require the installation of new culvert structures in some delineated streams within the Project ROW. It is anticipated that some damaged or deteriorated existing culverts may require replacement within the Project ROW. The locations and details for all proposed stream crossings will be shown in the EM&CP.

73. The Cattaraugus Creek Basin, located more than 30 miles south of the Project ROW, is the closest sole source aquifer to the Project. Therefore, the Project is not anticipated to have any impact on sole source aquifers.

74. The depth to the water table is variable for the numerous soil classes present along the Project ROW. Where feasible, structures will be located to avoid areas with high ground water. If a structure must be located in an area of high ground water, de-watering methods will be incorporated to minimize impacts and disturbance to the site. Dewatering procedures will be specified in the EM&CP.

75. The Project ROW consists of shrub and herbaceous vegetation cover conducive to soil stabilization, stormwater infiltration, and the reduction of erosion potential. During construction, the Project ROW will be mowed and cleared of trees and brush, but an intact vegetative cover will still exist over most of the Project ROW, thereby minimizing the potential for significant stormwater runoff. A SPDES General Permit and the development of a SWPPP will be required for the Project. The EM&CP will include the SWPPP and will address stormwater management, erosion and sediment control measures for all areas where ground disturbance results in exposed soils (such as structure sites and access roads), and spill prevention and control measures.

76. All pesticide applications shall be performed in accordance with the requirements of the ECL. National Grid will comply with the substantive requirements of the currently effective NYSDEC general permit for herbicide applications in State-regulated wetlands and the 100-foot adjacent areas associated with those wetlands.

77. Equipment refueling, maintenance, and repair shall be conducted a minimum of 100 feet away from any wetland or waterbody, to the maximum extent practicable, unless otherwise specified in the EM&CP, which shall specify protective measures against spills.

78. Stationary fuel tanks and chemical storage shall be a minimum of 300 feet from streams, waterbodies, and wetlands; provided that, if the minimum setback cannot be achieved, the approved EM&CP shall provide justification and demonstrate that impacts have been avoided or minimized to the maximum extent practicable, such as adequate secondary containment (containing at least 110% of the volume stored).

79. Nothing herein will limit the right of NYSDEC to enter and inspect the Project to assess compliance with any NYSDEC-issued permit or applicable substantive statute or

regulation under NYSDEC's jurisdiction. NYSDEC Staff field representatives will notify the DPS Staff representative and National Grid's appropriate representatives of any activities that violate, or may violate, either the terms of the Certificate or the ECL.

80. Based on a review of the Record Evidence, and National Grid's obligation to comply with the Certificate conditions and environmental protection plans and measures to be specified in the EM&CP, the Signatory Parties have determined that the Project avoids and minimizes adverse impacts to streams, waterbodies, wetlands, and the 100- foot adjacent area associated with any State-regulated wetlands.

81. National Grid will comply with applicable federal and state regulations, and complete any preapplication requirements for filing with the Secretary and submittal to the Chief of EC&C or their designee, to obtain a Water Quality Certification from the Commission pursuant to the federal Clean Water Act for construction work in federal jurisdiction waters and wetlands.

G. Topography and Soils

82. As noted in Exhibit 4, topography in the Project area is fairly level with elevations ranging from approximately 590 feet above mean sea level ("AMSL") up to approximately 770 feet AMSL. The lowest elevations in the study area are located along the Erie Canal. Elevations trend from lower ground in Segments 1 through 4, to higher areas in Segments 5 and 7.

83. The Project ROW is located within the Erie-Ontario Lowlands. The Erie-Ontario Lowlands consist of glacial till deposits, and some soils are mantled with a thin layer of clayey or silty lake-laid sediments. According to the USGS topographic maps, the Project ROW traverses primarily flat terrain, as the Erie-Ontario Plain has little significant relief,

aside from areas within the immediate vicinity of the major drainage ways. The topography changes to the south of the Project ROW as the steeper valleys and flat-topped hills of the Allegheny Plateau become more prevalent. The Project ROW crosses 10 streams, which are generally oriented north/south, and the elevations on both sides of the crossings are approximately the same. Thus, the ROW avoids high points, ridge lines and steep slopes.

84. The Project ROW is composed of several types of soils derived mainly from glacial till. The most prevalent soil type in Niagara County is Odessa silt loam, and the most prevalent soil type in Genesee County is Ontario loam. The depth to bedrock in these soils ranges from 40 to 60 inches, to greater than 80 inches. The soils along the Project ROW range from poorly drained to well drained.

85. The Project ROW does not cross any known commercial mines or gravel pits; thus, the Project will have no effect on any mining or gravel operations.

86. Grading for access roads, grading and excavation for structure installation, stock piling of soils and clearing of vegetation are examples of activities that will be designed with sensitivity to any slopes and soil type. Grading operations for access roads and at structure work areas along the Project ROW will vary with soils type, land use, and topography, and will be designed to protect soils from erosion, compaction, and soil mixing.

87. Construction activities required for structure installation will be confined to access roads and designated work areas that are laid out on a structure-by-structure basis, taking soil type and slope into consideration. Temporarily stockpiled soil will be protected to prevent erosion and keep stormwater runoff from reaching adjacent areas.

88. Vegetative clearing and slash disposal techniques will be prescribed on a site-by-site basis to minimize disturbance to areas of sensitive or unstable soils. General mitigation measures in areas with vulnerable soils would include the use of tracked equipment, low-ground-pressure equipment, and mats, which will be prescribed in the EM&CP.

89. Based on its review of the Record Evidence, the Signatory Parties has determined that the construction and operation of the Project will not appreciably change topography in the Project ROW, there are no unique geologic or topographic features that will be permanently affected by the construction or operation of the Project, and no topography or soil related impacts are anticipated as a result of this Project.

H. Noise

90. As discussed in Exhibit 4, overhead transmission line construction, including site and vegetation clearing, foundation form installation, excavation/concrete placement (as needed), structure installation, and wire stringing, will generate noise levels that are periodically audible along the Project route, access roads, structure sites, conductor pulling sites, staging areas and marshalling yards. Based upon its review of the Record Evidence, DPS Staff has determined that noise level changes resulting from the proposed construction activity associated with the Project are expected to be short-term and minimal and will vary according to the construction equipment in use as well as existing background or ambient noise.

91. Noise generated during construction is primarily from two sources: diesel engines, which power construction vehicles; and the noise generated from rock drills and jack hammers (if needed). Exhaust and engine noises are typically the predominant sources of noise from equipment operation. Contractors are required to maintain functional

mufflers on all relevant equipment. However, each piece of equipment is not used in every phase of construction, and equipment used is generally not operated continuously. A variety of construction equipment noise sources will be associated with each phase of construction.

92. Generally, temporary noise levels are mitigated by the attenuating effects of distance, the intermittent and short-lived character of the noise, the presence of existing vegetation, the presence of homes and buildings (particularly in the more suburban areas), and the use of functional mufflers on all construction equipment.

93. Residential homes are found at varying distances and densities along the Project ROW. The most densely populated residential areas crossed by the Project ROW are in the Towns of Lockport and Royalton (Segment 2). Because this Segment is comprised of two State roads crossed by the Project and land uses are predominately Public Service and Residential, it is likely that existing ambient noise levels are higher than in other Segments comprised of relatively fewer noise sensitive receptors or greater undeveloped areas, such as Agricultural areas.

94. In addition to the use of construction equipment mufflers, to minimize noise impacts during construction National Grid will limit construction activities on the Project to the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday unless, due to safety or continuous operation requirements, construction activities are required to occur on Sundays or after 7:00 p.m.

95. No work or new installation of equipment or other appurtenance is proposed within the fence line at any substation for this Project. Thus, there will be no change in

existing operational noise, or visual changes, at the substations to be connected to Rebuilt Line 112.

I. Invasive Species

96. As discussed in Exhibit 4, National Grid conducted an initial invasive plant species inventory to identify the presence and abundance of invasive plant species within the Project ROW. During the time of the initial invasive plant species survey, the Project ROW was divided into twenty-eight (28) distinct Invasive Species Sections to gather more comprehensive data. Of these twenty-eight (28) Invasive Species Sections, twenty-four (24) sections were classified as areas with two or more moderate invasive plant species or containing invasive plant species of high concern, one (1) section was classified as an area with a single invasive plant species of moderate abundance, one (1) section was classified as an area with a single abundant invasive plant species, and three (3) sections were classified as areas with sparse or no invasive plant species present.

97. Removal of any trees from the ROW will be pursuant to the NYSDEC's firewood regulations to protect forests from invasive insect and any applicable NYSDEC quarantine rules. Clearing crews will be trained to identify the Asian Longhorned Beetle, the Emerald Ash Borer, and any other insect that DPS Staff or NYSDEC identifies as a potential problem.

98. Based on a review of the Record Evidence, the Signatory Parties have determined that the initial invasive plant species inventory of the Project ROW did not reveal any findings that would be considered unusual for the area. A List of Invasive Species of Special Concern for the Project will be developed in consultation with DPS Staff, NYSDEC, and NYSDAM during the preparation of the EM&CP. The EM&CP will

address the measures to be implemented to minimize the introduction and spread of invasive species during construction of the Project, such as ensuring that all equipment, tools, and materials are clean before entering and upon leaving the Project ROW.

J. Transportation

99. As discussed in Exhibit E-6 of the Application (Exhibit 15 of the Evidentiary Record and referred to herein as "Exhibit E-6"), there are three airports near the Project ROW, two of which are listed in the 2009-2010 New York State Airport Directory and derived from the Federal Aviation Administration ("FAA") National Airspace System Resource Aeronautical Data Product that are within 20,000 feet of the Project ROW. The Project ROW is approximately 14,520 feet north of the North Buffalo Suburban Airport in the Town of Lockport, Niagara County. The Gasport Royalton Airport is in the Town of Royalton in Niagara County and is approximately 15,312 feet north of the Project ROW. The third airport, Bassett Field Airport, a privately-owned unlisted airport in the town of Lockport in Niagara County, is located approximately 18,480 west of the Lockport substation.

100. Because of the proximity of the Project ROW to these three airports, an obstruction evaluation is being performed pursuant to the FAA criteria and the appropriate Notices of Proposed Construction or Alteration will be submitted to the FAA.

101. The Project does not cross any railroads. The Project does cross the Erie Canal between Structures 2 and 3, which are located to the east of the Lockport substation. Three locks along the Erie Canal are located within 5 miles of Line 112; however, none are closer than 1.8 miles.

102. The Project will require a work permit from the New York State Canal Corporation and will be subject to the Special Provisions for Work In or Over Navigable Waterways Operated by the New York State Canal Corporation. Since New York State canals are navigable waterways under the jurisdiction of the U.S. Coast Guard, any work performed during the navigation season which may interfere with navigation will also require prior approval by the U.S. Coast Guard.

103. The Project ROW intersects the Erie Canal biking and walking path in the Town of Lockport. National Grid will implement appropriate construction safety practices, such as temporary barricades and fencing, to prevent pedestrians from entering construction work zones and avoid potential conflicts with pedestrian traffic during construction along the bike paths and any other paths or multi-purpose trails that are identified during the development of the EM&CP that could be impacted by Project construction.

104. The Project ROW crosses twenty-seven state, county, and local roadways in the City of Lockport, Town of Lockport, and the Town of Royalton, Niagara County, and the Town of Alabama, Genesee County with thirty (30) individual crossings (as some roadways are crossed more than once). During construction, the Project ROW will be accessed from these road crossings. Construction access points from local roads will be located to ensure maintenance of safe traffic operations at the road crossings. To ensure safe and continued traffic flow and to maintain access to local residences, a Maintenance and Protection of Traffic Plan will be developed and included in the EM&CP for each location where construction vehicles will access the Project ROW frequently from local roadways, and to provide a safe construction work zone near the edge or within a traffic

lane for construction activities within the road right-of-way (*i.e.*, removal of existing conductors and pulling of new conductors).

105. To minimize potential conflicts with traffic patterns and lane usage, National Grid has located transmission structures outside of road rights-of-way and as far from road crossings as feasible. Should temporary parking along the local roadways be required, all vehicles will be situated such that the safe operation of the roadway is not impeded, and appropriate safety signage is provided. The number of trips generated by the construction crews for ROW clearing, transmission structure erection, structure removal, and conductor stringing will be minimal and short-term. Construction-related truck traffic will consist of equipment and material deliveries to the structure sites and removal of cleared vegetation and construction debris from the ROW.

106. The NYSDOT requires that a Utility Work Permit Application be submitted for the installation of utilities within or adjacent to State highway rights-of-way. Following final design, the Applicant will submit a Utility Work Permit Application for all applicable road crossings and will fully comply with the permit conditions. All work within state highway rights-of-way will be designed and performed in accordance with all applicable traffic and safety standards and other substantive requirements, including NYSDOT regulations, the design standards of the American Association of State Highway and Transportation Officials, the Manual of Uniform Traffic Control Devices, the Highway Design Manual, and the Policy and Standards for Entrances to State Highways.

K. Communications

107. As noted in Exhibit E-5 of the Application (Exhibit 14 of the Evidentiary Record and referred to herein as "Exhibit E-5"), the Project is not expected to have adverse effects

on communications (*i.e.*, television, radio, microwave, etc.) during construction or operation. National Grid will comply with applicable sections of the latest version of the National Electric Safety Code related to appropriate spacing between power and communications cables.

108. According to existing line drawings, buried fiber optic cables are located within or adjacent to portions of the Existing ROW, and adequate separation between Rebuilt Line 112 and communication facilities will be maintained. As part of the final design, third parties that have underground communication cables within or adjacent to the Project ROW will be consulted to ensure that the precise location of the communication facilities are shown on the EM&CP plan and profile drawings and that appropriate clearances are maintained.

109. The Project is not expected to result in any interference with radio or television reception because the proposed electric transmission facilities are similar to the existing facilities and will use existing ROW where no such interference has been reported. Nevertheless, National Grid will respond to and investigate any reports of possible interference.

110. National Grid identified the location of existing communications facilities within one mile of the Project ROW using the Federal Communications Commission ("FCC") on-line Antenna Structure Registration Search database, and during field surveys. Two aboveground communication towers registered with the FCC are located within one mile of the Project ROW. The nearest communications facility is located within the Project ROW, while the other communications facility is approximately 3,000 linear feet from the Project ROW.

111. Based on its review of the Record Evidence, the Signatory Parties have determined that no impacts to the operations of fiber optic cables or other communication systems are anticipated from the Project and the continued operation of Line 112.

L. Electric and Magnetic Fields

112. As demonstrated by the EMF Study, Appendix D of the Application (Exhibit 18 of the Evidentiary Record), the maximum calculated electric and magnetic fields of the Line 112 Rebuild Project met the Commission's standards in all cases.

113. Under the Commission's September 11, 1990, "Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities," the peak field at the edge of the ROW as measured at one meter above ground when the circuit phase currents are equal to the winter normal conductor rating shall not exceed 200 milligauss ("mG"). The magnetic field at the Project ROW edges will remain below the limit of 200mG.

114. Under the standard set forth in Commission Opinion No. 78-13, the maximum electric field at the edge of the ROW shall not exceed 1.6 kV/m. The electric field at the Project ROW edges will remain below the limit of 1.6kV/m.

115. For most of the cases the electric field at the ROW edges will not significantly change from the existing conditions to the proposed conditions, except for those segments where Rebuilt Line 112 runs alone and the ROW width is increased. For those cases the electric field at ROW edges is expected to decrease. The maximum value of the electric field within the ROW remains relative constant from the existing conditions to the proposed conditions, except for those segments where the Line 112 runs alone, and new

delta and vertical configurations are used. For those cases, the maximum electric field decreases. Similar decrements will occur for the magnetic field.

D. The Availability and Impact of Alternatives

116. The Application and exhibits agreed upon by the Signatory Parties to be admitted as record evidence in this proceeding describe the availability and impact of alternatives to the Project and are briefly summarized below. Based on its review of the evidence and considering all factors, the Signatory Parties have determined that the Project as described in Appendix B is preferable, on balance, to any of the alternatives considered. The location is preferred due to its relatively minimal impacts to wetlands, floodplains, topography, and residential areas. The selected route and configurations are preferred because they primarily use existing electric transmission corridors and avoid impacts to existing land uses.

Alternative Routes

117. As stated in Exhibit 3 of the Application (Exhibit 3 of the Evidentiary Record and referred to herein as "Exhibit 3"), National Grid used aerial photography to conduct initial screening for potential alternate routes to relocate existing Line 112 in its entirety between the Lockport Substation and Structure 211. That showed no entirely new routes available that would avoid significant impact to existing residential developments, agricultural lands, or commercial/industrial areas.

118. Exhibit 3 details other factors that also justify the use of the proposed route for the Project. National Grid generally has existing property rights that allow for the rebuild and reconductoring of the existing lines, as was contemplated when the initial property rights

were acquired. The westernmost approximately 11.5 miles of the proposed route uses existing multi-line transmission corridors, and following existing transmission corridors is the Applicant's first choice for establishing any new alternative route. Without significant modifications to the substations presently served, any new line would have to approach and re-enter the existing substations from the same positions as the existing lines, thereby forcing any new route back to the proposed route in the vicinity of the substations. These factors led the Applicant to propose rebuilding Existing Line 112 along its current centerline, with only two exceptions.

119. First, the Applicant proposes a minor alignment adjustment between Structures 195 and 200 to minimize the amount of additional ROW required through a residential parcel, as more fully described in Exhibit 2 of the Application (Exhibit 2 of the Evidentiary Record).

120. The second exception arose because no viable new ROW was identified for relocating the entire length of the Project. The Applicant compared the reuse of an approximately 1.8 mile section of Existing Line 112 (called "Segment 4 Existing") located between existing Structure 141 and existing Structure 160, to options involving relocation of Section 4 to a new ROW. Because Segment 4 Existing is located in the TWMA, the Applicant consulted with NYSDEC Region 8 representatives about reroute alternatives for this segment which would avoid, as much as possible, large wetland areas containing sensitive plant and wildlife species and provide better access for National Grid routine maintenance and storm restoration activities while still being within the TWMA.

121. Several reroute alternatives for this segment discussed with the NYSDEC Region 8 were ultimately rejected due to either the disturbance of sensitive plant and wildlife

species, the location being within the New York Power Authority's ("NYPA") 345kV Niagara-Adirondack transmission line corridor that NYPA declined to share, potential land use conflicts with the nearby Tonawanda Reservation and Iroquois National Wildlife Refuge, or the need for multiple road crossings to avoid rural residences. NYSDEC Region 8 recommended a route that is approximately 0.2 miles to the northeast of the centerline of Segment 4 Existing. After evaluating that route, National Grid agreed and included it in the Project as "Segment 4 Relocation."

122. The Signatory Parties consider Segment 4 Relocation to be the most environmentally compatible route for this part of the Project. Reusing the Segment 4 Existing ROW would continue the placement of Line 112 in large NYSDEC regulated wetlands within the TWMA, whereas use of the Segment 4 Relocation would position the line in a new utility ROW southwest of Lewiston Road mainly outside of NYSDEC wetlands. There are a larger number of wetland communities along the Segment 4 Existing ROW than in the Segment 4 Relocation alternative, so it is anticipated that overall there would be less potential for wetland impacts by selecting the Segment 4 Relocation alternative versus the Segment 4 Existing rebuild alternative. Removal of Line 112 from Segment 4 Existing will result in a significant increase in vegetation as Segment 4 Existing is in wetlands and requires cyclical mowing to maintain access. Relocation of this portion of Line 112 would result in an increase in terrestrial and wildlife habitat. The Segment 4 Existing rebuild centerline would cross one stream, potentially resulting in additional impacts depending on location of work pad siting and access, whereas the proposed Segment 4 Relocation centerline would cross no streams.

123. During the extensive consultations with NYSDEC regarding the proposed Segment 4 Relocation, the Applicant agreed to evaluate the request of NYSDEC Region 8 staff to allow one or more structures in Segment 4 Existing to remain and be reused as support for osprey nests in the TWMA. Based on further study and analysis of the poor physical condition of Existing Line 112 structures in that area, however, it was determined by the Applicant and NYSDEC that leaving any such structures for that purpose was inadvisable. Accordingly, the Applicant intends to remove all Existing Line 112 structures in Segment 4 Existing, provided, however, that it will not remove any such structure with an active osprey nest (typically nesting occurs during the period of March 1 to August 31).

