

December 14, 2018

VIA EMAIL

Honorable Kathleen H. Burgess
Secretary of the Commission
New York State Department of Public Service
Three Empire Plaza
Albany, New York 12233-1350

Re: Case _____ - Application of NextEra Energy Transmission New York, Inc.
for an Order Granting Certificate of Public Convenience and Necessity Pursuant
To Section 68 of the Public Service Law.

Dear Secretary Burgess:

Attached is the Petition of Nextera Energy Transmission New York, Inc. for an Order
Granting Certificate of Public Convenience and Necessity Pursuant To Section 68 of the Public
Service Law.

Thank you for your attention to this matter.

Respectfully submitted,

COUCH WHITE, LLP

Leonard H. Singer

Leonard H. Singer

LHS/dp

Enclosures

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**PETITION OF NEXTERA ENERGY
TRANSMISSION NEW YORK, INC. FOR
AN ORDER GRANTING CERTIFICATE
OF PUBLIC CONVENIENCE AND
NECESSITY PURSUANT TO SECTION 68
OF THE PUBLIC SERVICE LAW**

Case _____

INTRODUCTION

NextEra Energy Transmission New York, Inc. (“NEETNY”) proposes to construct, own and operate the Empire State Line Project (“ESL Project”), an approximately 20-mile, 345 kV electric transmission line and associated switchyards in the Town of Royalton, Niagara County, New York and the Towns of Alden, Newstead, Lancaster and Elma, Erie County, New York. NEETNY filed an application (“Article VII Application”) with the New York State Public Service Commission (“Commission”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) pursuant to Article VII of the New York Public Service Law (“PSL”) on August 10, 2018 for authorization to construct and operate the ESL Project.¹ The Article VII Application is pending before the Commission.

¹ Case 18-T-0499, *Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Empire State Line Project* (filed August 10, 2018).

Portions of the ESL Project will occupy and traverse over roads under the control of the Towns of Newstead, Royalton, Elma and Lancaster. Attached to this Petition are Road Use and Crossing Agreements executed by NEETNY and the Towns of Newstead, Royalton, Elma and Lancaster.

NEETNY herein requests that the Commission grant a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Section 68 of the PSL authorizing NEETNY to exercise the rights granted to it by the Town to occupy and traverse such public property. NEETNY requests that any hearing required by Section 68 be held at the same time as any hearing to be held in the Article VII proceeding pending in Case 18-T-0499.

Correspondence and communications concerning this filing should be directed to:

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dtedesco@couchwhite.com

THE PETITIONER

NEETNY is an electric corporation organized under Article 2 of the New York Transportation Corporation Law. NEETNY’s parent company is NextEra Energy Transmission, LLC, (“NEET”), which in turn is an indirect wholly-owned subsidiary of NextEra Energy, Inc.

NEETNY will be an “electric corporation” engaging in the transmission of electricity under Section 2(13) and 5(b) of the PSL, by virtue of its ownership of the ESL Project, which will qualify as “electric plant” under PSL § 2(12).

BACKGROUND

On July 20, 2015, the Commission issued an “Order Addressing Public Policy Requirements for Transmission Planning Purposes” in Case 14-E-0454, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration*. (“July 2015 Order”). In the July 2015 Order, the Commission stated that congestion in Western New York was adversely impacting the performance of the bulk power transmission system, by limiting the output of the state’s largest renewable resource, the Niagara hydroelectric power plant. The Commission further determined that relieving congestion in Western New York would increase access to additional imports of renewable energy from Ontario. The Commission stated that “[i]ncreased dispatch of these renewable and economic resources could produce significant benefits to the State in terms of reduced air emission and energy costs.” (July 2015 Order at 27.) Finally, the Commission determined that significant environmental, economic, and reliability benefits could be achieved by relieving the transmission congestion identified in Western New York, including access to increased output from the New York Power Authority (“NYPA”) Niagara hydroelectric facility and system reliability benefits, specifically, increased operational flexibility, efficiency, and avoiding the need to maintain generation that would otherwise retire.

The Commission directed the NYISO to consider solutions for increasing Western New York transmission capability sufficient to ensure 2,700 MW from NYPA’s Niagara hydroelectric generating facility and 1,000 MW of renewable imports from Ontario could be transmitted across the Niagara tie lines. The Commission held that “the anticipated congestion

relief in Western New York, as well as the ancillary benefits of promoting renewables, reducing environmental emissions, and improving the reliability and resiliency of the electric system, are consistent with the final 2015 New York State Energy Plan.” (July 2015 Order at 29).