Alternative Configurations

124. The Applicant examined two alternatives in an effort to address existing electric field exceedances of 1.6 kV/m at the ROW edges in the northernmost portion of the section of the Project between Structures 119 and 141 (called "Segment 3"): rebuilding existing Line 108 on delta configured structures along the same centerline; and creating double circuit structures for Rebuilt Line 112 and Line 108. National Grid concluded that both alternatives would result in increased cost and ground line impacts without eliminating the need for acquiring additional operational easement. Thus, National Grid has instead proposed to increase the width of ROW on both sides as specified in Section E of Appendix B. The Signatory Parties agree that National Grid's proposal is the superior approach to addressing the existing electric field exceedances.

125. An alternative that would place Rebuilt Line 112 underground was considered. The Applicant developed a conceptual design and route for the underground alternative (referred to as the "115kV UG Alternative") from a proposed transition station in the

vicinity of Lockport Substation at Structure 5 to a proposed transition station at Structure 209. The vicinities of Structures 5 and 209 were selected to accommodate riser facilities and the need for land acquisition. The Applicant determined that the 115kV UG Alternative could potentially meet the need of allowing the deteriorated assets approaching the end of their service lives on Existing Line 112 to be retired, but it had a number of deficiencies as compared to the Project; specifically, it would be substantially more expensive, and it would have significant operational issues, including increased complexity, longer restoration times, load hogging issues, and voltage control issues. The Signatory Parties agree that overall, significantly lower costs and operational advantages make the Project clearly superior to the 115kV UG Alternative.

Alternative Transmission Line Components

126. National Grid proposes galvanized steel monopole structures for the Project. This is based on considerations of safety, reliability and resilience, cost, and environmental impact, following a quantitative comparative analysis which determined that steel pole structures were superior to wood pole structures overall. This is consistent with National Grid's current transmission line design standards for major rebuild/refurbishment capital projects.[3]

127. National Grid optimized its choice of proposed structure types to ensure that modifications to adjacent circuits were minimized. The use of galvanized steel pole single-circuit braced-post structures in Segments 1 and 2 was driven by the need to ensure circuit to circuit clearances in the Project ROW and minimize conductor blow-out whereby strong

[3] National Grid Transmission Line Design Guide GL.06.01.121 Version 1.26 – 5/27/2020.

winds could cause Rebuilt Line 112 to sway and contact an adjacent 115kV line. With the brace-post design, these structures are narrower than the standard galvanized steel pole delta davit arm structures proposed for Segments 3, 4 Relocated, 5, and 7.

128. For the Project, National Grid has proposed its standard conductor type for 115kV transmission lines: 795 MCM Aluminum Conductor Steel Reinforced ("ACSR") "Drake" (26/7). National Grid considered using 477 MCM ACCR "Hawk" (26/7) composite conductor, which has the same current carrying capacity as the 795 MCM ACSR "Drake" (26/7) and the added benefit of lighter weight, smaller diameter, and less sag during high current flows (maximum operating temperature) which allows for longer span lengths and thus fewer required poles. However, there are characteristics of Existing Line 112's configuration which prevented the use of the more expensive 477 MCM ACCR "Hawk" (26/7) conductor. The ROW in Segment 2 is occupied by the 115kV Existing Lines 107, 108, 111, 112, 113, and 114, in addition to Existing Line 112. The typical span length for these lines in the shared ROW is between 500 and 550 feet. To take full advantage of the 477 MCM ACCR "Hawk" (26/7) conductor and lengthen the spans of the Rebuilt Line 112, structure placement would be optimized based on maximum allowable span length, creating instances where new structures would be introduced that do not align with the existing structure locations of the adjacent circuits. This in turn would introduce circuit-to-circuit clearance challenges with conductor blow-out, along with adverse visual impact in the rural landscape of Segment 2.

129. For Segments 3, 4 Relocated, 5, and 7, where the Existing 112 Line runs alone in its own ROW for approximately 9 miles, National Grid determined that the required dead-end structures at the boundaries of Segments 4 Relocated and 7 result in the remaining

sections being much shorter. These shorter sections did not allow for the total number of structures in each Segment to be reduced to a point where the increased material cost of the 477 MCM ACCR "Hawk" was fully offset by the removal of structures from the scope.

130. The Signatory Parties believe that the structure and conductor types proposed by National Grid for the Project would have the least environmental and cost impact. They also expect that the Applicant will minimize impacts by selective structure placement and the use of good construction practices.

131. National Grid shall neither install nor use any gas insulated equipment that contains SF6 on the Project.

Alternative Methods to Fulfill Energy Requirements

132. Alternative methods to fulfill energy requirements considered by the Applicant included a "no-action" alternative, alternative transmission line technologies, and the feasibility of demand-side management and distributed generation.

133. As stated in Exhibit 3, the no-action alternative does not serve the need to address the deteriorated asset condition of the 1907-vintage steel tri-leg towers on Existing Line 112. Therefore, National Grid does not consider the no action alternative an effective alternative to the Project.

134. The Applicant examined one possible alternative transmission technology: use of direct current ("DC") electric transmission. To install a new DC transmission line between the Lockport and Batavia Substations, National Grid would need to build a new power conversion facility and interconnect it to each of the two (2) substations, presently designed to handle only alternating current ("AC") circuits. Because of the relatively short ROW

distance between the Lockport and Batavia Substations (34 miles), the installation of a DC circuit and associated conversion facilities would be cost-prohibitive. This result is to be expected for a short-distance DC transmission line incorporated into an AC system. DC circuits are typically utilized to transfer bulk power from point to point over long distances with interconnection into the AC system. Additionally, the existing substations served off of Existing Line 112 would require either a different source or significant modification and expansion to become DC-to-AC conversion facilities. Accordingly, the DC alternative was not considered further for the replacement of Existing Line 112.

135. As discussed in Exhibit E-4, the proposed rebuilding and reconductoring of Line 112 is driven by asset condition issues, and while capacity considerations have informed the choice of 795 ACSR conductor for the Project, reconstruction of the line is required even in the absence of any capacity considerations. As such, it falls squarely into the definition of an Asset Condition project found in the November 2018 Supplemental Distributed System Implementation Plan ("SDSIP")[4]: "Planned repair, replacement or enhancement of existing infrastructure to maintain minimum safety and reliability performance" (SDSIP at 45). The SDSIP notes that asset condition projects are typically not suitable for replacement with a Non-Wires Alternative ("NWA"): "NWA are not likely to improve the condition of existing T&D assets that must remain in service as part of the NWA alternative. Therefore, NWA in this area must also include the repair or replacement of the assets that were driving the need for the project recommendation. However, some

[4] The SDSIP was filed by the Joint Utilities (Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, National Grid, Orange, and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation) in Case 16-M-0411, "In the Matter of Distributed System Implementation Plans."

projects may have components which need to be reconstructed and other components which may be suitable for NWA." In this case, the need to rebuild Line 112 is driven by asset condition issues. Non-wires alternatives such as energy efficiency, demand response, and distributed generation clearly cannot address these issues. Therefore, such measures would not be an effective alternative to the Project.

E. Conformance to Long-Range Plans for Expanding the Electric Power Grid

136. The Project conforms to the requirements and planning objectives of the New York Independent System Operator (NYISO) and is consistent with the Applicant's long-range plans for the expansion of its transmission facilities. The Project will serve the interests of electric system economy and reliability. Completion of this Project will improve the reliability of the transmission system for the loads served by the Project.

137. The Application, particularly Exhibits 5 and E-1 (Exhibits 5 and 10 of the Evidentiary Record and referred to herein as "Exhibit 5" and "Exhibit E-1," respectively) and Exhibit E-4, shows that the Commission's grant of the Certificate will not be inconsistent with, and will not interfere with, the attainment of the statewide greenhouse gas emissions limits in Article 75 of the ECL established by Section 2 of the Climate Leadership and Community Protection Act.[5] Portions of the Project ROW cross locations designated as Disadvantaged Communities and Potential Environmental Justice Areas. However, no increased adverse impacts are anticipated in these locations because the Project is the rebuild of an existing electric transmission line predominately within the

[5] L. 2019, Ch. 106.

same ROW. The Project will improve the reliability and resiliency of the western portion of National Grid's transmission system, fostering the safe and reliable distribution of renewable energy.

F. System Impact Study

138. The NYISO has indicated that the Project would not adversely impact the New York State Transmission System because the Project is expected to affect NYISO interface transfer capability by less than 10 MW. The NYISO requires a system impact study for Transmission Owner transmission projects that are expected to affect interface transfer capability by more than 10 MW.

G. State and Local Laws

139. Exhibit 7 of the Application (Exhibit 7 of the Evidentiary Record and referred to herein as "Exhibit 7") identifies, for each local jurisdiction, every substantive local legal provision (ordinance, law, regulation, standard, and requirement) potentially applicable to the Project, as well as every such local legal provision that the Applicant requests that the Commission not apply because, as applied to the Project, such local legal provision is unreasonably restrictive in view of the existing technology, factors of costs or economics, or the needs of consumers. Except for those local legal provisions the Applicant specifically requested that the Commission refuse to apply, the Applicant will comply with, and the location of the Project as proposed conforms to, all substantive local legal provisions that are applicable to the Project. Due to the preemptive effect of PSL Section 130, procedural requirements to obtain any State or local approval, consent, permit,

certificate, or other condition for the construction or operation of the Project do not apply, except for permits or approvals issued or required by the NYSDEC pursuant to regulations implementing federal environmental programs.

140. The following are examples of local laws that the Applicant requests the Commission not apply, as well as the corresponding justifications for such requests: (i) time restrictions on construction noise or activities, on the grounds that exceptions may be required for safety or continuous operation requirements; (ii) minimum lot width, frontage, and depth requirements, because these requirements have no necessary nexus or relevance when considered in light of the Applicant's contiguous linear ROW lots; (iii) use prohibitions, because compliance is technologically impossible; (iv) maximum height requirements, also because compliance is technologically impossible; and (v) landscaping or screening requirements and prohibitions on cutting existing vegetation, on the grounds that these requirements cannot be reconciled with the Clearing and Slash Disposal Procedures in the EM&CP and the Applicant's TROWMP.

141. No local jurisdiction has filed any objection to the Applicant's requests, set forth in Exhibit 7, that the Commission not apply specified local laws. The Signatory Parties agree that the justifications set forth in Exhibit 7 provide sufficient basis for the Commission to refuse to apply the identified ordinances.

H. Public Interest, Convenience, and Necessity

142. The Applicant conducted public outreach and information efforts in support of the Project.

143. A Public Notice of the filing of the Article VII Application was published in the *Lockport Union-Sun & Journal* and *The Daily News Batavia* once per week for two consecutive weeks prior to the filing.

144. Local government officials in the municipalities affected by the Project were contacted personally and by letter (in 2019) notifying them of the Applicant's intention to file the Application. At around the time of filing of the original Application, the Applicant informed officials of such local governments by email that the Application was being filed.

145. A local "hotline" phone number was established for people seeking additional information about the Project: (716) 466-2007. The phone number was included in the Project Fact Sheet, Project website and materials shared in the Open Houses and Public Statement Hearings.

146. In August 2019, November 2021, and August 2022, owners of properties abutting the proposed Project right-of-way were sent notification letters regarding preliminary right-of-way activities for the proposed Project. In February 2021, owners of properties abutting the proposed Project right-of-way were sent notification letters regarding field studies, including a map of the Project area and the local hotline number. In November 2022, owners of properties abutting the proposed Project right-of-way were sent notification letters regarding the Applicant's intention to file the Article VII Application. This notification included the Project Fact Sheet containing a map of the Project area, the Project's website URL and the local hotline number. At or around the time of filing of the original Application, all owners of land on which any portion of the Project is to be located were served by first-class mail with a notice informing them that the Project may impact

their property. Such notice included a description of the Project and an explanation of how one can seek to become a party to the Article VII proceeding.

147. Shortly after the filing of the Application, copies of the Application were delivered to the following local libraries with a request that they be made available for public inspection: Lockport Public Library, 23 East Avenue, Lockport, NY 14094; Haxton Memorial Library, 3 North Pearl Street, Oakfield, NY 14125; and Royalton Hartland Community Library, 9 Vernon Street, Middleport, NY 14105.

148. National Grid conducted "Open House" informational meetings for the public on August 22 and October 19, 2023. It also held a virtual informational meeting prior to each of the two Commission Public Statement Hearings held on November 28, 2023. Advertising was used to inform the public of these informational meetings.

149. Shortly before commencement of construction, the Applicant will notify adjacent landowners and residents of construction commencement and include a safety message and the toll-free phone number that can be used to obtain additional information.

V. PROPOSED FINDINGS

150. The Signatory Parties agree that the record in this proceeding supports the Proposed Commission Findings set forth in Appendix C attached hereto.

VI. PROPOSED CERTIFICATE CONDITIONS

151. The Signatory Parties agree that the Proposed Certificate Conditions set forth in Appendix D attached hereto are acceptable and appropriate for inclusion in a Certificate of

Environmental Compatibility and Public Need authorizing construction and operation of the Project.

VII. ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN

152. The Signatory Parties agree that the Specifications for the Development of the Environmental Management and Construction Plan set forth in Appendix E attached hereto, as supplemented by the NYSDEC Supplemental Specifications for Wetlands and Waterbodies set forth in Appendix F attached hereto and the Invasive Species Management Plan Specifications set forth in Appendix G attached hereto, are acceptable and appropriate for application to the Project as described herein.

IN WITNESS WHEREOF, the Signatory Parties hereto have this day signed and executed this Joint Proposal.

Karla M Corpus

Niagara Mohawk Power Corporation d/b/a National Grid

By: KARLA M. CORPUS

Senior Counsel I

IN WITNESS WHEREOF, the Signatory Parties hereto have this day signed and executed this Joint Proposal.

Trial Staff of the New York State Department of Public Service

By: Russell King, Esq.

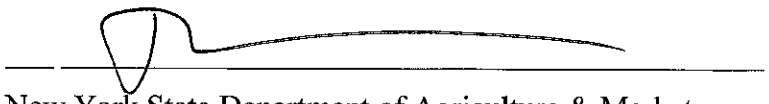
Dated: 4/18/24

IN WITNESS WHEREOF, the Signatory Parties hereto have this day signed and executed this Joint Proposal.

New York State Department of Environmental Conservation

By: Mark D. Sanza

IN WITNESS WHEREOF, the Signatory Parties hereto have this day signed and executed this Joint Proposal.



New York State Department of Agriculture & Markets

By: Tara B. Wells
Associate Attorney

APPENDIX B

DESCRIPTION AND LOCATION OF PROJECT

A. Introduction

The project ("Project") proposed by Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or "Applicant"), called the "Lockport-Batavia Line 112 Rebuild Project," is summarized below and described in further detail in Exhibits 2, 5, E-1 and E-2 of the Application (respectively, Exhibits 2, 5, 10, and 11 of the Evidentiary Record and referred to as "Exhibit 2," "Exhibit 5," "Exhibit E-1," and "Exhibit E-2").[1]

National Grid's existing Lockport-Batavia Line 112 is a 115 kilovolt ("kV") electric transmission line approximately 35 miles in length that runs between National Grid's Lockport Substation in the City of Lockport, Niagara County, and its Batavia Substation in the City of Batavia, Genesee County ("Existing Line 112"). The Lockport-Batavia Line 112 Rebuild Project is National Grid's proposal to rebuild approximately 20 miles of Existing Line 112. The western end of the rebuild will be immediately east of the first structure (Structure 1-2)[2] of the existing line, which is located just outside the Lockport Substation. The eastern end will be at (and include) the line's Structure 211 in the Town of Alabama. Between these two structures, National Grid proposes to rebuild all of Existing Line 112, except for an approximately 1.9-mile section thereof (called "Segment 6") that recently has been rebuilt in a new location on the site of the Western New York Science and Technology Advanced Manufacturing Park (known as "STAMP") as part of a separate project developed by the Genesee County Economic Development Center. Thus, Segment 6 of Existing Line 112 is not part of National Grid's proposal in this Article VII proceeding. (The resulting rebuilt portion of the line is referred to as "Rebuilt Line 112.")

B. Project Location

The location of the Project is detailed in Exhibit 2 and its figures. The Project is proposed to be located in the City of Lockport and the Towns of Lockport and Royalton in Niagara County and Alabama in Genesee County (the Frontier and Genesee Regions of National Grid's Western New York Service Territory).

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[1] As discussed in the Joint Proposal, the Signatory Parties have agreed on certain Settlement Revisions to the Project that was described in the Application. These revisions are summarized in Section C of this Appendix B and detailed in Exhibits 29 and 30 of the Evidentiary Record. All references in this Appendix B to the Application and its exhibits are intended to incorporate all Settlement Revisions.

[2] All references to structure numbers in this Joint Proposal are intended to refer to the identifying numbers of existing structures, not proposed structure numbers.

The Project will modify six segments of Line 112: Segments 1 to 5 and Segment 7. The segments, which are more fully detailed in Exhibit 2, run between the Lockport Substation and Structure 211 for a total distance of approximately 20 miles (that distance excludes Segment 6).

Segment 1 of the Project begins at Structure 1-2, outside of the Lockport Substation, and extends in a generally easterly direction to Structure 6 on Existing Line 112. Segment 2 begins at Structure 6 in the Town of Lockport and extends in an easterly direction over approximately 10.9 miles to Structure 119, which is located in the Town of Royalton. Segment 3 commences at Structure 119 in the Town of Royalton and extends in a generally southeast direction over a distance of approximately 2.2 miles to Structure 141, located in the Town of Alabama.

Segment 4 is described as both the existing section of Line 112 ("Segment 4 Existing") and the proposed new relocated section of the line ("Segment 4 Relocated"). Both are located in the Town of Alabama. Segment 4 Existing extends generally southeasterly from Structure 141 to Structure 159-1, over a distance of approximately 1.8 miles, and crosses through the Tonawanda Wildlife Management Area ("TWMA"). National Grid proposes to remove all conductor, hardware and structures along Segment 4 Existing. To reduce impacts to wetlands and the TWMA, Segment 4 Relocated will be located approximately 0.2 miles to the north of Segment 4 Existing, within portions of the TWMA. Segment 4 Relocated will be centered on a new 100 foot wide right-of-way ("ROW"), generally paralleling Lewiston Road (State Highway 77) to the intersection of Lewiston Road and Feeder Road, at which point Rebuilt Line 112 will turn approximately ninety degrees and proceed south to reconnect with the ROW of Existing Line 112 ("Existing ROW"). Segment 4 Relocated will extend approximately 2.2 miles.

Segment 5 is located within the Town of Alabama, beginning at Structure 159-1 and extending southeast approximately 1.4 miles to new Structure 173 ½. Segment 7 is located within the Town of Alabama and begins at new Structure 184 ½ on Existing Line 112 and extends southeasterly then easterly approximately 2.6 miles to Structure 211. In Segment 7, Structures 190 to 197 are located within the John White Wildlife Management Area managed by the NYSDEC's Division of Fish and Wildlife.

C. The Settlement Revisions

As discussed in the Joint Proposal, the Signatory Parties have agreed to the following Settlement Revisions because they believe that these revisions improve the Project with respect to environmental impacts, reliability, current and future accessibility of Project facilities, and future cost savings and accessibility for other electric transmission facilities in the vicinity:

- Brace-Post Insulator Structures: Use the brace-post insulator structure design shown in Sheet 7 of Figure 5-4 of Exhibit 5 for all suspension structures (rather than davit arms for certain structures as indicated in Exhibit 5 and other parts of the Application). Brace-post insulators provide more working clearances between conductors than davit arms and can also be worked on utilizing live-line methods allowing for quicker restoration times.
- 25-35' Offset: Place the new structures associated with Rebuilt Line 112 (except for Segment 4 Relocated) generally within 25 to 35 feet ahead or back of the existing

structure replacements along the existing centerline (rather than 10 to 15 feet ahead or back as indicated in Exhibit E-1 of the Application). This additional offset between new and existing structures eliminates the risk of contacting a below grade limb of a tri-leg structure when drilling the hole for a replacement structure.

- Permanent Access Roads: As detailed in Exhibit 29 of the Evidentiary Record, build access routes needed on ROW owned in fee by the Applicant that abuts agricultural lands (i.e., between structures 77-86, 93-96 and 97-116) as permanent access roads (rather than as temporary access roads as indicated in Exhibit 2 and other parts of the Application). These permanent roads will allow for easier access to structures and replace the need for future matting when working in this ROW shared by Lines 107, 108, 111, 113 and 114.
- Single-Circuit Lines 111/112: As detailed in Exhibit 30 of the Evidentiary Record, replace the existing double-circuit structures of Lines 111 and 112 at structures 2, 3, 4, 15 and 92 with single-circuit monopoles (rather than with double-circuit monopoles as indicated in Exhibit 2 and other parts of the Application). Separating Lines 111 and 112 onto individual monopoles will reduce the risk of losing both lines in the event of a double-circuit tower failure. Two separate monopoles will also provide more spacing between the Line 111 and Line 112 conductors, allowing for more working clearances between the lines. Separating the two lines also provides future outage flexibility.

D. Specific Project Components

The Project proposes to replace the existing single-circuit steel tri-leg "aeromotor" towers with new single-circuit galvanized tubular steel pole structures. Single-circuit suspension structures will be directly embedded into native soils and single-circuit dead-end structures will be set upon foundations.

As detailed in Exhibit E-1, Rebuilt Line 112 will be located substantially along the same centerline as Existing Line 112 in all Project Segments except for Segment 4 Existing. In the portion of Segment 1 between Structures 1-2 and 4, Rebuilt Line 112 will be reconstructed on vertically configured, galvanized steel pole structures set on the same centerline as Existing Line 112, except Structure 1-2 will not be replaced. Existing Line 112 currently shares the double-circuit lattice tower Structures 2, 3 and 4 with National Grid's existing 115 kV T1530 Lockport-Mortimer Line 111 ("Existing Line 111"). These three structures will be replaced with single-circuit galvanized tubular steel pole dead-end structures set upon foundations. Each transmission line will be supported on its own single-circuit line of structures. The existing conductor of Existing Line 111 will not be replaced. For the remainder of Segment 1 between Structures 5 and 6, Rebuilt Line 112 will be supported by single-circuit galvanized tubular steel pole structures. All suspension structures will be brace-post insulator structures.

In Segment 2, Rebuilt Line 112 will continue to be reconstructed on the same centerline as Existing Line 112 and will be supported by single-circuit galvanized tubular steel pole brace-post insulator suspension structures and single-circuit galvanized tubular steel monopole dead-end structures. In this Segment, Existing Line 112 currently shares the double-circuit lattice tower Structures 15 and 92 with Existing Line 111. As described above for the currently double-circuited portion of Segment 1 at Structures 2, 3 and 4, these Structures 15 and 92 will be

replaced with galvanized tubular steel pole dead-end structures set upon foundations, with each transmission line on its own single-circuit line of structures, and the existing conductor of Existing Line 111 will not be replaced.

In Segment 3, Rebuilt Line 112 will continue to be reconstructed on the same centerline as Existing Line 112 and will be supported by single-circuit galvanized tubular steel pole brace-post insulator suspension structures and single-circuit galvanized tubular steel monopole dead-end structures. Additional permanent easement rights will be secured to ensure conformance with the Applicant's Transmission Right-of-Way Maintenance Plan ("TROWMP"), to ensure that the energized conductor remains within the operational easement under all applicable design conditions and to ensure that operation of all circuits in the corridor is in conformance with the New York State Public Service Commission's ("Commission") electric and magnetic field ("EMF") standards. Between Structure 120 and Structure 124, an additional 40 feet of permanent easement will be required to expand the Existing ROW to the northeast and another five feet to expand it to the southwest. Between Structure 124 and 141, the ROW width will be expanded to a total of 100 feet, requiring acquisition of 22 feet of permanent easement on the southwestern edge of the ROW and an additional 38 feet of permanent easement on the northeastern edge of the ROW.

In Segment 4, the Applicant will relocate Rebuilt Line 112 to a new 100-foot wide ROW ("Segment 4 Relocated"). This will be done for the following reasons: to avoid the need to expand the ROW in Segment 4 Existing, to ensure conformance with the Applicant's TROWMP in the TWMA; to ensure that the energized conductor remains within the operational easement under all applicable design conditions; to ensure that operation of Rebuild Line 112 is in conformance with the Commission EMF standards; to reduce future maintenance impacts to this sensitive area; and to better facilitate access to structures by moving them upland from areas of standing water. Structure placement for Rebuilt Line 112 in Segment 4 Relocated will optimize span lengths while mitigating impacts to sensitive resources. In Segment 4 Relocated, Rebuilt Line 112 will be supported by single-circuit galvanized tubular steel monopole brace-post insulator suspension structures and single-circuit galvanized tubular steel monopole dead-end structures.

In Segment 5, Rebuilt Line 112 will continue to be reconstructed on the same centerline as Existing Line 112 and will be supported by single-circuit galvanized tubular steel monopole brace-post insulator suspension structures, single-circuit galvanized steel pole H-Frame suspension structures, and single-circuit galvanized tubular steel monopole dead-end structures. Additional permanent easement rights will be secured to ensure conformance with the Applicant's TROWMP, to ensure that the energized conductor remains within the operational easement under all applicable design conditions, and to ensure that operation of all circuits in the corridor is in conformance with the Commission's EMF standards. The ROW width will be expanded to a total of 100 feet, requiring acquisition of 20 feet of permanent easement on the southwestern edge of the ROW and an additional 40 feet of permanent easement on the northeastern edge of the ROW.

The scope for Segment 7 of the Project is generally consistent with the scope associated with Segment 5. In this Segment, Rebuilt Line 112 will continue to be reconstructed on the same centerline as Existing Line 112 (except between Structures 195 and 200 as described in Exhibit

2) and will be supported by galvanized tubular steel pole brace-post insulator suspension structures, single-circuit galvanized tubular steel monopole dead-end structures, and, for Structure 211 (the final structure in Segment 7 and the eastern end of the Project), a galvanized steel H-Frame dead-end structure to allow Rebuilt Line 112 to transition to Existing Line 112. Structures 190 to Structure 197 in this segment are located within the John White Wildlife Management Area. In Segment 7, additional permanent easement rights will be secured to ensure conformance with the Applicant's TROWMP, to ensure that the energized conductor remains within the operational easement under all applicable design conditions, and to ensure that operation of all circuits in the corridor is in conformance with the Commission's EMF standards. The ROW width will be expanded to a total of 100 feet, requiring acquisition of 20 feet of permanent easement on the southwestern edge of the ROW and an additional 40 feet of permanent easement on the northeastern edge of the ROW.

The proposed conductor type for Rebuilt Line 112 is a single 795 kcmil 26/7 Aluminum Conductor Steel Reinforced ("ACSR") "Drake" conductor per phase for three phases over the full length of the Project. All conductor proposed to be installed as part of the Project will have a non-specular finish. The existing 795 kcmil ACSR "Coot" conductor presently in service between the Lockport Substation and Structure 1-2 will remain in service. Similarly, the existing conductors presently in service between Structure 211 and the Batavia Substation will remain in service.

The aerial ground wire type proposed to be utilized on Rebuilt Line 112 will be a 48 count fiber optic ground wire ("OPGW") for the full length of the Project. In locations where the Rebuilt Line 112 crosses under existing overhead electric transmission lines, the aerial ground wire may be terminated at the structures on either side of the crossing to ensure that proper clearances to the crossing circuits are maintained. In these instances, the Applicant may elect to install either an underhung span of OPGW or All-Dielectric Self-Supporting ("ADSS") cable or buried ADSS cable (in conduit) to ensure continuity of the fiber optic cable. This will be detailed in the Environmental Management and Construction Plan ("EM&CP").

Grounding on the Rebuilt Line 112 will be provided in one of two ways. In instances where structures are set on reinforced concrete foundations, the grounding will be accomplished using driven ground rods set a minimum of three feet from the exterior face of the foundation and bonded to a grounding plate located near the base of the structure. Steel pole direct embed structures will be placed in corrugated metal pipe ("CMP") that is bonded to the structure grounding plate located near the ground line of the structure. In instances where aerial ground wire and OPGW cannot be continuous (primarily where the line must cross under another line) the use of buried wire grounding systems (continuous counterpoise) and an underhung ADSS cable will be considered. This will be detailed in the EM&CP.

Insulator design for the Rebuilt Line 112 will vary based on structure type utilized. In general, the Applicant proposes to utilize suspension structures featuring brace-post insulators. The use of this insulator assembly type is to minimize the width of the structures associated with the Rebuilt Line 112, which in turn, affords the appropriate circuit-to-circuit clearances between Rebuilt Line 112 and the adjacent 115 kV facilities in the ROW. Where brace-post insulators are not used, the Rebuilt Line 112 will feature ten ball-and-socket toughened glass insulators. Where necessary, restrained porcelain strut insulator assemblies will be utilized to mitigate the effects of

conductor blow-out and to maintain the appropriate clearance between the conductor and the grounded surfaces of the structure. Structures located at critical crossings such as highways, railroads, and navigable water crossings will utilize double insulator string assemblies.

The Project includes installation of stormwater management features, establishing one or more marshalling yards, and constructing or improving supporting access roads. As part of the Settlement Revisions, permanent access roads will be built in certain sections of National Grid fee-owned lands abutting agricultural fields.

The primary structure type for the Rebuilt Line 112 will be single-circuit galvanized tubular steel monopoles. The single-circuit galvanized tubular steel pole structures in Segments 1 and 2 will be predominately brace-post insulator structures for tangent structures with self-supporting monopole dead-end structures. At three locations in Segment 1 (Structures 2, 3 and 4) and two locations in Segment 2 (Structures 15 and 92), Rebuilt Line 112 is currently supported by double-circuit steel lattice structures that also support Existing Line 111. These five double-circuit lattice structures will be replaced with self-supporting single-circuit galvanized steel monopole dead-end structures for the Rebuilt Line 112 and Existing Line 111. In Segments 3, 4, 5, and 7, Rebuilt Line 112 will be supported by galvanized tubular steel pole suspension structures, with dead-ends and line angles supported by self-supporting single-circuit galvanized steel monopole dead-end structures. Single-circuit galvanized steel pole H-Frame suspension structures are proposed for Rebuilt Line 112 on either side of the location where Existing Line 112 crosses under two New York Power Authority 345 kV Lines in Segment 5 at Structures 171 and 172.

National Grid will design the Project transmission facilities in accordance with applicable national and state codes regulations, in addition to its own standards. Figures 5-2, 5-3 and 5-4 of Exhibit 5 contains drawings of the typical transmission structures proposed (showing the structure type, material of construction, support arm configuration, insulators, and reference to wire type supported by the structures), a typical concrete foundation design, and the details for direct-embedded steel poles structures. Figure 5-1 of Exhibit 5 (except for sheets 1, 5 and 16 thereof) and Exhibit 30 are cross-section diagrams of the ROW of the Project that show the typical configuration of the structures (including width and height) in each segment.

As part of the Settlement Revisions, placement of the structures associated with Rebuilt Line 112 (except for Segment 4 Relocated) will be generally within 25 to 35 feet ahead or back of the existing structure replacements along the existing centerline. The resulting average span length will be approximately 550 feet.

The Applicant proposes to employ two types of foundations for the Project's transmission line structures: one for tangent (suspension) structures and one for line angle and dead-end structures.

Typical tangent, single-circuit steel pole suspension structures are proposed to have direct embed foundations. These direct embedded foundations consist of digging a hole to a specified depth determined in final design, setting the pole into the hole, and backfilling with well graded gravel backfill. 12-gauge CMP, also commonly referred to as culverts, may be placed in the hole where unstable soil conditions are present or as required by the construction contractor to facilitate the installation. Upon setting the CMP, flowable fill, or high-slump concrete will be placed between

the CMP and the native soil. Well graded gravel backfill will be used to backfill the pole that is installed inside the CMP. The purpose of the CMP is to help facilitate the construction means and methods and provide stability to the excavation. Diameters of these culverts will range from 3 to 5 feet depending upon the diameter of the steel pole.

Steel pole structures designed for line angles and dead-end structures will be self-supporting and typically set on reinforced concrete caisson foundations. These concrete foundations will range from 6 to 10 feet in diameter and set to a depth of 15 to 40 feet depending upon structure loading and soil conditions. However, should existing soil conditions, structure loading, and costs dictate the need, alternate foundation types such as micro-piles, helical piles, rock anchors, or vibratory caissons may be used. This will be detailed in the EM&CP.

As stated in Exhibit E-2, no switching station, substation or terminal facility is needed or proposed to be built or modified as part of the Project, and no equipment is to be installed in any such station or facility as part of the Project.

E. Additional Property Rights

The Project is located primarily within and along an existing electric ROW corridor but does include some locations where the line will run on new ROW to accommodate the Project, maintain required clearances and minimize impacts. As detailed in Exhibit 2, the Applicant will need to acquire additional ROW in the form of Operational (Gross) Easements that allow, among other rights, the construction, operation, repair and maintenance of electric transmission line structures and related facilities, as follows:

- Segment 3:
  - 5’ and 40’ from Mile 11.4 to Mile 11.8
  - 22’ and 38’ on either side from Mile 11.8 to Mile 13.6
- Segment 4 Relocated:
  - 100’ from Mile 13.6 to Mile 15.8
- Segment 5:
  - 20’ and 40’ on either side from Mile 15.8 to Mile 17.2
- Segment 7:
  - 20’ and 40’ on either side from Mile 19.1 to Mile 20.1
  - Tapered from 20’ to 60’ and 40’ to 0’ on either side from Mile 20.1 to Mile 20.6
  - 20’ and 40’ on either side from Mile 20.6 to Mile 21.7.

National Grid will also acquire additional rights outside of the ROW to selectively remove danger trees.

APPENDIX D

PROPOSED CERTIFICATE CONDITIONS

The Certificate of Environmental Compatibility and Public Need (the "Certificate") for Case 22-T-0654 granted to Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or the "Certificate Holder") pursuant to Article VII of the New York Public Service Law ("PSL") authorizing a project (the "Project" or "Facility") to rebuild an approximately 21.7 mile portion of its Lockport-Batavia Line 112 in Niagara and Genesee Counties, is subject to the following conditions:

A. Conditions of the Order

1. The Certificate Holder shall, within 30 days after the issuance of the Certificate, file with the Secretary to the Commission (the "Secretary") either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate. Failure to comply with this condition shall invalidate the Certificate.

2. If the Certificate Holder decides not to commence construction of any portion of the Facility, it shall so notify the Secretary in writing within 30 days of making such decision and shall serve a copy of such notice upon all parties in the same manner and at the same time as it files with the Secretary.

3. If construction of the Project hereby certified is not commenced within 24 months after the Certificate Holder files a verified statement that it accepts and will comply with the Certificate, the Certificate may be vacated with notice to the Certificate Holder.

4. Except for deadlines established by statute, the Secretary may extend any deadlines established by this order for good cause shown.

B. Description and Location of Project

5. Appendix B, entitled "Description and Location of Project," identifies the Project, its proposed location, and its components. The proposed location of the Project is approved.

C. Laws and Regulations

6. Notwithstanding any contrary provision of the Certificate, each substantive Federal, State, and local law, regulation, code, and ordinance applicable to the Project shall apply and the Certificate Holder shall comply with same, except to the extent that the Commission has expressly refused to apply a substantive local law or regulation as being unreasonably restrictive as discussed in the Order.

7. No State or municipal legal provision purporting to require any approval, consent, permit, certificate or other condition for the construction or operation of the Project authorized by the Certificate shall apply, except (i) those of the PSL and regulations and orders adopted thereunder, (ii) those provided by otherwise applicable state law for the protection of employees engaged in the construction and operation of the Project, and (iii) those permits issued under a federally delegated or approved

environmental permitting program.

8. The Certificate Holder shall construct the Facility in a manner that conforms to the then-current Building Code of New York State and all applicable standards of the American National Standards Institute ("ANSI") including, without limitation, the National Electrical Safety Code ("NESC"), Institute of Electrical and Electronics Engineers ("IEEE") Standard IEEE C2-2023, and any stricter standards adopted by the Certificate Holder.

9. a) The Certificate Holder shall coordinate all work performed at state and municipal road and highway crossings with the appropriate state and municipal officials and shall obtain the required authorization for such work, subject to the Commission's continuing jurisdiction as appropriate. A copy of each such authorization shall be provided to the Secretary by the Certificate Holder before commencement of construction across the affected municipal road or highway.

b) The Certificate Holder shall coordinate with the appropriate municipal agencies, school districts and police departments for traffic management of roads under municipal jurisdiction.

10. A copy of each permit or approval received by the Certificate Holder from the issuing agencies, including all necessary U.S. Army Corps of Engineers ("USACE") Nationwide permits for construction in federal wetlands affected by the Project, any required permit pursuant to §404 of the Federal Clean Water Act, and the State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Construction Activities (Permit No. GP-0-20-001 or the then-effective general permit number) ("SPDES Permit"), shall be provided to the Secretary by the Certificate Holder before commencement of any Project construction that requires such permit or approval.

11. The Certificate Holder's maintenance of the Project ROW will be in accordance with its Transmission Right-of-Way Management Plan adopted by the Commission pursuant to 16 NYCRR Part 84, as it may be amended from time to time ("TROWMP"). The currently-effective TROWMP is on file with the Commission in Case 10-E-0155.

12. If the Certificate Holder believes that any action taken, or determination made, by a State or municipal agency in connection with this Certificate is unreasonable or unreasonably delayed, the Certificate Holder may petition the Commission, upon reasonable notice to that agency, to seek a resolution of any such unreasonable or unreasonably delayed action or determination. Such agency may respond to the petition, within five (5) business days, to address the reasonableness of its action, determination or delay.

D. Public Health and Safety

13. The Certificate Holder shall design, engineer and construct the Project such that its operation shall comply with the electric and magnetic field standards established by the Commission in Opinion No. 78-13, issued June 19, 1978, and the Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, issued September 11, 1990.

14. The Certificate Holder shall engineer and construct the Facility to be fully compatible with the operation and maintenance of nearby electric, gas, telecommunication, water, sewer, and related facilities; details of such other facilities shall be presented in the Project's Environmental Management & Construction Plan ("EM&CP"). The Facility shall be designed and constructed to avoid adverse effects on the cathodic protection system and physical conditions of existing structures and any fuel gas pipelines. The Certificate Holder shall provide the design measures that it will implement to protect the integrity, operation, and maintenance of nearby facilities and structures in the EM&CP.

15. The Certificate Holder shall keep local fire department and emergency management teams apprised of on-site hazardous chemicals and waste. All such chemicals and waste shall be secured in a locked and controlled area.

16. The Certificate Holder shall notify the New York State Department of Environmental Conservation ("NYSDEC") of any fuel or chemical spill it is required to report in accordance with NYSDEC regulations and guidance, and it shall notify New York State Department of Public Service ("DPS") staff ("Staff") as soon as possible but not to exceed two hours thereafter.

17. The Certificate Holder shall take appropriate measures to minimize fugitive dust and airborne debris from construction activity. Exposed soils and roadways shall be wetted as needed during extended dry periods to minimize dust generation. To the extent practicable, water for dust control shall come from municipal water supplies/sources.

18. The Certificate Holder shall ensure that parking for Project construction workers' personal vehicles shall be in designated areas where the parking of such vehicles will not interfere with normal traffic or cause a safety hazard and will minimize impacts to existing land uses to the extent practicable. These parking areas shall be designated in the EM&CP.

19. The Certificate Holder shall minimize direct vehicular disturbance to properties by accessing the Project ROW from existing roadways or approved off-ROW access roads identified in the EM&CP.

20. For each road crossing and location where construction vehicles will access the Project ROW frequently from local roadways, the Certificate Holder shall implement a Maintenance and Protection of Traffic ("MPT") plan that identifies procedures to be used to maintain traffic and provide a safe construction zone for those activities within the roadway right-of-way. The MPT plan shall address temporary signage, lane closures, placement of temporary barriers and traffic diversion, and the transportation needs of emergency and school vehicles. The Certificate Holder shall ensure that:

a) All signage utilized shall comply with the New York State Department of Transportation ("NYSDOT") Manual of Uniform Traffic Control Devices. Placement of signs shall be determined in consultation with the jurisdictional agency.

b) Flagmen shall be present at all times when equipment is crossing any road, when equipment is being loaded or unloaded, and where two-lane traffic has been reduced to one lane. All flagging operations shall comply with 17 NYCRR Part 131.