On October 17, 2017, the NYISO determined that the ESL Project is the most efficient and cost-effective solution to address the Western New York public policy transmission needs. The NYISO concluded that the ESL Project will enable delivery of 2,700 MW of NYPA’s Niagara hydroelectric facility and 1,000 MWs of import from Ontario, provide \$274 MM in production cost savings, reduce New York Control Area Demand Congestion by \$582 MM, and reduce CO2 emissions by nearly 7.4 MM tons. Finally, the ESL Project will also predominantly utilize existing utility right-of-way (“ROW”).

**NEETNY REQUESTS A CPCN AUTHORIZING NEETNY
TO EXERCISE THE RIGHTS GRANTED BY THE TOWN**

Public Service Law § 68(1) provides that:

No gas corporation or electric corporation shall begin construction of a gas plant or electric plant without first having obtained the permission and approval of the commission. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained a certificate of public convenience and necessity issued by the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities. The commission shall have power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is convenient and necessary for the public service. In making such a determination, the commission shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest.

The requirement for Commission construction approval will be considered in the Article VII proceeding in Case 18-T-0499.² However, the requirement for approval of the exercise of a franchise has not been supplanted. The Commission has concluded that, as used in PSL § 68, the term “franchise” includes consents to use municipal property.³ Accordingly, in determining whether to grant a CPCN to NEETNY, the Commission need not consider the environmental compatibility and public need issues, or whether issuance of a Certificate is in the public interest, as those issues are being addressed in Case 18-T-0499. Rather, in this proceeding the Commission should only “consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates...”

In support of its request, NEETNY provides the following information required by Section 68 and Section 21.3 of the Commission’s rules (16 NYCRR 21.3).

² See e.g., Case 14-F-0490, *Application of Cassadaga Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to a Construct a Wind Energy Facility* “Order Granting Certificate of Environmental Compatibility and Public Need with Conditions” in (January 17,2018)(“Cassadaga Order”). In the Cassadaga Order, the Siting Board stated that in a proceeding under Section 68, the Commission need not duplicate “the need and environmental compatibility issues already addressed by the Siting Board and will instead only act on its police power functions related to the entity” owning and operating the facility. (Cassadaga Order at 114.) Although the present case is before the Commission, not the Siting Board, and NEETNY’s Application is being considered under Article VII rather than Article 10, the same considerations apply here.

³ See Case 10-G-0462, *Petition of DMP New York, Inc. and Laser Northeast Gathering Company, LLC*, “Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Rate Making Regulation” (issued February 22, 2011) at 5 (hereinafter “*DMP and Laser*”).

1. A certified copy of NEETNY's Certificate of Good Standing is attached as Exhibit A hereto.

2. A copy of the Road Use and Crossing Agreements with the Towns of Newstead, Royalton, Elma, and Lancaster are attached as Exhibit B hereto.

3. As required by Section 21.3(a), the municipal consent to be exercised by NEETNY is set forth in the attached Road Use and Crossing Agreement. NEETNY anticipates commencing construction of the ESL Project upon receipt of an Article VII Certificate and subsequent required approvals. NEETNY anticipates the construction period to last for approximately 365 days depending on when the Article VII Certificate is issued and applicable permit requirements and restrictions.

4. A complete description of the ESL Project required by Section 21.3(b) is included in the Article VII Application and is summarized above.

5. The manner in which the cost of the ESL Project will be financed as required by Section 21.3(c) is provided in the testimony of Brian Duncan, the Executive Director of Development at NEET, included as part of the Article VII Application (at pages 11-16.)

6. The rates to be charged for services rendered by the ESL Project are within the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC"). Accordingly, NEETNY respectfully submits that the information required by Section 21.3 (d) is not applicable.

7. Likewise, the estimated revenues to be derived from the operation of the ESL Project will be determined by FERC and, therefore, such information is not applicable here. Other information required by Section 21.3 (e)--the estimated costs of the ESL Project-- are provided in Exhibit 9 of the Article VII Application.

8. As required by Section 21.3(f), NEETNY refers to the testimony of Brian Duncan, submitted as part of the Article VII Application, for a description of NEETNY's management team's experience and NEETNY's technical expertise to build and operate the ESL Project.

9. As required by Section 21.3 (g), the manner in which the ESL Project serves the public need and is in the public interest will be determined in the Article VII proceeding.

10. Because the ESL Project is reviewed by the Commission under Article VII of the PSL, State Environmental Quality Review Act ("SEQRA") review is not required.⁴

⁴ See N.Y. Env'tl. Conserv. Law § 8-0111(5)(b) (actions subject to Article VII are excluded from impact review under SEQRA); *see also* 6 NYCRR § 617.5(c)(35).