21. The Certificate Holder shall have the right to require that any person seeking to access the Project area first be appropriately trained in environmental protection and safety. DPS Staff, NYSDEC staff and NYSAGM staff who are present at the Project site

are appropriately trained for the purposes of this Condition.

22. Should the Certificate Holder determine that blasting or helicopter use will be needed for the Project, an appropriate plan for such activity will be provided in the EM&CP. Each such plan will detail avoidance and mitigation measures for T&E species during construction of the Project.

E. Environmental Management and Construction Plan

23. The EM&CP shall be developed in accordance with these Certificate Conditions and, except where this Certificate requires otherwise, the environmental protection measures contained in the Application shall be incorporated into the EM&CP. Applicable provisions of the Certificate, the EM&CP, and Commission Order(s) approving the EM&CP shall be accommodated in any design, construction, operation, or maintenance contracts associated with the Project. The EM&CP shall be prepared in accordance with the Specifications for the Development of Environmental Management and Construction Plan attached as Appendix E to the Certificate order ("EM&CP Specifications"), the NYSDEC Supplemental Specifications for Wetlands and Waterbodies in Appendix F to the Joint Proposal, and the Invasive Species Management Plan Specifications in Appendix G to the Joint Proposal. The EM&CP shall comply with the TROWMP, which is incorporated herein.

24. Prior to filing the EM&CP, the Certificate Holder shall contact the NYSDEC, NYS Natural Heritage Program and the United States Fish and Wildlife Service ("USFWS") to check for any updates or changes of known threatened or endangered plant or animal species listed in New York, (collectively, "T&E" species) or habitat or Significant Natural Communities in the Project area. After the Certificate Holder learns of any updates regarding T&E species, it will inform DPS Staff of such updates. The Certificate Holder may meet its obligation to inform DPS of such an update by including it in the EM&CP.

25. The Certificate Holder shall include in the EM&CP NYSDEC's letter of acknowledgement and the Stormwater Pollution Prevention Plan ("SWPPP") with respect to the SPDES Permit. The Certificate Holder shall develop the EM&CP in accordance with the SWPPP requirements in NYSDEC's then-current SPDES Permit.

26. Deviations from the certified centerline, design height, location, number of structures, and structure types for appropriate environmental or engineering reasons shall be explained in the EM&CP or otherwise provided as an amendment to the EM&CP, if proposed to be implemented after approval of the EM&CP. Deviations shall subject to DPS Staff approvals and may not conflict with any provision of the Certificate Conditions or the Commission's Order. An explanation for the proposed deviation and supporting documentation shall be provided in the EM&CP or any amendment.

27. The Certificate Holder shall not commence construction of any portion of the Project, the preparation of the site for the construction of any portion of the Project, or any proceedings under the Eminent Domain Procedure Law ("EDPL") to acquire permanent ROW, temporary ROW, or off-ROW access with respect to any portion of the Project until the Commission has approved the EM&CP for such portion of the Project. To calculate the three-year period for acquisition of property pursuant to the EDPL, the

date of Commission approval of the EM&CP covering the affected parcel shall be regarded as the date on which this Article VII proceeding was completed.

28. The Certificate Holder shall provide as part of the EM&CP:

a) A final design plan that conforms to the Project design set forth in the Certificate and to applicable federal, state, and local requirements, including applicable NYSDEC, New York State Office of Parks, Recreation and Historic Preservation ("OPRHP"), New York State Department of Agriculture and Markets ("NYSAGM"), Commission, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Occupational Safety and Health Administration, NYS Department of Labor, and local government chemical and waste-storage use and handling regulations;

b) A discussion of the status of the Certificate Holder's efforts to obtain permits necessary for construction of the Project from Federal agencies and state agencies with federally-delegated authority;

c) The URL address for the Certificate Holder's website containing Project information; and

d) The location of document repositories.

29. The EM&CP will include a description of a video assessment the Certificate Holder will conduct of the preconstruction condition of municipal roads. The assessment will record video imagery of visible facilities found in the road right-of-way, including (where present and visible) road pavement, stormwater facilities, sidewalks, and street furniture (*i.e.*, items and structures that are installed or placed in public areas for various purposes).

30. The Certificate Holder shall file an electronic copy of its proposed EM&CP with the Secretary and contemporaneously inform all parties to this proceeding of such filing and of the DPS website page(s) where the proposed EM&CP is available. Additionally, unless otherwise directed by the Secretary, the Certificate Holder shall serve one electronic copy on each of: the staff of the Deputy Permit Administrator, Major Projects Bureau of the NYSDEC Central Office in Albany; the Natural Resources Supervisors of the Region 8 and Region 9 offices of the NYSDEC; the staff of the New York State Department of Agriculture & Markets ("NYSAGM"); the staffs of the Region 4 and Region 5 offices of the NYSDOT; any other New York State agency that requests the document. Within seven days after the Certificate Holder files the proposed EM&CP with the Secretary, it shall deliver 4 hard copies to DPS Staff, one hard copy to the staff of the NYSDEC Central Office in Albany and another hard copy to each of the Region 8 and Region 9 offices of the NYSDEC. The Certificate Holder also shall deliver one electronic copy or one hard copy to be made available for inspection by the public in a convenient location in each municipality in which construction will take place, which location for a given municipality may be a repository *(e.g.,* library or town hall) in such municipality. The Certificate Holder will also make the EM&CP accessible on its Project website by way of direct PDF download(s) and a web link to the DPS website page(s) where the EM&CP is available.

31. Contemporaneously with filing and serving the proposed EM&CP, the Certificate Holder shall disseminate, in the manner specified below, a written notice, in language reasonably understandable to the average person, that the proposed EM&CP has been filed (the "EM&CP Filing Notice").

a) The Certificate Holder shall serve a copy of the EM&CP Filing Notice on

all persons required to be served with the Application by statute or regulation (except those state agencies to which the Certificate Holder is required to send one or more copies of the EM&CP).The Certificate Holder shall deliver a copy of the EM&CP Filing Notice to the owners and residents (if different from the owners) of all properties that are crossed by or about the ROW, and all properties on which new property rights are required for the Project. The Certificate Holder shall deliver such notice to property owners by first class mail, and if the names and mailing addresses are known to the Certificate Holder, residents (if different from the owners) by first class mail. If the Certificate Holder knows that the residential structure on the property is an apartment building with multiple separate dwelling units, then the Certificate Holder shall also affix the notice to the main publicly accessible door of such apartment building or prominently post it in another common area as permitted by the owner.

b) The Certificate Holder shall include a copy of the EM&CP Filing Notice in the proposed EM&CP.

c) Consistent with the publication requirements in the Commission's regulations, the Certificate Holder shall publish a copy of the EM&CP Filing Notice in a newspaper or newspapers of general circulation, including a free publication (if available), near the Facility.

d) The EM&CP Filing Notice delivered to the owner (and resident(s), if different from the owner) of each property on which property rights are to be acquired shall be accompanied by a description of the type of property rights required for the Project with respect to such property (e.g., fee, easement, lease, etc.).

32. The EM&CP Filing Notice shall contain, at a minimum, the following:

a) a statement that the proposed EM&CP has been filed with the Secretary and provide the applicable case number (Case 22-T-0654) and shall contain a link to the full EM&CP;

b) a general description of the certified Facility and of the content of the proposed EM&CP;

c) a listing of the locations and the websites where the Certificate Holder and DPS have made the proposed EM&CP available for public inspection;

d) a statement that any person desiring additional information about a specific geographical location or specific subject may request it from the Certificate Holder;

e) the URL address for the Certificate Holder's website containing Project information;

f) the name, address, email address, and telephone number(s) of an appropriate Certificate Holder representative;

g) the e-mail address and postal address of the Secretary and the DPS website URL address; and

h) a statement that any person may be heard by the Commission on any matter or objection regarding the proposed EM&CP by filing written comments with the Secretary and the Certificate Holder within thirty (30) days of the date the proposed EM&CP was filed with the Commission, or within thirty (30) days of the date of the newspaper publication of a copy of the EM&CP Filing Notice, whichever is later.

33. A certificate of service indicating upon whom all the EM&CP Filing Notices

were served and delivered shall be filed with the Secretary within three (3) business days after the time the proposed EM&CP is filed, and shall be a condition precedent to approval of the EM&CP; provided that, when the Certificate Holder delivered EM&CP Filing Notices to the owners and residents of apartment buildings with multiple separate dwelling units by affixing them to the main publicly-accessible doors of such buildings or by prominently posting same in other common areas of such buildings, the certificate of such service filed with the Secretary shall indicate the manner of such delivery and identify all such owners and residents whose identities are known to the Certificate Holder. When available, proof of publication of the newspaper notice(s) of filing the proposed EM&CP, including a copy of such notice, shall be filed with the Secretary.

34. The Certificate Holder shall employ the following procedures for any proposed changes to the Commission-approved EM&CP:

a) The Certificate Holder shall submit a written report of any proposed changes (each a "Notice of Change") to the approved EM&CP to DPS Staff. DPS Staff will refer any Notice of Change that will not result in any increase in adverse environmental impacts or are not directly related to contested issues decided during the proceeding to the Director of the Environmental Certification and Compliance ("EC&C") Section of the Office of Energy System Planning and Performance or their designee for approval (each a "Minor EM&CP Change"). At the option of the DPS Staff representative, a Minor EM&CP Change may be verbally approved in the field, prior to receiving written confirmation and approval by the Director of EC&C or their designee. DPS Staff will refer all other Notices of Change to the Commission for approval.

b) Upon being advised that DPS Staff will refer a Notice of Change to the Commission, the Certificate Holder shall notify all parties. The Certificate Holder shall also notify property owners whose property is affected by the proposed change by first class mail, and if the names and mailing addresses are known to the Certificate Holder, residents (if different from the owners) by first class mail. The Certificate Holder shall also give such notices to residents of apartment buildings with multiple separate dwelling units by affixing such notices to the main publicly accessible doors of such buildings or by prominently posting same in other common areas of such buildings as permitted by the owners. The notice shall: (1) describe the original conditions and the requested change; (2) state that documents supporting the request are available for inspection at specified locations, (3) state that persons may comment by writing or calling (followed by written confirmation) to the Commission within twenty-one (21) days of the notification date, and (4) provide the Secretary's email address, phone number, and mailing address. Any delay in receipt of written confirmation will not delay Commission action on the proposed change.

c) The Certificate Holder shall not execute any proposed change until it receives written approval from the Director of EC&C or the Commission, or verbal approval as described in paragraph a) above; except in emergency situations threatening personal injury, property damage, or severe adverse environmental impact, or as specified in the approved EM&CP.

F. Notices and Public Complaints

35. The Certificate Holder shall make available to the public a toll-free or local

phone number of an agent or employee who will, for the duration of construction of the Project, be available to receive inquiries or complaints, if any, from any member of the public about the construction of the Project, and such agent or employee shall respond to such members of the public with acknowledgement of the receipt of the inquiry or complaint within one (1) business day. That phone number shall include a recorded outgoing message that will, when a call is not answered by a person, provide the caller with: (i) the number to be called at any time in case of emergency, (ii) the phone number and email address of the Secretary, and (iii) the phone number of the Commission's Environmental Compliance Section.

36. The Certificate Holder's Project website shall provide a means for the public to communicate to the Certificate Holder about the Project *(e.g.,* to register complaints or ask questions) through either a direct link to a complaint form or email or by providing the contact information (phone and/or email address) of a representative of the Certificate Holder who can respond to communications that include questions and concerns about the Project from members of the public. The Certificate Holder shall post construction notices and other publicly relevant information to the Project website.

37. The Certificate Holder shall report to DPS Staff every complaint received that cannot be resolved after reasonable attempts to do so, and describe the actions taken to address the complaint, within ten (10) business days after receipt of the complaint. The Certificate Holder shall retain a record of complaints received, which record shall be made available to DPS Staff upon request.

38. a) No less than two weeks before commencing site preparation, the Certificate Holder shall prepare and disseminate a notice (the "Construction Commencement Notice") to notify the public of the date it anticipates that Project construction will commence, as follows:

(1) provide the Construction Commencement Notice to all parties to the proceeding and to all local officials, school districts and emergency personnel along the entire Facility route;

(2) provide the Construction Commencement Notice to local media for dissemination, including local newspapers of general circulation and a free publication (if available);

(3) provide the Construction Commencement Notice for display in the repositories identified in the Application, the Certificate Holder's Project website, and other public places (such as general stores, post offices, town halls, community centers and conspicuous community bulletin boards); and

(4) Provide the Construction Commencement Notice to property owners (and residents, if different from owners) who properties are crossed by or abut the ROW.

The Certificate Holder shall deliver the Construction Commencement Notice to property owners and residents by first class mail or by affixing it to the doors of the residences. If the Certificate Holder knows that the residential structure on the property is an apartment building with multiple separate dwelling units, then the notice may be affixed to the main publicly-accessible door of such apartment building or prominently posted in another common area as permitted by the owner.

b) The Construction Commencement Notice shall be written in language reasonably understandable to the average person and shall contain:

(1) a map of the Project;

(2) a brief description of the Project;

(3) the anticipated date for start of site preparation and estimated date for Project completion (inclusive of restoration);

(4) the name, mailing address, local or toll-free telephone number, and email address of an employee or agent of the Certificate Holder who will, for the duration of construction of the Project, be available to receive complaints, if any, from the public about the construction of the Project;

(5) a description of where to get more information about the Project, including the Project website address and the locations of document repositories; and

(6) a statement that the Project is under the jurisdiction of the New York State Public Service Commission, which is responsible for enforcing compliance with environmental and construction conditions, and which may be contacted at an address, email, and telephone number to be provided in the notice.

c) Upon distribution and prior to the commencement of construction, a copy of the Construction Commencement Notice shall be submitted to the Secretary.

39. For the duration of Project construction, the Certificate Holder shall post and maintain on its Project website a schedule that includes at least general-level information for the public about Project activities scheduled to occur during the upcoming two-week period.

40. The Certificate Holder shall provide all contractors providing services for construction of the Project ("Contractors") with complete copies of the Certificate, the approved EM&CP, the order(s) approving the EM&CP, updated construction drawings, any site-specific plans, the SPDES Permit, any permit issued pursuant to Section 404 of the Federal Clean Water Act and the Section 401 Water Quality Certification. To the extent that the listed documents are available before contracts for construction services are executed, such copies shall be provided to the Contractors prior to the execution of such contracts.

41. The Certificate Holder shall notify all Contractors in writing that the Commission may seek to recover penalties for violation of the Certificate and other orders issued in this proceeding, not only from the Certificate Holder, but also from its Contractors, and that Contractors also may be liable for other fines, penalties and environmental damage.

42. The Certificate Holder shall inform the Secretary in writing at least five days before commencing construction of the Facility.

43. The Certificate Holder shall provide DPS Staff and the NYSDEC with weekly status reports summarizing construction of the Facility and indicating construction activities and locations scheduled for the next week.

44. Within ten (10) days after the Facility is fully constructed and placed in service, the Certificate Holder shall notify the Secretary in writing of that fact.

45. Within ten days of the completion of final restoration of the Facility, the Certificate Holder shall notify the Secretary in writing that all restoration has been completed in compliance with this Certificate and the order(s) approving the EM&CP.

46. Within twelve (12) months of the completion of the Project, the Company shall provide DPS Staff with "as-built" drawings for the entire Facility and for the segment identified in the Application as Segment 6.

G. Construction, Operation, Maintenance, and Restoration

47. The Certificate Holder shall not commence construction until the Director of the Office of Energy System Planning and Performance or their designee has sent a "Notice to Proceed with Construction" letter. Construction means the beginning of tree clearing, site clearing, ground disturbance, site preparation, grading, and other activities related to installation of the Project. Commencement of construction does not include soils or groundwater testing, surveying (such as geotechnical drilling) and similar preconstruction activities to determine the adequacy of the site for construction and to prepare filings (including final design plans for the EM&CP) pursuant to this Certificate. Commencement of construction also does not include (a) activities such as limited amounts of staging, and matting that are required to perform such preconstruction activities; (b) receiving Project construction materials or construction equipment at a pre-existing storage location that is not specific to the Project (provided the Certificate Holder notes such storage location in the EM&CP); and (c) routine mowing of the existing ROW pursuant to the TROWMP. Notwithstanding the foregoing provisions of this paragraph, the Certificate Holder is hereby authorized to prepare the Ledge Road marshalling yard described in the Evidentiary Record for use as a marshalling yard for the Project, and to use it for such purpose. The Certificate Holder shall provide DPS Staff 5 days' notice of its commencement of preparation of such marshalling yard.

48. a) At least two (2) weeks prior to the start of construction of the Project, the Certificate Holder shall hold a preconstruction meeting to which it shall invite its contractors, DPS Staff, NYSAGM, NYSDOT, NYSDEC, and representatives from the municipalities in which the Project is located. An agenda, the location, and an attendee list shall be agreed upon between DPS Staff and the Certificate Holder. Notification of the meeting shall be provided to all attendees at least 10 days prior to the meeting date.

b) Maps showing designated travel routes, construction worker parking and access road locations and a general project schedule will be available at the meeting for the attendees.

c) The Certificate Holder shall supply draft minutes from this meeting to a representative of each party in attendance for corrections or comments, and thereafter the Certificate Holder shall issue the finalized meeting minutes to all attendees and make them available to any state agency not in attendance that requests them.

d) If, for any reason, the Contractors cannot finish the construction of the Project, and one or more new contractors are needed, there shall be another preconstruction meeting with the same format as outlined above.

49. The Certificate Holder shall confine construction and subsequent maintenance to the Project ROW or as otherwise certified and to additional work areas as detailed in the EM&CP.

50. Each construction activity shall be described in detail in the EM&CP.At least 2 weeks prior to construction beginning in any area, the Certificate Holder shall, in such area: (a) delineate both edges of the Project ROW, as certified; (b) mark out or

delineate all off-ROW access roads and all work pads and pulling pads; (c) mark wetland and state-regulated adjacent area boundaries based on approved plans; (d) mark any then-known danger trees on land adjacent to either edge of the ROW as certified; and (e) notify DPS Staff when the above-described field mark out and delineation is completed in such area.

51. Construction activities on the Project shall be confined to the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday. If, due to safety or continuous operation requirements, construction activities are required to occur on Sundays or after 7:00 p.m., the Certificate Holder shall notify the affected municipality and request DPS Staff approval. Such notice and request for approval shall be given at least 24 hours in advance unless the construction activities are required for safety reasons that arise less than 24 hours in advance.

52. In connection with the ROW vegetation clearing, the Certificate Holder shall:

a) comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and Section 9-1303 of the ECL and any quarantine orders issued thereunder;

b) note on the EM&CP drawings the clearing and disposal techniques;

c) not create a wood chip depth greater than three (3) inches, except for chip roads or invasive species control, nor store or dispose of chips in wetlands or within 50 feet of stream banks, floodways, or agricultural lands;

d) utilize the wood resource generated by the clearing in accordance with sound environmental techniques;

e) not fell any danger trees except pursuant to one of the following clauses:

i. after Project construction begins, the Certificate Holder may fell any danger tree marked as required by Condition 51(d), except any tree that DPS Staff informs the Certificate Holder, prior to felling, is not a danger tree; and

ii. after the initial phase of tree clearing, including danger trees, in a Project location, the Certificate Holder may fell any additional danger trees that it determines will require removal, provided the Certificate Holder marks and notifies DPS Staff of such trees and allows for a site inspection by DPS Staff or review of materials that DPS Staff needs to determine whether or not to give such authorization;

f) not remove or grind stumps within 50 feet of streams unless construction of an access road or work pad necessitates removal below grade;

g) not fell any trees into any stream or onto the immediate stream bank; and

h) limit clearing of natural vegetation during construction to that material which poses a hazard or hindrance to the construction, operation or maintenance of the Facility. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion.

53. Unless described otherwise in the EM&CP, all trees over four inches in diameter breast height or shrubs over four feet in height damaged or destroyed by activities during construction, regardless of where located, shall be replaced within one year after completion of Project construction by the Certificate Holder with the equivalent type of

trees or shrubs (though not necessarily the same size), except if:

a) DPS Staff and the Certificate Holder determine that equivalent type replacement trees or shrubs would interfere with the proper clearing, construction, operations or maintenance of the certified Project;

b) replacement would be contrary to sound ROW management practices, or to any approved long-range ROW management plan applicable to the Facility; or,

c) after consultation with the owner, the owner of land where the damaged or destroyed trees or shrubs were located declines replacement (or other recorded easement or license holder with the right to control replacement declines replacement).

54. The Certificate Holder shall ensure that the EM&CP: (a) identifies plans for tree protection; and (b) indicates on the drawings where tree protection measures will be applied (if any are known at the time of EM&CP preparation).

55. The EM&CP shall include a plan for removal, re-use, recycling and disposal of all existing equipment *(e.g.,* transformers, wood poles, conductors, etc.). Existing transmission facility components removed or replaced as part of the Project shall be removed from the ROW to appropriate destinations and handled appropriately for re-use as available based on conditions. To the extent allowed by easements or lease agreements, debris found in the ROW that will interfere with maintenance of the ROW is to be removed during construction. The Certificate Holder shall not bury construction debris in the ROW.

56. Neither the Certificate Holder, nor any Contractors in its employ, shall construct any new, or improve any existing, access road unless such road is described in the EM&CP. Should the need arise for additional off-ROW access, the Certificate Holder shall follow the EM&CP change procedures recited in Certificate Condition number 34.

57. a) The Certificate Holder's SWPPP for the Project shall be submitted with the EM&CP. The Certificate Holder shall adhere to the NYSDEC's then-effective "New York State Standards and Specifications for Erosion and Sediment Control" ("NYSSESC," also known as the "Blue Book"), or take such alternative measures as identified in the SWPPP. A final SWPPP shall be prepared as part of the SPDES Permit and in accordance with the then most recent version of the Blue Book.

b) The Certificate Holder shall ensure that all erosion control devices in areas of disturbance are in place and functional by the end of the workday.

c) Erosion and sediment controls with respect to the Project shall be prescribed on the EM&CP Plan and Profile drawings.

d) The Certificate Holder shall install temporary erosion control devices (e.g., silt fence, straw bales, and structural diversions) as soon as practicable or by the end of the workday for newly disturbed areas, as indicated in the EM&CP.

e) Use of hay bales is strictly prohibited.

f) All erosion control fabric or netting must be 100% biodegradable natural product, excluding geotextiles used for road construction and temporary erosion control devices such as silt fence and silk sock.

58. The Certificate Holder shall restore disturbed construction areas to original grades and conditions with permanent re-vegetation and erosion controls appropriate for those locations consistent with the EM&CP . Disturbed pavement, curbs and sidewalks

shall be restored to their original preconstruction condition or better.

59. The Certificate Holder shall be responsible for checking all culverts and assuring that they are not crushed, blocked, or otherwise damaged during construction and restoration of the Project. If a culvert is crushed, blocked, or otherwise damaged during construction or restoration of the Project, Certificate Holder shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage, aquatic connectivity and stream flow, as applicable. Culvert repairs or replacements shall follow specifications in the EM&CP.

60. The Certificate Holder shall, upon completion of construction of the Facility:

a) conduct an assessment of the need for additional restoration work, and landscape improvements, including vegetation planting, earthwork or installed features to screen or landscape the Facility with respect to road crossings, residential areas, and substations;

b) prepare plans for any visual mitigation found necessary, and, in connection therewith, removal, rearrangement and supplementation of existing landscape improvements or plantings should be considered, as appropriate;

c) In the event that vegetative screening is proposed, the Certificate Holder shall consult with DPS Staff on content and execution of its assessment, resultant landscaping plan specifications and materials list; details shall include measures for third party or wildlife damage or other causes of damage to any landscape and vegetation plantings; and

d) present draft assessments and plans to DPS Staff for review and file a final plan with the Secretary within one year after the completion of construction of the Facility.

61. The EM&CP shall include plans to prevent unauthorized access to and along the Project ROW. Plans may include the following:

a) posting signs at the ROW edges in those locations where the ROW intersects public roads;

b) performing outreach to educate and inform the public concerning the risks and impacts of unauthorized access;

c) working with local law enforcement officials in an effort to prevent future trespassing;

d) identifying construction and material details of gates and berms; and/or

e) identifying existing and proposed gate locations on the Plan and Profile drawings. Final determination of locations of gates and berms shall be made during a post-construction assessment of the Facility, in consultation with DPS Staff.

H. Herbicide Use

62. All pesticide applications shall be performed in accordance with the requirements of ECL Articles 15 and 33 and 6 NYCRR Part 320.

63. Only herbicides specified in the EM&CP shall be applied during construction of the Project. If the Certificate Holder desires a change to the herbicides specified in the

EM&CP for use during construction of the Project, including mix proportions, additives (with the exception of dyes), or method of application, the Certificate Holder shall submit the proposed change for approval. No change inconsistent with the labeling for such herbicides shall be approved.

64. The Certificate Holder shall comply with the substantive requirements of the currently-effective NYSDEC general permit for herbicide applications in State-regulated wetlands and the 100-foot adjacent areas associated with those wetlands. The supervising certified applicator shall be familiar with and understand the applicable provisions of this Certificate and the most recent version of the Certificate Holder's TROWMP.

65. Herbicide application within state-regulated wetlands and the 100-foot adjacent areas shall be performed via low volume foliar spray from backpack sprayer, cut stem and/or stump treatment, and basal bark treatment methods consistent with approved treatment methods in the most recent version of the Certificate Holder's TROWMP.

I. Oversight and Supervision

66. The Certificate Holder shall use at least five (5) independent third-party inspectors (or fewer if the Certificate Holder elects to use the same individual in more than one role and that individual is qualified and has sufficient time and resources to adequately fulfill each role): (a) at least one environmental inspector employed full-time on the Project; (b) at least one construction inspector employed full-time on the Project; (c) at least one agricultural inspector employed part-time on the Project; (d) at least one safety inspector who will inspect the work site from time to time; and (e) at least one quality assurance inspector who will inspect the work site from time to time. The environmental inspector may be used to perform agricultural inspections, if they become necessary, and if the person who performs such inspections is qualified to do so and is approved by DPS Staff and NYSDAM. The environmental inspector shall have stop work authority over all aspects of the Project and shall report directly to DPS Staff.

67. During periods of relative inactivity on the Project, after consultation with and acceptance from DPS Staff, the Certificate Holder may temporarily decrease the number of hours worked by inspectors and the extent of their presence at the Project site commensurate with the decline in Project activity; likewise, during periods of relatively high activity on the Project, the number of inspectors and the extent of their presence at the Project site may temporarily increase commensurate with the increase in Project activity. The Certificate Holder shall describe in the EM&CP how it will ensure adequate coverage by inspectors and implementation of the reporting requirement in Condition 66.

68. The environmental inspector(s) and the construction inspector(s) shall be equipped with sufficient documentation and transportation and communication equipment to effectively monitor each Contractor's compliance with the provisions of every order issued in this proceeding and applicable sections of the PSL, the ECL and regulations issued thereunder, the Section 401 Water Quality Certification, and the EM&CP.

69. The Certificate Holder shall provide DPS Staff with the environmental inspector's daily reports within 48 hours of completion.

70. The names and qualifications of the environmental inspector(s) and the construction inspector(s) shall be submitted to DPS Staff for review and approval at least

two weeks prior to the start of construction. The environmental inspector's qualifications shall satisfy those of a "Qualified Inspector" pursuant to the applicable SPDES General Stormwater Permit for construction activity.

71. The Certificate Holder shall provide to DPS Staff, NYSAGM, and NYSDEC the cell phone numbers of the Certificate Holder's environmental inspector(s) and construction inspector(s). The environmental inspector(s) and construction inspector(s) may have direct communication with DPS Staff, NYSAGM, and NYSDEC throughout the duration of construction.

72. The Certificate Holder's employees, contractors and subcontractors assigned to the construction of the Project and inspection of such construction work shall be properly trained in their respective responsibilities.

73. The Certificate Holder shall regard DPS Staff representatives (authorized pursuant to PSL §8) as the Commission's designated representatives in the field. In the event of any emergency resulting from specific construction or maintenance activities that violate or may violate the terms of the Certificate or any other order in this proceeding, such DPS Staff representatives may issue a stop work order for any location or activity.

74. A stop work order shall expire 24 hours after issued unless confirmed by a single Commissioner. If a stop work order is so confirmed, the Certificate Holder may seek reconsideration from the confirming Commissioner or the whole Commission.

75. Before exercising stop work authority, DPS Staff representatives will consult (wherever practicable) with the Certificate Holder's representatives possessing comparable authority to resolve an issue or dispute. Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field. In the event the dispute cannot be resolved, the matter will be brought immediately to the attention of the Certificate Holder's Project Manager and the DPS Chief of EC&C. In the event that a DPS Staff representative issues a stop work order, neither the Certificate Holder nor the Contractor will be prevented from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances. The issuance of a stop work order or the implementation of measures as described below may be directed at the sole discretion of the DPS Staff representative during these discussions.

a) If a DPS Staff representative discovers a specific activity that represents a significant environmental threat that is or immediately may become a violation of the Certificate or any other order in this proceeding, or any applicable law or regulation, the DPS Staff representative may -- in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action -- direct the field crews to stop the specific potentially harmful activity immediately. If responsible Certificate Holder personnel are not on site, the DPS Staff representative will immediately thereafter inform the construction inspector or environmental inspector of the action taken. The stop work order may be lifted by the DPS Staff Representative if the situation prompting its issuance is resolved;

b) If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific corrective measures, the DPS

Staff representative may, in the absence of responsible Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action, direct the Certificate Holder or its Contractors to implement the corrective measures identified in the approved EM&CP. The field crews shall comply with the DPS Staff representative's directive immediately. The DPS Staff representative will immediately thereafter inform the Certificate Holder's construction inspector or environmental inspector of the action taken.

76. The Certificate Holder shall organize and conduct construction progress meetings and site-compliance audit inspections for DPS Staff as needed, but not less frequently than once per month during the site preparation, construction, and restoration phases, or as otherwise agreed between the Certificate Holder and DPS Staff. Such inspections shall conclude upon the final sign-off of the SWPPP by the SWPPP inspector and as agreed to by the Certificate Holder and DPS Staff.

a) The monthly inspections shall include a review of the status of compliance with all conditions contained in the Certificate and any other order issued in this proceeding and with all other legal requirements and commitments, as well as a field review of the Facility site, if necessary. The inspections also shall include:

(1) review of all complaints received, and their proposed or actual resolutions;

(2) review of any significant comments, concerns or suggestions made by the public, local governments, or other agencies, and the Certificate Holder's response(s);

(3) review of the status of the Project in relation to the overall schedule established prior to the commencement of construction; and,

(4) other items the Certificate Holder or DPS Staff considers appropriate.

b) The Certificate Holder shall provide a written record of the results of the inspection, including resolution of issues and additional measures to be taken, to all agencies involved in the inspection audit (and uninvolved agencies requesting copies) and as part of its scheduled construction update reports.

77. The Certificate Holder shall ensure that each inspector, before entering onto any work site to work on the Project, has received the required safety rules and regulations in a documented meeting particular for such work site. The Certificate Holder also shall ensure that these rules and regulations have been interpreted for non-English speaking and reading-impaired personnel working on the Project. A separate meeting is required for each Project work site.

78. The Certificate Holder shall promptly notify DPS Staff and, for NYSDEC-jurisdictional areas or SWPPP violations, NYSDEC of any activity that involves a violation of the Certificate.

J. Roads and Highways

79. The Certificate Holder shall delineate on the EM&CP drawings, the locations of proposed temporary roads, proposed permanent roads and existing access roads. Proposed access road improvements and measures for environmental impact

minimization and access control shall be included in the EM&CP.

80. The Certificate Holder shall minimize the impact of Project construction on traffic circulation. Traffic control personnel and safety signage shall be employed to ensure safe and adequate traffic flow when secondary roadways are affected by construction.

81. The Certificate Holder shall consult periodically with municipal highway transportation agencies about traffic conditions near the Project site and shall notify each such transportation agency of the approximate date work will begin in its jurisdiction, using access points that take direct access from the highways in that jurisdiction.

82. In preparing the proposed EM&CP, the Certificate Holder shall consult with each transportation department or agency normally having jurisdiction over any roads in the Project vicinity that will be crossed by the certified Project ROW, used for direct access to the ROW or otherwise affected by Project construction. If the access road takes direct access from or lies within the limits of such roads, the Certificate Holder shall notify each relevant transportation department or agency of the approximate date when work will begin.

83. NYSDOT shall have authority to place inspectors on site to monitor and observe the Certificate Holder's activities on state highways, or to request the presence of state or local police to ensure the safety of freeway travelers, at such times and for such periods as NYSDOT deems appropriate. All costs thereof shall be borne by the Certificate Holder.

84. The Certificate Holder shall coordinate with DPS Staff and NYSDOT for all work to be performed in the State highway rights-of-way. Prior to submitting its construction plan for any State highway right-of-way segment, the Certificate Holder shall provide to DPS Staff and NYSDOT a preliminary design marked to avoid conflict with potential future transportation projects that NYSDOT may seek to undertake in the future and shall offer to consult with NYSDOT concerning any comments it may offer and shall use reasonable efforts to accommodate any NYSDOT concerns.

85. In preparing the proposed EM&CP, the Certificate Holder shall consult with NYSDOT regarding any State highways and/or related structures in the Project vicinity that will be crossed by the Project or used for direct access to the Project ROW. If the access road takes direct access from, or lies within the limits of, such roads, the Certificate Holder shall notify NYSDOT of the approximate date when work will begin. Work hours in NYSDOT ROW will be under the control of NYSDOT, subject to the Commission's continuing jurisdiction as appropriate.

86. The Certificate Holder shall ensure that:

a) All Project-related work within State highway rights-of-way shall be designed and performed according to the traffic and safety standards and other substantive requirements contained in 17 NYCRR Part 131, entitled *Accommodation of Utilities Within State Highway Right-of-Way* and applicable design standards required by law or governmental regulation; and

b) For work within roads other than state highways, if any, the EM&CP shall provide details, including provisions for minimizing the duration and extent of open excavation, if any, traffic disruptions, and work within adjoining public streets and right-of-way.

K. Cultural Resources

87. The Certificate Holder shall comply with the Avoidance Plan approved by the NYS Office of Parks, Recreation & Historic Preservation and with the matting requirement contained in paragraph 35 of the Joint Proposal. The Certificate Holder shall not undertake construction in previously undisturbed areas where archeological surveys have not been completed until such time as the appropriate authorities, including New York State Office of Parks Recreation & Historic Preservation ("OPRHP") and DPS Staff, have reviewed the results of any additional historic properties and archeological surveys that are required.

88. Should archeological materials be encountered during construction, the Certificate Holder shall stabilize the area and cease all construction activities in the immediate vicinity (*i.e.*, 164 feet) of the find and protect the find from further damage. Within twenty-four (24) hours of such discovery, the Certificate Holder shall notify and seek to consult with DPS Staff and the OPRHP Field Services Bureau to determine the best course of action. No construction activities shall be permitted in the immediate vicinity of the archeological materials, except in situations threatening human life or in an emergency situation for the protection of property, until such time as the significance of the resource has been evaluated and the need for and scope of impact mitigation has been determined.

89. Should human remains or evidence of human burial(s) be encountered during the conduct of archeological data recovery fieldwork or during construction, all work in the vicinity (*i.e.*, 164 feet) of the find shall be halted immediately and the remains shall be protected from further disturbance. Within twenty-four (24) hours of any such discovery, the Certificate Holder shall notify and consult with DPS Staff and the OPRHP Field Services Bureau. Treatment and disposition of any human remains that may be discovered shall be managed in a manner consistent with the OPRHP's then-current *Human Remains Discovery Protocol.* All archaeological or remains-related encounters and their handling shall be reported in the status reports summarizing construction activities and reviewed in the site-compliance audit inspections.

90. The Certificate Holder shall avoid creating adverse impacts on heritage resource sites, archeological sites, and historic structures in the vicinity of the Project by implementing specific Project location, design, vegetation management, resource protection, and construction scheduling measures described in the EM&CP.

91. The Certificate Holder shall have a continuing obligation during the duration of Project construction to respond promptly to complaints of negative archeological impacts and to mitigate any negative archeological impacts through on-site design modifications and off-site mitigation techniques developed in consultation with the OPRHP Field Services Bureau.

L. Terrestrial and Wildlife Resources

92. In accordance with the substantive requirements of the ECL governing the identification, avoidance, protection, impact minimization and, if necessary, compensation for the incidental take of T&E species, the Certificate Holder shall comply with the following provisions of this Section L.

93. Prior to the commencement or recommencement of construction or maintenance activities, the Certificate Holder shall provide all personnel who will work in the Project area with written information on any T&E animal or plant species and their associated habitat as identified by the New York Natural Heritage Program or that are within or contiguous to the Project area and shall indicate measures to minimize risks to the species during construction, operation, and maintenance.

94. If the Certificate Holder observes any T&E animal species, as defined in 6 NYCRR Part 182, or T&E plant species, identified under 6 NYCRR Part 193, on the Project ROW, the Certificate Holder shall:

a) If the observation occurred during construction, including but not limited to any observation made by a bird monitor employed pursuant to Conditions 98 or 101, notify DPS Staff and NYSDEC within one business day of the observation, and immediately secure the surrounding area, in locations where the Certificate Holder has the necessary property rights to do so and, unless continued construction activities are necessary for protection of property or human life, safely cease construction activities within 500 feet of the approximate location of the observed listed species until DPS Staff in consultation with NYSDEC authorizes recommencement of activities; or

b) If the observation occurred during operation or maintenance, notify NYSDEC as soon as practicable, but not to exceed two business days, after the observation, and initiate consultation with NYSDEC in an effort to avoid, minimize, or, if necessary, mitigate for impacts to T&E species and their associated habitat during continued operation and maintenance activities.

95. If the Certificate Holder observes any T&E animal species on or near the Project ROW, including any dead, injured, and damaged T&E species, their eggs, or nest, the Certificate Holder shall maintain a record of such observation. All such records of observations of T&E animal species shall include the following information, to the extent known and practicable: species; number of individuals; age and sex of individuals; observation date(s) and time(s); GPS coordinates (as property rights allow) of each individual observed (if GPS coordinates are not readily ascertainable, the report should include the nearest Facility structure number and cross road location); behavior(s) observed; identification and contact number of the observer(s); the nature of and distance to any Project construction activity; and whether the death, injury, or damage to the T&E species, their eggs, or nest was caused by such activity. The records of observations shall be provided to NYSDEC no later than 30 days following the observation of a T&E species.

96. In the event that an Indiana or Northern long-eared bat, little brown bat or tri-colored bat hibernaculum or tree roost is identified on or near the Project ROW during the construction, operation, or maintenance of the Project, the Certificate Holder will consult DPS Staff and NYSDEC to comply with the substantive requirements of the ECL Article 11, and 6 NYCRR Part 182, or any other regulations or guidance as then applicable.

97. For the avoidance and protection of bald eagles, the Certificate Holder shall implement the following measures during construction:

a) At least two weeks prior to commencement of construction activities in any area, the Certificate Holder shall conduct a visual inspection in the area to determine if any bald eagle nests are present and consult with NYSDEC to determine if NYSDEC has records of any nests within one mile of the project area

that may not have been detected by the visual inspection.

b) If any bald eagle nest is discovered within 0.25 miles of the work area, the Certificate Holder shall notify NYSDEC and DPS Staff within twenty-four (24) hours of discovery and, except to protect property and human life: (i) the nest shall not be approached; (ii) the 0.25 mile environmentally sensitive area shall be marked, where the Certificate Holder has property rights to allow such marking; and (iii) the 0.25 mile environmentally sensitive area shall be avoided until DPS Staff, after consultation with NYSDEC, authorizes construction activities in such area. In the presence of a visual barrier (i.e., tree line, topography) that obstructs the view from the nest and shields it from work activities, the 0.25 mile environmentally sensitive area shall be reduced to 660 feet.

c) Subject to subsection (d) of this Condition, no construction work (ground disturbance and construction related activities including boring, restoration and equipment staging, storing and transportation) shall occur during the bald eagle breeding season (January 1 to September 30) within 0.25 mile (or 660 feet if there are visual barriers) of any existing known bald eagle nest except as necessary to protect property or human life. If monitoring of the nest by a bird monitor whose qualifications have been approved by DPS Staff and NYSDEC indicates that the nest has either failed prematurely or the chicks have fledged the nest and left the area, the Certificate Holder may perform construction work after NYSDEC confirms that the nest is no longer active.

d) Alternatively, if construction work during the bald eagle breeding season (January 1 to September 30) within 0.25 miles of an active nest is necessary, a bird monitor whose qualifications have been approved by DPS Staff and NYSDEC shall monitor any active nests within 0.25 miles of the proposed work during all times when construction activities are in progress. If the bald eagle(s) show signs of distress due to noise associated with the work, then all work, except work necessary to protect property or human life, must immediately cease and the area shall be avoided until DPS Staff, after consultation with NYSDEC, authorizes construction activities in such area.