CONCLUSION

Based on the foregoing, NEETNY respectfully requests that the Commission issue an order granting NEETNY a CPCN authorizing the exercise of the rights granted in the Road Use and Crossing Agreement and such other relief as deemed appropriate by the Commission.

Date: December 14, 2018
Albany, New York

Respectfully submitted,

Leonard H. Singer

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dtedesco@couchwhite.com

EXHIBIT A

**State of New York
Department of State } ss:**

I hereby certify, that the Certificate of Incorporation of NEXTERA ENERGY TRANSMISSION NEW YORK, INC. was filed on 07/25/2013, with perpetual duration, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation. I further certify the following:

A Certificate of Amendment was filed on 08/05/2013.

A Biennial Statement was filed 07/20/2015.

Certificate of Change was filed on 11/18/2016.

A Biennial Statement was filed 07/10/2017.

I further certify that no other documents have been filed by such corporation.

*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 05th day of October
two thousand and eighteen.*



Brendan W. Fitzgerald
Executive Deputy Secretary of State



201810090588 * GX

EXHIBIT B

ROAD USE AND CROSSING AGREEMENT

This Road Use and Crossing Agreement ("Agreement") is entered into this 29 day of NOVEMBER, 2018 between NextEra Energy Transmission New York, Inc., a New York corporation ("NEETNY"), having an office at 700 Universe Boulevard, Juno Beach, Florida 33408, and the Town of ~~Nowata~~ Nowata municipal corporation ("Town"), having an office at 5 Clarence CTR Rd, Akron New York 14001.

RECITALS

WHEREAS, NEETNY engages in developing, building, owning, operating and maintaining electric transmission facilities in New York; and

WHEREAS, NEETNY intends to develop, construct, own, operate and maintain an electric transmission facility and/or related appurtenances pursuant to orders of the New York State Public Service Commission granting a certificate of environmental capability and public need and pursuant to other permits and authorizations (hereinafter "electric transmission lines") and/or ancillary activities (collectively "electric transmission activities"); and

WHEREAS, in connection with the construction, operation and maintenance of the electric transmission activities, the parties desire to address certain issues relating to the highways, roads, bridges and related fee-owned land, rights-of-way or easements owned, operated and maintained by the Town (collectively, the "Roads") over which it will be necessary for NEETNY and its representative(s) to, among other things: (i) traverse with heavy machinery, including but not limited to, trucks, construction machinery and equipment and other related items; (ii) transport heavy equipment and materials which may be in excess of local design limits of certain Roads, (iii) transport locally sourced materials, such as concrete and gravel, on the Roads; (iv) make specific modifications and improvements (both temporary and permanent) to the Roads (including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and (v) install the electric transmission lines across Roads along NEETNY's electric transmission line route; and

WHEREAS, NEETNY will necessarily need to conduct certain construction and restoration activities and locate electric transmission lines within the Town, some of which may involve construction and restoration activities across Roads (hereinafter "construction activities"); and

WHEREAS, NEETNY further acknowledges that the nature of heavy vehicular traffic during electric transmission activities, construction activities, reworking activities, and other activities will exceed the normal and anticipated use of public roadways within the Town's limits, causing distress to said Roads which may either be structural or functional and which in turn will increase overall maintenance, oversight, repair, and replacement costs to the Town in connection with the electric transmission activities and which distress may be immediate or may be gradual and delayed, and also may exceed the design criteria for said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

WHEREAS, the Town seeks guarantees and assurances from NEETNY that NEETNY will pay and/or otherwise indemnify the Town for any distress or damage to the Roads arising from or related to NEETNY's electric transmission activities and/or construction activities.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, NEETNY and the Town, each intending to be legally bound, agree as follows:

1. NEETNY Responsibilities.

- a. NEETNY shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof, which are required by governing law to use and cross the Roads.
- b. NEETNY agrees that it shall be responsible for insuring that all debris, garbage, and waste upon Roads related to NEETNY's electric transmission activities and/or construction activities are disposed of in accordance with governing law.
- c. NEETNY shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic for any significant length of time.
- d. NEETNY shall require that its employees, officers, directors, members, managers, agents, licensees, vendors, contractors, subcontractors, haulers and the like will comply with the terms and conditions of this Agreement.
- e. NEETNY shall not permit any excavation made in or upon any Road to remain open or uncovered either day or night, without having or causing the same to be properly barricaded by day and night and, in addition thereto, shall place at such location flares, red lanterns or other warning devices, by night, so as to properly warn all persons of the danger of such hole or excavation.