98. To avoid direct impacts to identified T&E marsh birds, grassland breeding birds and wintering birds in occupied habitat as identified by the New York Natural Heritage Program ("Occupied Habitat") and included in the EM&CP, the Certificate Holder shall endeavor to schedule construction activities, including restoration and equipment staging, storage, and transportation, outside of the specified Time of Year Restriction ("TOYR") windows, as set forth in Condition 100. The Certificate Holder also shall endeavor to not schedule operation and maintenance activities in Occupied Habitat with TOYR windows in effect at the time of such activities, following consultation with NYSDEC.

99. Subject to the provisions of Conditions 101 and 102, for T&E marsh bird (i.e., the least bittern, pied-billed grebe, black tern, and king rail), grassland breeding bird (i.e., sedge wren, Henslow's sparrow, and northern harrier) and wintering bird (i.e., short-eared owl and northern harrier) species, the following TOYRs apply and no construction, except as necessary to protect property or human life, shall occur:

a) during the marsh bird breeding season from April 15 to September 1 within Occupied Habitat as included in the EM&CP.

b) during the grassland bird breeding season from April 23 to August 15 in contiguous open field areas greater than 25 acres within Occupied Habitat as included in the EM&CP. If sedge wren are documented within 500 feet of the planned work area

during the grassland bird breeding season, the above restrictive period will be extended at this location until September 1 for that grassland bird breeding season. However, if fields are planted with row crops (i.e., hay, corn, beans, or vegetables) during the farming season of the year prior to the commencement of construction, and no significant grassland habitat is present based on NYSDEC habitat surveys, these fields are not subject to the foregoing TOYR for T&E grassland breeding bird species.

c) from November 1 to March 30 in contiguous open field areas greater than 25 acres within Occupied Habitat of wintering birds as included in the EM&CP.

100. If avoidance as defined in clauses (a) to (c) in Condition 100 cannot be maintained, then minimization measures in Occupied Habitat consisting of preconstruction surveys, conducted within two weeks prior to the commencement of construction, and onsite continuous monitoring during construction activities, by a bird monitor whose qualifications have been approved by DPS Staff and NYSDEC, shall be employed. Preconstruction surveys and onsite monitoring plans for marsh, breeding grassland, and wintering bird species shall be developed in the EM&CP in consultation with, and approved by, NYSDEC and DPS Staff, and a determination of whether construction will occur within the TOYR windows, accompanied by the continuous onsite bird monitor, shall be based on the results of such surveys.

101. If NYDEC and DPS Staff determine that avoidance, as defined in clauses (a) to (c) in Condition 100, and minimization measures, as defined in Condition 101, are not sufficient to avoid a take, the Certificate Holder may conduct construction activities, provided the EM&CP includes and the Certificate Holder complies with a Breeding Grassland, Marsh, and Wintering Bird Net Conservation Benefit Plan (NCBP) that meets the substantive requirements of 6 NYCRR Part 182 and is developed in consultation with and accepted by NYSDEC and DPS Staff.

102. The foregoing provisions of this Section L are subject to any further avoidance or mitigation measures for T&E species set forth in the helicopter use plan or blasting plan, if any, included in the EM&CP pursuant to Condition 22.

M. Waterbodies and Wetlands

103. The Certificate Holder shall perform all construction, operation or maintenance activities in a manner that avoids and minimizes adverse impacts to streams, waterbodies, wetlands, and the one hundred (100) foot adjacent area associated with any State-regulated wetland (adjacent area). The Certificate Holder shall ensure the provisions to protect wetlands, waterbodies, and adjacent areas are followed as specified in the approved EM&CP:

a. The Certificate Holder shall notify DPS Staff and NYSDEC within 2 hours of observing or being made aware of a discharge to a wetland or waterbody resulting in a violation of New York State Water Quality Standards. In the event that construction results in an alteration to (i.e., lowering) of wetland hydrology, then the breach shall be immediately sealed and no further activity shall take place until DPS Staff and NYSDEC staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by DPS Staff in consultation with NYSDEC.

b. Unless otherwise specified in the approved EM&CP, all in-stream work is

prohibited from September 15 through May 31 in cold water fisheries, and from March 1 through July 15 in warm water fisheries.

c. All work in streams shall be conducted in the dry, using appropriate water handling measures to isolate work areas and direct stream flow around the work area, unless approved otherwise specified in the approved EM&CP.

d. Water resulting from dewatering operations, equipment washing, or other construction related activities shall not be directly discharged into any wetland or waterbody.

e. Bridges shall be installed wherever a new permanent crossing is required for state-regulated streams (Class C(T) or higher and/or navigable), as defined in 6 NYCRR Part 608.1(u) and Part 608.1(aa). The bridge shall span the bed and banks of the stream. If a bridge is not practicable the approved EM&CP shall provide justification for a non-bridge crossing, or if the installation of a bridge would require major re-configuration of the stream channel and banks, the permanent culvert shall be designed in accordance with the approved EM&CP.

f. When installation of a bridge to span a state-regulated stream is not practicable and a culvert is the only practicable option, it shall be designed as follows:

i. To safely pass the 1% annual (100-year return) chance storm event;

ii. To contain native streambed substrate or equivalent using an open bottom arch, three-sided box culvert, or round/elliptical culvert with at least 20% of the culvert height embedded beneath the existing grade of the stream channel at the downstream invert;

iii. Shall be a minimum width of 1.25 times the width of the stream bank full width;

iv. The slope shall remain consistent with the slope of the pre-existing channel (upstream and downstream). For slopes greater than 3%, an open bottom culvert shall be used, where practicable; and

v. Shall facilitate downstream and upstream passage of aquatic organisms.

g. Concrete washout areas shall be located a minimum of 100 feet away from any wetland or waterbody; provided that if the minimum setback cannot be achieved, the approved EM&CP shall provide justification and demonstrate that impacts to wetlands and waterbodies from concrete washout areas shall be avoided or minimized to the maximum extent practicable.

h. Disturbed streams shall be restored to equal width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to the profile of the stream channel upstream and downstream of the disturbance. All disturbed stream banks shall be mulched within (2) days of final grading, stabilized with 100% natural/biodegradable fiber matting, and seeded with an appropriate riparian seed mix specified in the approved EM&CP. In areas where vegetation has been uprooted or grubbed on stream banks, the vegetation shall be replaced with ROW compatible native plantings as site conditions and facility design allow, as appropriate and consistent with the use of the Facility.

i. Immediately upon completion of grading, and as consistent with existing land uses, the area shall be seeded with a seed mix of native plants specified in the approved EM&CP that is appropriate for wetlands and the 100-foot wetland adjacent

area. Overall vegetative cover in restored areas shall be monitored until an 80% cover of plants with the appropriate wetland indicator status has been reestablished over all portions of the restored area. If 80% cover of plants with the appropriate wetland indicator status has not been achieved at the end of the second year of monitoring, a Wetland Planting Remedial Plan (WPRP) shall be prepared that evaluates the reasons for the results, including an analysis of poor survival; corrective actions to ensure successful restoration; and a schedule for conducting remedial work. Once approved by DPS Staff, in consultation with NYSDEC, the WPRP shall be implemented according to an approved schedule.

j. The Certificate Holder shall work with NYSDEC to develop a Wetland Mitigation Plan, if necessary, following the NYSDEC Supplemental Specifications for Wetlands and Waterbodies contained in Appendix F to the Joint Proposal and will submit the Plan within six months of the start of construction for DPS Staff and NYSDEC acceptance, subject to the Commission's continuing jurisdiction as appropriate.

k. Wetland locations, and wetland adjacent areas located within the ROW or crossed by the ROW or any off-ROW access road constructed, improved or maintained for the Project, shall be delineated in the field as indicated on the EM&CP drawings.

l. Marshalling yards and staging areas constructed on previously undisturbed lands shall not be sited within wetlands, state regulated wetland adjacent areas, or within fifty feet of waterbodies or streams.

m. Construction through wetlands shall be done with low-ground pressure equipment or on temporary mats or geotextile/gravel access roads and shall be restricted to access roads and work areas set forth in the EM&CP. In the event that temporary matting will be placed in wetlands, those mats will be removed, and wetlands hydrology soils and vegetation will be restored to the extent practicable. Where new permanent access roads are to be constructed through wetlands, geotextile fabric or equivalent underlayment shall be used.

n. The Certificate Holder shall use measures to minimize soil compaction in wetlands and waterbodies, including the use of temporary matting, low-ground pressure equipment and constructing when soils are frozen. The EM&CP shall include a plan to restore wetlands and waterbodies, including restoration of pre-construction site conditions and stabilization of disturbed wetlands and waterbodies, within 48 hours or as soon as practicable after final construction.

o. All excess fill materials and spoils shall be completely removed to upland areas greater than 100 feet from wetlands and waterbodies.

p. Equipment shall not be washed in any stream, waterbody, wetland or regulated 100 foot adjacent area. No runoff resulting from washing operations shall directly enter into these areas.

q. Excavated soil material resulting from pole structure installation shall not be stored within one hundred (100) feet of wetlands, streams or waterbodies, to prevent runoff into such areas; provided that if soil storage is required in wetlands, the soil is to be temporarily stored on construction mats and properly contained to prevent runoff.

r. Vegetation cut in wetlands areas may be left in place (drop and lop) or removed from wetlands to upland areas. Cut vegetation shall not be permanently piled

in the wetland areas.

s. Construction vehicle access across protected streams and waterbodies (streams classified as C(T) or higher) shall be limited to existing bridges, culverts or fords and to crossings installed in accordance with the provisions set forth in the EM&CP, except fords are not permitted in protected streams.

t. There shall be no substantial increase in visible contrast in water clarity or variation of flow volume due to construction activities between upstream reaches of work areas and downstream reaches of work areas.

u. Dewatering operations shall discharge into an approved dewatering device (i.e., temporary straw bale/silt fence barrier or filter bag). The dewatering device shall not be placed on or near the top of streambanks or within or adjacent to wetlands unless the EM&CP provides justification and demonstrates that impacts to wetlands and waterbodies shall be minimized to the maximum extent practicable. When dewatering within or next to a wetland, waterbody or stream is so authorized under this Condition and as set forth in the EM&CP, the return water shall not cause a substantial visual contrast from existing upstream conditions.

v. The EM&CP shall include measures to minimize impacts to fish and wildlife during wetland and waterbody construction including, where practicable, returning animals that become trapped within work areas to an appropriate and safe location outside of the work area. If it is determined that it is not practicable to return the animal, the environmental inspector shall notify DPS and NYSDEC Staff.

104. The Certificate Holder shall inform the USACE of any changes in the design of the Project that have the potential to impact any water resources under USACE jurisdiction and shall provide a copy of such correspondence to the Secretary with the USACE response.

105. NYSDEC Staff field representatives shall be permitted on the Project site. The NYSDEC Staff field representatives will notify the DPS Staff representative and the Certificate Holder's appropriate representative of any activities that violate or may violate either the terms of the Certificate, any permits issued by the NYSDEC, the ECL and/or 6 NYCRR.

N. Agricultural Resources

106. The Certificate Holder shall comply with the below guidelines for the Project ROW:

a) The Certificate Holder shall retain a qualified agricultural inspector for each phase of Project development, including design, construction, initial restoration, post-construction monitoring and follow-up restoration. The agricultural inspector shall be available to provide site-specific agricultural information as necessary for EM&CP development through field review, as well as to have direct contact with affected farm operators, County Soil and Water Conservation Districts, NYSAGM and others. The agricultural inspector shall maintain regular contact with the environmental inspector and/or the construction inspector throughout the construction phase. The agricultural inspector also shall maintain regular contact with the affected farmers and County Soil and Water Conservation Districts concerning farm resources and management matters pertinent to the agricultural operations and the site-specific

implementation of the EM&CP. Whenever the Certificate Holder submits a request for an EM&CP change concerning agriculture, it shall consult with NYSAGM.

b) The Certificate Holder shall identify Black Cherry trees located on the ROW near active livestock use areas during EM&CP development. During the clearing phase, such vegetation shall be disposed of in a manner which prevents access by livestock.

c) As part of the line-location surveys conducted during the preparation of the EM&CP, the Certificate Holder shall locate all commercial sugarbushes maintained for maple syrup production within the ROW. The Certificate Holder shall attempt to adjust the centerline location within the ROW to avoid such operations.

d) The Certificate Holder shall design the Project to the extent possible to avoid or limit the placement of structures on crop fields or on other active agricultural land where the structures may significantly interfere with normal agricultural operations or activities. Where the location of a structure on such agricultural land is unavoidable, the Certificate Holder shall attempt to site the structure in a location that minimizes impact to normal farming operations.

e) During preparation of the EM&CP, a detailed drainage line repair procedure shall be developed, in consultation with the local Soil and Water Conservation District, for the repair of crushed/severed clay tile and plastic drain lines. Drawings showing the generic technique to be implemented for drain line repairs shall be provided by the Certificate Holder. All new plastic drain tubing shall meet or exceed the AASHTO M252 specifications. The plan for the replacement of functional stone drainage systems severed during construction shall be prepared during the restoration phase, in consultation with NYSAGM and/or the Soil and Water Conservation District.

f) Where construction entrances are required from public roadways to the ROW in agricultural fields, an underlayment of durable, geotextile fabric shall be placed over the exposed subsoil surface prior to the use of temporary gravel access fill material. Complete removal of the construction entrance upon completion of the Facility and restoration of the affected site is required prior to topsoil replacement, except where retention of the construction entrance would be more conducive to the existing land use than removal, and is agreeable to the agricultural land owner.

g) Segments of existing farm roads utilized for access shall be improved as required following consultation with the farm operator and NYSAGM prior to use. Such improvements shall include the installation of geotextile fabric and crushed stone.

h) Farm drainage features, fences and gates affected by construction shall be rebuilt to like new condition upon completion of construction. The base of all new posts

shall be secured to a reasonable depth below the surface to prevent frost heave.

i) Mats may be installed as an alternative to topsoil stripping. If so, the mats shall be layered where necessary to provide a level access surface. Once access is no longer required across agricultural areas, the mats shall be removed and the agricultural inspector shall use a soil penetrometer to determine if soil compaction has occurred as a result of construction activities. All compacted areas shall be remediated as specified below.

j) Where the installation of mats is not practical, such as access roads, work pads associated with pole structures, wire pulling sites and marshalling yards (laydown yards), the topsoil shall be removed, including all of the "A" horizon down to the beginning of the subsoil "B" horizon, generally not to exceed a maximum of 12 inches. Topsoil removal up to a depth of 16 inches may be required in specially-designated soils encountered along the route and identified in the EM&CP. All topsoil shall be stockpiled directly adjacent to the travel way on the ROW and separated from other excavated materials. The agricultural inspector shall determine depth of topsoil stripping on each affected farm by means of the County Soil Survey and on-site soil augering, if necessary. All topsoil material shall be stripped, stockpiled, and uniformly returned to restore the original soil profile. During the clearing/construction phase, site specific depths of topsoil stripping shall be monitored by the agricultural inspector.

k) If blasting is required in agricultural areas of till over bedrock, the blasting plan in the EM&CP shall require that: the Certificate Holder use matting or controlled blasting to limit the dispersion of blast rock fragments; all blasted rock not used as backfill shall be removed from croplands, haylands and improved pastures; the till and topsoil shall be returned in natural sequence to restore the soil profile; and the Certificate Holder give farm owners/operators timely notice prior to blasting on farm property.

l) During the restoration phase of the Project, the Certificate holder shall remove the crushed stone and geotextile fabric. In all agricultural sections of the ROW disturbed during construction, the Certificate Holder shall break up the subsoil compaction with deep tillage by such devices as a deep-ripper (subsoiler). Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. Following the deep ripping (with tractor-drawn farming equipment), all stone and rock material 4 inches and larger in size which has been lifted to the surface shall be collected and taken off site for disposal. The topsoil that has been temporarily removed for the period of construction shall then be replaced. Finally, deep subsoil shattering shall be performed, if the decompaction requirements are not met, with a subsoiler tool having angled legs. Stone removal shall be completed, as necessary, to eliminate any additional rocks and stones brought to the surface as a result of the final subsoil shattering process. In the event that subsequent construction or clean-up activities result in additional compaction, additional deep tillage should be performed to alleviate such compaction.

m) Soil compaction should be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The soil compaction test results within the affected area will be compared with those of the adjacent unaffected

portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative soil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional soil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

n) After topsoil replacement and seedbed preparation, apply seed and soil amendments in accordance with the NYSAGM recommendations contained in *Fertilizer, Lime, and Seeding Recommendations for Restoration of Construction Projects on Farmland in New York* (revised 9-25-2012) or as specified by the landowner.

o) All structures and guy anchors removed from agricultural areas as part of the construction activities should be removed to a minimum depth of 48 inches below the soil surface. All holes or cavities created by the removal of the old facilities shall be filled to the same level as the adjacent area, plus 6 to 12 inches of additional soil to allow for settling. All material will be slightly mounded to accommodate for settling.

p) Wherever existing structures are removed from agricultural fields, the immediate area will be restored to be compatible with agricultural production. Such restoration should include the removal of concrete foundations and steel structures down to a minimum of 48" below the ground surface, the removal of all vegetation from the structure area, and grading of the ground surface to match the adjacent field. All rocks 4 inches and greater in size shall be removed from the surface.

q) At the end of all construction, the ROW and respective work areas, including guying wire assembly and disassembly sites, shall be thoroughly cleared of debris such as nuts, bolts, spikes, wire, pieces of steel, and other assorted items.

r) The Certificate Holder shall provide a monitoring and remediation period of two growing seasons following completion of ROW restoration in active agricultural areas. The Certificate Holder shall retain the services of an agricultural inspector on at least a part-time basis through this period. The monitoring and remediation phase shall be used to identify any remaining agricultural impacts associated with ROW construction that are in need of mitigation and to implement the follow-up restoration.

s) During the monitoring and remediation period, on site monitoring shall be conducted at least three times during each growing season and shall include a comparison of growth and yield for crops on and off the ROW. When the subsequent crop productivity within the affected ROW is less than that of the adjacent unaffected agricultural land, the agricultural inspector, in conjunction with the Certificate Holder and other appropriate organizations, shall help to determine the appropriate rehabilitation measures for the Certificate Holder to implement (soil de-compaction, topsoil replacement, etc.). During the various stages of the Project, all affected farm operators shall be periodically apprised of the duration of remediation by the agricultural inspector. Because conditions which require remediation may not be noticeable at or shortly after the completion

of construction, the end of the remediation period shall not obviate the Certificate Holder's responsibility to fully redress all Project impacts, and the Certificate Holder shall continue to respond to the reasonable requests of the farmland owner/operators to correct Project related effects on the impacted agricultural resources after completion of the specific remediation period.

t) The Certificate Holder shall provide all farm owners/operators with a telephone number to facilitate direct contact with the Certificate Holder and the agricultural inspector(s) through all of the stages of the Project. The farm owner/operators shall also be provided with a telephone number to facilitate direct contact with the Certificate Holder's Project Manager (or other representative of the Certificate Holder) for the Project during operation and maintenance of the transmission line.

u) The agricultural inspector shall work with the farm operators during the planning phase to develop a plan to delay the pasturing of the ROW, following construction until pasture areas are adequately revegetated. The Certificate Holder shall be responsible for maintaining the temporary fencing on the ROW until the agricultural inspector determines that the vegetation on the ROW is established and able to accommodate grazing. At such time, the Certificate Holder shall be responsible for removal of the fences.

v) On affected farmland, restoration practices shall be postponed until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration shall not be conducted while soils are in a wet or plastic state. Stockpiled topsoil shall not be regraded until plasticity, as determined by the Atterberg field test is significantly reduced. No Project restoration activities shall occur in agricultural fields between the months of October through May unless favorable soil moisture conditions exist. The Certificate Holder shall monitor and advise NYSAGM and DPS Staff regarding tentative restoration planning. Potential schedules will be determined by conducting the Atterberg field test at appropriate depths into topsoil stockpiles, and below the traffic zone for a mutual determination of adequate field conditions for the restoration phase of the Project.

w) Topsoil stockpiles on agricultural areas left in place prior to October 31 shall be seeded with Aroostook Winter Rye or equivalent at an application rate of 3 bushels (168 #) per acre and mulched with straw mulch at rate of 2 to 3 bales per 1000 sq. ft. Topsoil stockpiles left in place between October 31 and May 31 shall be mulched with straw mulch at a rate of 2 to 3 bales per 1000 sq. ft. Straw (not hay) mulch shall be used to prevent soil loss on stockpiled topsoil from October through May.

O. Petroleum and Hazardous Substances

107. The EM&CP shall include Fuel and Chemical Handling Procedures, and a spill response and route emergency plan, including the NYSDEC spill reporting contact number and the Certificate's reporting requirements. This plan shall provide proposed methods of handling spills of petroleum products and any hazardous or controlled substance which may be stored or utilized during construction, operation, or maintenance of this Facility.

108. All Certificate Holder and Contractor vehicles working on the Project shall have a spill kit that is appropriate for the volume of fuel carried by the vehicle.

109. The Certificate Holder's contractor will retain a qualified spill response company for the duration of the Project and provide that company with maps showing access roads, marshalling yards, and other information that will facilitate response to a spill location.

110. Equipment refueling, maintenance, and repair shall be conducted a minimum of 100 feet away from any wetland or waterbody, to the maximum extent practicable, unless otherwise specified in the EM&CP, which shall specify protective measures against spills.

111. Stationary fuel tanks and chemical storage shall be a minimum of 300 feet from streams, waterbodies and wetlands; provided that, if the minimum setback cannot be achieved, the approved EM&CP shall provide justification and demonstrate that impacts have been avoided or minimized to the maximum extent practicable, such as adequate secondary containment (containing at least 110% of the volume stored).

P. Contractors and Contractor Supplies/Materials

112. If an OSHA Recordable accident occurs in connection with work on the Project, the Certificate Holder shall report any such accident to DPS Staff as soon as possible. A copy of the accident report, if any, shall be provided to DPS Staff after it has been finalized.

113. The Certificate Holder shall provide DPS Staff with a copy of any police report and any insurance claim filed in connection with any theft of Project-related materials, as well as a list of the stolen items.

114. A field review shall be conducted by the Certificate Holder to determine compliance with its design on a monthly basis and prepare a written report of the Company's findings on whether the Project is being constructed in accordance with the EM&CP design for the Project. The Certificate Holder shall provide a copy of each such report to DPS Staff within three (3) business days after the Certificate Holder receives the report. The Certificate Holder shall notify DPS Staff of when the field reviews will occur.

115. If the Contractor installs materials, structures, or components that do not conform to the specifications described in the EM&CP, the Certificate Holder shall, after becoming aware of such incident, prepare and deliver to the Chief of EC&C a summary report detailing the incident, the steps to be taken to rectify the mistake, the material and labor costs associated with rectifying the incident, and the manner in which such costs will be accounted for separately from other Project costs.

116. The Certificate Holder shall develop a quality control plan ("Quality Control Plan") for inclusion in the EM&CP describing how it will ensure that the major transmission line components it purchases for the Project conform to the specification for such components described in such EM&CP. At a minimum, the Quality Control Plan shall include: (i) the qualifications of the individual(s) who will conduct audits under the Quality Control Plan ("Quality Control Audits"); and (ii) the frequency with which the Quality Control Audits will be performed.

117. Manufacturer recommendations for materials storage will be followed and materials will be stored in an orderly fashion, secured and protected from damage.

To better ensure a safe working environment for all persons at each Project worksite, the

Certificate Holder shall require its contractors or subcontractors, before any person who is authorized by the Certificate Holder to be present at the site that day, or any representative of a regulatory agency present on official business, commences performing or observing Project activities, to give such person an on-site tailboard safety briefing. The Certificate Holder shall ensure that: (a) any document that a person participating in a tailboard safety briefing is required to sign at such briefing is legible; and (b) the person conducting the briefing shall use his/her best efforts to give accurate and complete responses to all requests by such persons for clarification of the scope of work, construction methodology, and other pertinent personal safety information. If a person participating in a tailboard safety briefing who signed such a document desires a copy thereof, he/she shall request it in writing and the Certificate Holder shall provide a copy thereof to the requester within 48 hours of the request.

Q. Invasive Species

118. The Certificate Holder shall prepare an Invasive Species Management Plan in accordance with the Invasive Species Management Plan Specifications in Appendix G to the Joint Proposal and in consultation with and accepted by DPS Staff and NYSDEC. The Certificate Holder shall implement said Invasive Species Control Plan as part of the approved EM&CP.

R. Water Quality Certification

119. To obtain a Water Quality Certification from the Commission in connection with its application(s) for permit(s) under Section 404 of the Federal Water Pollution Control Act authorizing construction work in federal-jurisdictional waters and wetlands, the Certificate Holder shall comply with applicable federal and state regulations and complete any then-applicable forms and preapplication requirements for filing with the Secretary and submittal to the Chief of EC&C or their designee, pursuant to §401 of the Federal Water Pollution Control Act.

APPENDIX E

SPECIFICATIONS FOR THE DEVELOPMENT OF ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN

Section A of the Specifications for the Development of Environmental Management and Construction Plan (Specifications) addresses the development of the plan and profile drawings, and maps portion of the Environmental Management and Construction Plan (EM&CP).

Section B addresses the description and statement of objectives, techniques, procedures, and requirements, i.e. the textual portion of the EM&CP. A table of contents will be included for the EM&CP and each section, appendix or exhibit containing ten or more pages.

If any particular requirement of the Specifications is not applicable, so indicate and briefly explain.

A. EM&CP Plan and Profile Drawings and Maps

The EM&CP maps, charts, photostrip maps, and illustrations shall include, but need not be limited to, the following information:

1. Plan and Profile Details

A Line[1] Profile (at an appropriate scale) and plan drawings (scale minimum 1 inch = 200 feet)[2] showing:

a. The boundaries of any new, existing, and/or expanded right-of-way (ROW)[3] or road boundaries, and where cables are to be constructed overhead or underground; plus, areas contiguous to the ROW or street within which the Certificate Holders will obtain additional rights.

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[1] The lowest conductor of an overhead design shall be shown in relation to ground at the maximum permissible conductor temperature for which the line is designed to operate, i.e., normally the short-time emergency loading temperature. If a lesser conductor temperature is used for the line profile, the maximum sag increase between the conductor temperature and the maximum conductor temperature shall be indicated for each ruling span. For underground project design, show relation of project to final surface grade, indicating design depth-of-cover.

[2] Contour lines (preferably at 5-foot intervals) are desirable on the photostrip map if they can be added without obscuring the required information.

[3] The term "right-of-way" in these *Specifications* includes property, whether owned in fee or easement, to be used for substations, disposal sites, underground terminals, storage yards, and other associated facilities. Where such properties cannot reasonably be shown on the same plan or photo-strip, maps, or plan drawings used for the transmission line, additional maps or drawings at convenient scales should be used.

b. The location of each Facility structure (showing its height, material, finish and color, and type), structural foundation type (*e.g.*, concrete, direct bury), fence, gate, down-guy anchor, and any counterpoise required for the Facility (typical counterpoise drawings will suffice recognizing that before field testing of installed structures the Certificate Holder may be unable to determine the specific location of all required counterpoise), conductors, insulators, mid-span splices, and static wires and other components attached to Facility structures.
c. Existing utility or non-utility structures on the ROW, and indicate those to be removed or relocated (include circuit arrangements where new structures will accommodate existing circuits, indicate methods of removal of existing facilities, and show the new locations, types and configurations of relocated facilities).
d. Any underground utility or non-utility structure.
e. The relationship of the Facility to nearby fence lines; roads; trails; railways; airfields; property lines; hedgerows; surface waters; wetlands; other water bodies; significant habitats; associated facilities; flowing water springs; nearby buildings or structures; major antennas; oil or gas wells, and blowdown valves.
f. The location of any proposed new or expanded switching station, substation, or other terminal or associated utility or non-utility structure (attach plan[4] - plot, grading, drainage, and electrical - and elevation views with architectural details at appropriate scales). Indicate the type of outdoor lighting, including design features to avoid off-site illumination and minimize glare; the color and finish of all structures; the locations of temporary or permanent access roads, parking areas, construction contract limit lines, property lines, designated floodways and flood-hazard area limits, buildings, sheds, relocated structures, and any plans for water service and sewage and waste disposal.
g. The location and boundaries of any areas whether located on- or off- ROW proposed to be used for fabrication, designated equipment parking, staging, access, lay-down, and conductor pulling. Indicate any planned fencing, surface improvements, and screening of storage and staging areas.
h. The locations for ready-mix concrete chute washout and any other cleaning activities (e.g., control of invasive species).

2. <u>Stormwater Pollution Prevention</u>

a. Include on the plan and profile drawings the acknowledged Storm Water Pollution Prevention Plan (SWPPP) details. Include the locations of soil erosion and sediment control measures developed in accordance with the latest version of the New York Standards and Specifications for Erosion and Sediment Control (e.g., stabilized construction entrances, silt fences, check dams, and sediment traps).

[4] Preferably 1" = 50' scale with 2-foot contour lines.

b. Include on the plan and profile drawings the approved SWPPP locations of all permanent stormwater management controls that are required based on site-specific conditions or conditions of the Certificate.

3. <u>Vegetation Clearing and Disposal Methods</u>

Identify on the plan and profile drawings:

a. the locations of sites requiring trimming or clearing of vegetation and the geographic limits of such trimming or clearing;

b. the specific methods for the type and manner of cutting and disposition or disposal method for cut vegetation (e.g., chip; cut and pile; salvage merchantable timber, etc.);

c. the methods for management of vegetation to be cut or removed at each site;

d. any geographical area bounded by distinctly different cover types requiring different cut-vegetation management methods;

e. any geographical area bounded at each end by areas requiring distinctly different cut-vegetation methods due to site conditions such as land use differences, population density, habitat or site protection, soil or terrain conditions, fire hazards, or other factors;

f. different property-owners requesting specific vegetation treatment or disposal methods;

h. areas requiring (off-ROW) danger tree removal; and,

i. the location of any areas where specific vegetation protection measures will be employed and the details of those measures to avoid damage to specimen tree stands of desirable species, important screening trees, or hedgerows.

4. <u>Building and Structure Removal</u>

Indicate the locations of any buildings or structures to be acquired, demolished, moved, or removed.

5. <u>Waterbodies</u>

a. Indicate the name, water quality classification and location of all rivers and streams, (whether perennial and intermittent) and drainages crossed by, the proposed ROW or any off-ROW access road constructed, improved, or maintained for the Facility. On the plan and profile drawings, indicate:

   i. stream crossing method and delineate any designated streamside "protective or buffer zone" in which construction activities will be restricted to the extent necessary to minimize impacts on rivers and streams;

   ii. the activities to be restricted in such zones; and,

   iii. identify any designated floodways or flood hazard areas to be traversed by the Facility or access roads, or otherwise used for Facility construction or the site of associated facilities.

b. Show the location of all potable water sources, including springs and wells on the ROW or within 100 feet of the ROW or access roads, indicating, on a site-by-site basis, precautionary measures to be taken to protect each water source.

6. Wetlands

a. All wetlands and wetland 100-foot adjacent areas (adjacent areas) located within the ROW or crossed by the ROW or any off-ROW access road constructed, improved, or maintained for the Facility shall be depicted on EM&CP drawings. The plan and profile drawings shall delineate the wetland "protective or buffer zone" in which construction activities will be restricted to the extent necessary to minimize impacts on wetlands.

b. Indicate the location and type (i.e., identification code for regulated town, state, or federal wetlands) of any wetland (e.g., marsh, meadow, bog, or scrub-shrub or forested swamp) within or adjoining the ROW or any access road, as determined by site investigation and delineation.

c. Indicate type and location of precautionary measures (e.g., mats) to be taken to protect all wetlands, associated drainage patterns, and wetland functions.

7. Land Uses

a. Agricultural Areas

   i. Indicate the locations of sites under cultivation or in active agricultural use including rotational pasture, pasture, hayland, and cropland.

   ii. Indicate the location of any unique agricultural lands including maple sugarbushes, organic muckland and permanent irrigation systems, as well as areas used to produce specialty crops such as vegetables, berries, apples, and grapes.

   iii. Indicate the location of vulnerable soils in agricultural areas that are more sensitive than other agricultural soils to construction disturbance due to slope, soil wetness, and shallow depth to bedrock.

   iv. Indicate the location of all land and water management features including subsurface drainage, surface drainage, diversion terraces, buried water lines, and water supplies.

   v. Designate the site-specific techniques to be implemented to minimize or avoid construction-related impacts to agricultural resources.

b. Sensitive Land Uses and Resources

   Indicate the location and identification of sensitive land uses and resources that may be affected by construction of the Facility or by construction-related traffic (e.g., hospitals, emergency services, sanctuaries, schools, and residential areas).

c. Geologic, Historic, and Scenic or Park Resources

   Indicate the locations of geologic, historic, and existing or planned scenic or park resources and specify measures to minimize impacts to these resources (e.g., fencing, signs).

d. Recreational

Indicate the locations where existing or planned recreational use areas, would affect or be affected by the Facility location, construction or other ROW preparation.

8. Access Roads, Lay-down Areas and Workpads

Indicate the locations of temporary and permanent on- and off-ROW access roads, lay-down areas and workpads. Provide construction type, material, and dimensions. Indicate provisions for upgrading any existing access roads.

9. Noise Sensitive Sites

Show the locations of noise-sensitive areas along the proposed ROW.

10. Ecologically and Environmentally Sensitive Areas

Indicate the general locations of any known ecologically and environmentally sensitive sites (e.g., archaeological sites; fish and wildlife habitat; rare, threatened, and endangered species or habitats; forest and vegetation; open space; areas of important aesthetic or scenic quality; deer winter yards, etc.), within or nearby the proposed or existing ROW or along the general alignment of any access roads to be constructed, improved or maintained for the Facility. Specify the measures that will be taken to protect these resources (e.g., fencing, flagging, signs "Sensitive Environmental Areas, No Access").

11. Invasive Species of Special Concern

Identify the location(s) of invasive species of special concern and the prescribed method to control the spread and/or eradicate the identified species.

12. Herbicide

On the plan and profile drawing notes, indicate areas where herbicides will not be used.

B. Description and statement of objectives, techniques, procedures and requirements

The textual portion of the EM&CP for the Facility shall include, but need not be limited to, all of the following information:

1. Facility Location and Description

Describe the location and limits of the site or ROW and explain the need for any additional rights. For each structure type, indicate the GSA-595A Federal standard color designation or manufacturer's color specification to be used for painted structures. State any objections raised by Federal, State, or local transportation (highways, waterways, or aviation) officials to the final location or manner of installation of, or access to, the certified Facility. Provide a rationale for the inclusion of any mid-span splice locations proposed.

2. Stormwater Pollution Prevention

a. The information included in the acknowledged SWPPP.

b. In areas of coastal erosion hazard, include plans to demonstrate compliance with the standards for coastal erosion hazard protection as required by 6 NYCRR Part 505 - Coastal Erosion Management.

3. Vegetation Clearing and Disposal Methods

a. Describe the specific methods and rationale for the type and manner of cutting and disposition or disposal methods for cut vegetation.

b. Detail specific measures employed to avoid damage to specimen tree stands of desirable vegetation, rare, threatened and endangered species, important screening trees, and hedgerows.

c. Identify the factors such as the attributes of the site, outcome of landowner negotiations, and attributes of the logs, upon which Certificate Holder's removal of the merchantable logs resulting from clearing the ROW for the Facility will be based.

d. Describe methods of compliance with 6 NYCRR Part 192 – Forest Insect and Disease Control, applicable New York State Department of Environmental Conservation (NYSDEC) quarantine orders, and New York State Department of Agriculture and Markets (NYSDAM) regulations.

4. Building and Structure Removal

Indicate the locations of any buildings or structures to be acquired, demolished, moved, or removed. Provide the rationale for the acquisition and removal of buildings or structures.

5. Waterbodies

a. Describe the measures to be taken to protect stream bank stability, stream habitat, and water quality including, but not limited to: crossing technique; crossing structure type; timing restrictions for in-stream work; stream bed and bank restoration measures; vegetation restoration measures; and other site-specific measures to minimize impacts, protect resources, and manage Facility construction.

b. Indicate the procedures that were followed to inventory such resources and provide copies of any resulting data sheets and summary reports.

c. Develop a table of waterbodies crossed by the Facility and include: Town (location), Existing Structure Span (mileposts), Stream Name, Field/Map Identification Name, Perennial or Intermittent, New York Stream Classification, Water Index Number, Crossing Method and Length, Fishery Type, GPS coordinates.

6. Wetlands

a. For each State-regulated wetland, indicate the following: town (location); existing Structure Span (milepost); wetland field designation; NYSDEC classification code;

wetland type; proposed structure located within wetland; total area of temporary disturbance/impact; dead end structures in NYSDEC wetlands; tangent structures in NYSDEC wetlands; total area of permanent disturbance in NYSDEC wetlands (sq. ft.); area crossed by Facility (sq. ft.); conversion of State-regulated forested wetlands (sq. ft.).

b. Describe all activities that will occur within State-regulated wetlands or adjacent areas (e.g., construction, filling, grading, vegetation clearing, and excavation) and assure that the activity is consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f). Describe how impacts to wetlands, adjacent areas, associated drainage patterns, and wetland functions will be avoided, and how impacts will be minimized.

c. Describe the precautions or measures to be taken to protect all other wetlands (e.g., town, federal wetlands) associated drainage patterns, and wetland functions.

7. Land Uses

a. Agricultural Areas

   i. Describe programs, policies, and procedures to mitigate agricultural impacts such as soil compaction. Explain how construction plans either avoid or minimize crop production losses and impacts to vulnerable soils.

   ii. Indicate specific techniques and references to appropriate agricultural protection measures recommended by NYSDAM.

b. Sensitive Land Uses

Describe the sensitive land uses (e.g., hospitals, emergency services, sanctuaries, schools, residential areas) that may be affected by construction of the Facility or by construction-related traffic and specify measures to minimize the impacts on these land uses.

c. Geologic, Historic and Scenic or Park Resources

Describe the geologic, historic, and scenic or park resources that may be affected by construction of the Facility or by construction-related traffic and specify measures to minimize impacts on these resources. Indicate the procedures that were followed to identify such resources and specify the measures that will be taken to protect or preserve these resources. Reports prepared to identify and analyze such sites shall be made available to Department of Public Service (DPS) Staff upon request.

d. Recreation Areas

Explain how proposed or existing recreation areas will be avoided or accommodated during construction, operation, and maintenance of the Facility.

8. Access Roads, Lay-down Areas and Workpads

a. Discuss the necessity for access to the ROW, including the areas where temporary or permanent access is required; and the nature of access improvements based on natural features, equipment constraints, and vehicles to be used for construction and

maintenance, and the duration of access needs through restoration and the maintenance of the Facility.

b. Discuss the types of access which will be used and the rationale for employing that type of access including consideration of:
    i. temporary installations (e.g., corduroy, mat, fill, earthen road, geotextile underlayment, gravel surface, etc.);
    ii. permanent installations (e.g., cut and fill earthen road, geotextile underlayment, gravel surface, paved surface, etc.);
    iii. use of roads, driveways, farm lanes, rail beds, etc.; and,
    iv. other access, e.g. helicopter or barge placement. For each temporary and permanent access type, provide a figure or diagram showing a typical installation (include top view, cross section, and side view with appropriate distances and dimension). Where existing access ways will be used, indicate provisions for upgrading to meet appropriate standards.
c. Indicate the associated drainage and erosion control features to be used for access road construction and maintenance. Provide diagrams and specifications (include plan and side views with appropriate typical dimensions) for each erosion control feature to be used, such as:
    i. staked straw bale or check dam (for ditches or stabilization of topsoil);
    ii. broad-based dip or berm (for water diversion across the access road);
    iii. roadside ditch with turnout and sediment trap;
    iv. French drain;
    v. diversion ditch (water bar);
    vi. culvert (including headwalls, aprons, etc.);
    vii. sediment retention basin (for diverting out-fall of culvert or side ditch); and,
    viii. silt fencing.
d. Indicate the type(s) of stream crossing method to be used in conjunction with temporary and permanent access road construction. Provide diagrams and specifications (include plan and side view with appropriate dimensions) for each crossing device and rationale for their use. Stream crossing devices may include but not be limited to:
    i. timber mat;
    ii. culverts including headwalls;
    iii. bridges (either temporary or permanent); and,
    iv. fords.
e. All diagrams and specifications should include material type and size to be placed in streams and on stream approaches.
f. If access and workpad areas cannot be limited to upland areas, provide justification for any access and workpad areas which are proposed to be located in a wetland or stream or waterbody.

9. Noise Sensitive Sites

Specify procedures to be followed to minimize noise impacts related to ROW clearing, and construction and operation of the Facility. Indicate the types of major equipment to be used in construction or Facility operation; sound levels at which that equipment operates; days of the week and hours of the day during which that equipment will normally be operated; any exceptions to these schedules; and any measures to be taken to reduce audible noise levels caused by either construction equipment or Facility operation.

10. Ecological and Environmentally Sensitive Sites

Indicate the procedures that were followed to identify ecological and environmental resources (e.g., archaeological sites; fish and wildlife habitat; rare, threatened, and endangered species or habitats; forest and vegetation; open space; areas of important aesthetic or scenic quality; deer winter yards) and specify the measures that will be taken to protect or preserve these resources. Reports prepared to identify and analyze such sites shall be identified, and made available upon request.

11. Invasive Species of Special Concern

a. Provide an invasive species prevention and management plan for invasive species of special concern, prepared in consultation with DPS Staff, NYSDEC, and NYSDAM, based on the pre-construction invasive species survey of invasive species within the ROW.
b. The plan shall include measures that will be implemented to minimize the introduction of invasive species of special concern and the spread of existing invasive species of special concern during construction (e.g., soil disturbance, vegetation clearing, transportation of materials and equipment, and landscaping/revegetation).

12. Herbicides

a. Specify the locations where herbicides are to be applied. Provide a general discussion of the site conditions (e.g., land use, target and non-target vegetation species composition, height, and density) and the choice of herbicide, formulation, application method, and timing.
b. Describe the procedures that will be followed during application to protect non-target vegetation, streams, wetlands, potable waters and other water bodies, and residential areas and recreational users on or near the ROW.

13. Fugitive Dust Control

Specify appropriate measures that will be used to minimize fugitive dust and airborne debris from construction activity.

14. Petroleum and Chemical Handling Procedures

a. Include a plan for the storage, handling, transportation, and disposal of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances

which may be used during, or in connection with, the construction, operation, or maintenance of the Facility. Address how to avoid spills and improper storage or application in the vicinity of any wetland, river, creek, stream, lake, reservoir, spring, well, or other ecologically sensitive site, or existing recreational area along the ROW and access roads.

b. Include a plan for responding to and remediating the effects of any spill of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances in accordance with applicable State and Federal laws, regulations, and guidance, and include proposed methods of handling spills of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances which may be stored or utilized during the construction and site restoration, operation, and maintenance of the Facility.

15. <u>Environmental Supervision</u>

a. Describe protocols for supervising demolition, vegetation clearing, use of herbicides, construction, and site restoration activities to ensure minimization of environmental impact and compliance with the environmental protection provisions specified by the Certificate.
b. Specify the titles and qualifications of personnel proposed to be responsible for ensuring minimization of environmental impact throughout the demolition, clearing, construction, and restoration phases, and for enforcing compliance with environmental protection provisions of the Certificate and the EM&CP. Indicate the amount of time each supervisor is expected to devote to the project.
c. Specify responsibilities for personnel monitoring all construction activities, such as clearing, sensitive resource protection, site compliance, EM&CP change notices, etc.
d. Explain how all environmental protection provisions will be incorporated into contractual specifications, and communicated to those employees or contractors engaged in demolition, clearing, construction, and restoration.
e. Describe the procedures to "stop work" in the event of a Certificate violation.
f. Identify the company's designated contact including 24/7 emergency phone number, for assuring overall compliance with Certificate conditions.

16. <u>Clean-up and Restoration</u>

Describe the Certificate Holder's program for ROW clean-up and restoration, including:

a. the removal of any temporary roads; restoration of lay-down or staging areas; the finish grading of any scarified or rutted areas; the removal of waste (e.g. excess concrete), scrap metals, surplus or extraneous materials or equipment used;
b. plans, standards and a schedule for the restoration of vegetative cover; including, but not limited to, specifications to address:
    i. design standards for ground cover:
        1. species mixes and application rates by site;

2. site preparation requirements (soil amendments, stone removal, subsoil treatment, or drainage measures);
3. acceptable final cover % by cover type;

ii. planting installation specifications and follow-up responsibilities;
iii. a schedule or projected dates of any seeding and/or planting; and,
iv. plans to prevent unauthorized access to and along the ROW.

17. <u>Visual Impact Mitigation</u>

Provide details of screening or landscape plans prescribed at road crossings and for adjacent property owners. Discuss existing or proposed landscape planting, earthwork, or installed features to screen or landscape substations and other Facility components.

18. <u>ROW Encroachment Plan</u>

Provide detailed plans for identifying and resolving potential encroachments to the existing and proposed ROW.

19. <u>Wetland Mitigation Plan</u>

Provide a proposal to address wetlands mitigation, for all permanent impacts to State-regulated wetlands and Federally- regulated wetlands, if prescribed by the Army Corps of Engineers, including, but not limited to, the permanent conversion of forested wetland to scrub-shrub wetland. If such proposal is to prepare a detailed mitigation plan for State regulated wetlands, it shall separately address impacts to each of the wetlands benefits described in ECL § 24-0105(7). Plans shall provide for wetland mitigation in the same watershed to the maximum extent possible.

APPENDIX F

NYSDEC SUPPLEMENTAL SPECIFICATIONS FOR WETLANDS AND WATERBODIES

NYSDEC SUPPLEMENTAL SPECIFICATIONS FOR WETLANDS AND WATERBODIES

The Specifications set forth below are in addition to, or refinements of, the elements required in the Specifications for the Development of Environmental Management and Construction Plan ("EM&CP Specifications") contained in Appendix E of the Joint Proposal. The applicant must incorporate in the EM&CP all the information specifically described in this Appendix.

Wetland and Waterbody Construction Specifications

1) Show the extent of clearing and ground disturbance in each wetland, state-regulated wetland adjacent area, and waterbody on the construction drawings.
2) The wetland and waterbodies summary tables required under section (B)(5)(c) of the EM&CP Specifications must include the following information for each wetland and waterbody located within the Project ROW and along access roads: proposed structure/disturbance type; NYSDEC ID; NYSDEC classification code (e.g. , C(T) stream standards, and Class I, II, III, and IV state-regulated wetlands); wetland cover type; wetland functions and values; total area of temporary disturbance (sq. ft.); total area of permanent impact (sq. ft.); conversion of forested and scrub-shrub wetlands (sq. ft.); and stream flow designation (perennial, intermittent, or ephemeral).
3) Provide a narrative description of construction activities within regulated wetlands, state regulated 100-foot wetland adjacent areas, and waterbodies that shows compliance with the following requirements:
    a. Where new permanent access roads are to be constructed through wetlands, a layer of geotextile fabric or equivalent underlayment must be used;
    b. In the event that construction results in an alteration to wetland hydrology, the

breach must be immediately sealed, and no further activity may take place until DPS and NYSDEC staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been accepted by DPS and NYSDEC;

c. Measures to minimize soil compaction in wetlands and waterbodies, including the use of temporary matting, low weight to surface area equipment or constructing when soils are frozen;

d. Measures and details demonstrating how work areas will be isolated from flowing streams and standing water in wetlands, including the use of water handling methods such as sandbags, cofferdam, piping or pumping. The details shall include a discussion of:

(i) the management of waters accumulated in the isolated work area to ensure settling and filtering of solids and sediments before water is returned to a wetland or waterbody;

(ii) restoration measures for the isolated work area in streams including the complete removal of the temporary measures, reestablishment of pre-construction contours, and stabilization and seeding immediately following the completion of work;

(iii) the manner by which low flow conditions will be maintained and water depths and velocities similar to undisturbed upstream and downstream reaches will be preserved so that the movement of native aquatic organisms is sustained;

e. Measures to minimize impacts to fish and wildlife during wetland and waterbody construction, including actions to prevent entrapment of fish and wildlife in the work area and, if entrapment occurs, actions to timely and safely move the animals

to appropriate undisturbed locations outside the work area; and

f. Procedures to remove all excess fill materials to upland areas at least 50 feet from waterbodies and outside of the state-regulated 100-foot adjacent area.

Wetland and Waterbody Restoration Specifications

Include the following measures and details:

1) Restoration of pre-construction site conditions and stabilization of disturbed wetlands and waterbodies as site conditions and facility design allow within 48 hours or as soon as practicable after completion of construction;
2) Restoration of disturbed streams as follows:
    a. Stabilization of stream banks above ordinary high-water elevation with natural fiber matting, seeded with an appropriate perennial native riparian seed mix, and mulched with straw within two (2) days of final grading;
    b. Streams must be equal in width, depth, gradient, length, and character as the pre-existing conditions and tie in smoothly to the profile of the stream channel upstream and downstream of the project area. The planform of any stream must not be changed; and
    c. Woody stream bank vegetation must be replaced with ROW compatible native plantings as site conditions and facility design allow;
3) Revegetation of disturbed state-regulated wetlands and 100-foot adjacent areas with native plants. Appropriate native wetland species mixes must be described (e.g., Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW; ROW compatible native plantings; and/or crop seed mixes consistent with existing, continued agricultural use);
4) Monitoring of restoration areas until an 80% cover of native plant species with the

appropriate wetland indicator status has been reestablished over all portions of the restored area;

5) If, after two years, monitoring demonstrates that the criteria for restoration (80% native species cover) is not met, the Certificate Holder must submit a Wetland Planting Remedial Plan (WPRP). The WPRP must include an evaluation of the likely reasons for the results, including an analysis of poor survival; a description of corrective actions to ensure a successful restoration; and a schedule for conducting the remedial work. Once accepted by DPS and NYSDEC, the WPRP must be implemented according to an approved schedule.

Wetland Mitigation Plan for State-Regulated Wetlands

The Wetland Mitigation Plan, intended to compensate for unavoidable loss of wetland functions and values, must include the following:

1) The creation of compensatory wetlands at appropriate ratios;
2) A construction timeline for the mitigation activities;
3) Construction details for meeting all requirements contained in the proposed certificate conditions;
4) Agreed-upon performance standards for determining wetland mitigation success;
5) Provisions for post-construction annual monitoring and reporting for a period of five years after completion of the wetland mitigation;
6) After each agreed-upon monitoring period, the Certificate Holder must take corrective action for any areas that do not meet the above-referenced performance standards to increase the likelihood of meeting the performance standards after five years; and
7) If, after five years, monitoring demonstrates that the wetland mitigation is still not meeting the established performance standards, the Certificate Holder must submit a Wetland Mitigation Remedial Plan (WMRP). The remedial plan must include an evaluation of the

likely reasons for not achieving performance standards, a description of corrective actions to ensure a successful mitigation, and a schedule for conducting the remedial work. Once accepted by DPS and NYSDEC, the WMRP must be implemented according to an approved schedule.

Stream Crossings Specifications

1) For each new permanent crossing of a "protected stream" (C(T) or higher) and/or "navigable waters of the state" as those terms are defined at 6 NYCRR Part 608, the following must be provided:
    a. Detailed plan, profile, and cross-sectional view plans;
    b. Drainage area and flow calculations to ensure that the design will safely pass the 1% annual (100-year return) chance storm event; and
    c. Location, quantity, and type of fill.
2) Bridges shall be utilized for each new permanent stream crossing and shall span the stream bed and banks. If a bridge is not practicable, an alternatives analysis must be provided, including written justification in the EM&CP for why a bridge is not practicable. If a bridge is deemed not practicable then the following options, in order, shall be considered and evaluated: an open bottom arch culvert; three-sided box culvert and round/elliptical culvert. NOTE: For stream channels with slopes greater than 3% an open bottom culvert must be used. All culverts shall be designed to:
    a. Contain native streambed substrate or equivalent;
    b. Be a minimum width of 1.25 times the width of the stream bed. The stream bed is measured bank to bank at the ordinary high-water level or edges of terrestrial, rooted vegetation;
    c. Include a slope that remains consistent with the slope of the upstream and

downstream channel; and

d. Facilitate downstream and upstream passage of aquatic organisms.

APPENDIX G

INVASIVE SPECIES MANAGEMENT PLAN SPECIFICATIONS

Invasive Species Management Plan (ISMP) Specifications

An "Invasive Species" (IS) is a species that is non-native to the ecosystem and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. 6 NYCRR Part 575, ***Prohibited and Regulated Invasive Species***, was adopted in July 2014, to "restrict the sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in New York". The purpose of this Invasive Species Management Plan (ISMP) is to describe the procedures that will be used to help prevent the introduction of new and spread of existing regulated and prohibited invasive plant species as listed in part 575 within the limits of disturbance (LOD) due to construction of the Project.

Purpose and Goals of the Plan

An Invasive Species Management Plan (ISMP) shall at a minimum identify invasive species known or found on the project site, describe the methods which will be used to minimize the spread and expansion of invasive species found on site, and describe the methods which will be used to prevent introduction of new invasive species. The ISMP shall include baseline surveys, construction best management practices, post-construction monitoring and an adaptive management strategy plan.

Baseline Invasive Species (IS) Survey

1. During the development of the EM&CP, a **Pre-Construction Baseline Survey** shall be conducted during the growing season. This survey shall serve as a baseline for the preparation of the draft invasive Species Management Plan. If preconstruction surveys are completed at different times or as part of different phases, the results of the surveys will be incorporated into one ISMP. As the ISMP is revised to include surveys or survey updates the Certificate Holder shall evaluate, in consultation with NYSDEC, DPS, and AGM, whether the results of the surveys also require revisions to the Adaptive Management Plan and the special and high concern species list.

2. The entire Limits of Disturbance (LOD) including permanent and temporary off-ROW access roads shall be surveyed for IS plants as identified in 6 NYCRR Part 575.

3. The survey shall include qualitative observations for IS spread potential from adjacent properties and land use (i.e., IS dominated adjoining property, private off-site access roads that cross the ROW) shall be documented.

4. The preferred survey protocol is for data to be collected in a format which can be uploaded into the statewide database *iMapInvasives*.[1]
    a. An existing mobile application is available to facilitate data collection.

    b. Alternately, a custom ArcGIS collector application can be developed by NYSDEC or an alternative protocol may be proposed for acceptance by NYSDEC.

    c. The data collection protocol shall allow for:

[1] iMapInvasives is New York State's on-line, all-taxa invasive species GIS based data management system used to assist in the protection of the state's natural resources from the threat of invasive species. It is managed by the New York State Natural Heritage Program (NYNHP) in partnership with the New York State Department of Environmental Conservation.

- Point data collected in the field on GPS-enabled devices;
- Confidentiality controls to restrict information distribution. This coding hides the data from public view and is only visible to key state agency staff and PRISM[2] coordinators focused on IS work with funding from the state. Those with access to this data have signed a non-disclosure agreement.

Construction Best Management Practices (BMPs)

Construction BMPs shall be implemented for all IS in all LOD not just jurisdictional areas and at a minimum shall include:

1. Contractor/Subcontractor/Employee Training on cleaning and other IS management procedures;

2. Inspection of Construction Materials and Equipment by trained staff;

3. Minimizing Ground Disturbance in IS dominated areas;

4. Proper Clearing and Disposal Practices (*i.e., cut and leave in dominated area or dispose off-site in landfill-incinerator or approved disposal site*);

5. Equipment Cleaning; and

6. Restoration.

IS Propagation

IS Propagation shall be prevented by, among other stated techniques, the following:

1. Preparing ROW travel routes to prevent IS spread through contact with equipment/vehicles by any practical combination of matting, IS burial, clean fill cover or IS eradication; and/or

2. Providing cleaning stations for equipment/vehicles whenever leaving IS dominated areas along ROW; and/or

3. Other mutually agreeable practices.

Post-Construction Monitoring

1. Post construction surveys shall be conducted in all LOD, both within the ROW and off-ROW areas and access roads;

2. A post construction survey of IS shall be conducted in all temporary off-ROW access road areas during the final SWPPP inspections;

3. A post construction survey of IS shall be conducted in all ROW LOD areas, including permanent access roads, after the second full growing season from final SWPPP signoff;

[2] (PRISM) Partnerships for Regional Invasive Species Management. PRISMs coordinate invasive species management functions and the NYSDEC has contracted with eight PRISMs across the State.

4. All post-construction surveys shall use the same IS Survey Protocols used during the baseline pre-construction IS survey;

5. Upon completion of the post-construction surveys, a final report shall be prepared and submitted to the NYSDEC, AGM and DPS. The final report shall discuss whether the goals of the ISMP have been achieved and whether any additional post-construction monitoring may be warranted based on whether an expansion of identified IS of Special Concern (ISSSC) or High Concern (ISHC) as a result of construction are present, as defined in the Adaptive Management Strategy (AMS) discussed below. If the post construction monitoring report shows the aerial extent of ISSC or ISHC has expanded as defined in the AMS as a result of construction of the Project, the final report shall include a Final Adaptive Management Strategy for achieving the goals of the ISMP. DPS, AGM and NYSDEC will review the final report and DPS, in consultation with the other agencies, will determine whether the goals of the post construction monitoring have been achieved or, if applicable, whether the Final Adaptive Management Strategy must be implemented.

Adaptive Management Strategy Plan

The initial ISMP will include an Adaptive Management Strategy Plan prepared in consultation with and accepted by NYSDEC, DPS and AGM and, at a minimum must include the following elements:

1. A project specific list of Prohibited Invasive Species pursuant to 6 NYCRR Part 575 divided into two sub-lists for which management and control will be required (these lists to be generated by NYSDEC in consultation with DPS and AGM):
    a. Invasive Species of Special Concern (ISSC), being comprised of *Prohibited* IS[3] known to be present in the project area and for which NYSDEC has deemed control is necessary such that there is no expansion as defined below. This list will be generated following results of pre-construction surveys and an analysis of regional threat, (e.g. PRISM Tier rankings).
    b. Inclusion of a project specific list of Invasive Species of High Concern[4] (ISHC), being those IS not present in the project area, but which if newly identified in post-construction monitoring, eradication is required. This list will include *Prohibited* IS with the highest management concern, e.g. Giant Hogweed.

2. Management of "expansion":
    a. ISSC that have expanded under the following terms must be controlled.
    b. ISHC that have been newly identified must be eradicated.
    c. In comparing progressive monitoring data of ISSC, expansion may be defined in terms of categorical jump in *iMapInvasives* size categories, described as follows:

        iMapInvasives size categories:
        - New and distinct occurrence
        - Up to 10 sq. ft.

[3] See 6 NYCRR Part 575.3.

[4] To be defined by NYSDEC in consultation with the Certificate Holder, DPS and AGM. The list would be selected from the 6 NYCRR 575 species list.

- Up to 0.5 acre
- Up to 1.0 acre
- More than 1.0 acre

3. In consultation with NYSDEC, DPS and AGM, a discussion of possible adaptive management strategies and control measures (e.g., eradication) and where and when they may be required if the post-construction survey identifies an expansion of ISSC or ISHC in LOD areas caused by construction. This should include consideration of IS phenology, control methodology (mechanical techniques, pesticide use etc.) and control objectives.

4. Discussion of conditions that may necessitate additional post construction monitoring and the extent and duration of such extended monitoring considering ongoing Long-Range Vegetative Management Plan practices.

Upon completion of the post-construction monitoring surveys, if the post construction monitoring report shows the aerial extent of ISSC or ISHC has expanded as defined in the Adaptive Management Strategy as a result of construction of the Project, then DPS, AGM and NYSDEC will review the final report and DPS, in consultation with NYSDEC and AGM, will determine whether the goals of the post construction monitoring have been achieved or, if applicable, whether a Final Adaptive Management Strategy Plan must be implemented.