2. Road Surveys and Routes.

- a. Exhibits A are the list and map, respectively, of the Roads/bridges that NEETNY is authorized by the Town to traverse as part of the electric transmission activities and/or construction activities and Exhibits B are a list and map, respectfully, of the Roads over which NEETNY is authorized by the Town to install its electric transmission lines. The electric transmission lines will be installed on and occupy the route certified by the New York Public Service Commission.
- b. Prior to the commencement of Road use activities, NEETNY will prepare a pre-construction survey of the Roads and bridges identified in Exhibits A, which survey must be acceptable to the Town in its reasonable discretion. NEETNY shall provide a copy of such survey to the Town.
- c. If, in the reasonable opinion of the Town Engineer, the conditions of a Road change after the date of this Agreement such that any seasonal or dirt Roads included on Exhibits A cannot withstand the structural and functional distress anticipated by heavy vehicular traffic resulting from the Road use activities, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road. NEETNY will have one business day from its receipt of such notice to notify the Town as to whether it can make alternate route arrangements.
- d. If NEETNY notifies the Town that it can make alternate route arrangements, NEETNY will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify NEETNY within one (1) business day from its receipt of such alternate proposed route whether or not that proposed route is satisfactory to the Town. If the proposed alternate route is satisfactory to the Town, Exhibits A will be amended to remove the Roads that cannot withstand the structural and functional distress and to add the alternate route. If the proposed alternate route is not satisfactory to the Town, then NEETNY and the Town will repeat the above process until an alternate route that is satisfactory to both parties is agreed upon. In the event the Town does not notify NEETNY

that the proposed route is unsatisfactory to the Town within in such one (1) business day time period, the proposed route shall be deemed acceptable by the Town.

e. If NEETNY decides that it still needs to use such Roads, then NEETNY prior to continued use of said Road will make the improvements described in the Town's initial notice of changed Road conditions, which repairs will be at NEETNY's cost.

f. If, during the term of this Agreement, the Town Engineer determines in his sole discretion that the condition of any Road/bridge has changed since the date of this Agreement such that the Road/bridge cannot, due to its condition, withstand or continue to withstand the structural and functional distress anticipated by further heavy vehicular traffic, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road/bridge. NEETNY will have one (1) business day from its receipt of such notice to decide if it can make alternate route arrangements.

g. If NEETNY notifies the Town that it can make alternate route arrangements, NEETNY will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify NEETNY within one (1) business day from its receipt of such alternate proposed route whether or not that proposed route is satisfactory to the Town. If the proposed alternate route is satisfactory to the Town, Exhibits A will be amended to remove the Roads/bridges that cannot withstand the structural and functional distress and to add the alternate route. If the proposed alternate route is not satisfactory to the Town, then NEETNY and the Town will repeat the above process until an alternate route that is satisfactory to both parties is agreed upon. In the event the Town does not notify NEETNY that the proposed route is unsatisfactory to the Town within in such one (1) business day time period, the proposed route shall be deemed acceptable by the Town.

h. If NEETNY decides that it still needs to use such Roads/bridges, then NEETNY prior to continued use of said Roads/bridges will make the improvements described in the Town's initial notice of changed Road/bridge conditions, which repairs will be at NEETNY's cost.

3. Road Damage.

a. If any damage occurs to Roads during Road use activities and such damage is, in the reasonable opinion of the Town Engineer, an immediate danger to the public using said Road, then the Town shall undertake immediate emergency repairs to said Road. In the event NEETNY becomes aware of any such damage, it shall notify the Town within 24 hours of becoming aware of such damage.

b. Except as otherwise set forth in paragraph 3(a) above, within 7 days of a receipt of an allegation of damage from the Town, NEETNY shall notify the Town in writing of its agreement or disagreement with the allegations. The Town shall then submit a written invoice (hereinafter "invoice") to NEETNY detailing the costs, fees, and/or expenses incurred or to be incurred by the Town to repair the damage which occurred.

c. NEETNY shall pay all undisputed invoiced amounts within 30 days from NEETNY's receipt of the invoice. If NEETNY disputes any amounts set forth on an invoice, or if NEETNY disputes that it caused the damage it is being invoiced for, it shall provide a written statement as to its basis for contesting the disputed amount(s) and/or alleged damage within 30 days after NEETNY's receipt of the invoice. In the event of a dispute, then both parties shall abide by the procedure set forth herein for dispute resolution in paragraph 4 below.

d. The manner of repair of any Road or bridge damage described in this Agreement shall be at the reasonable discretion of the Town Engineer or his designee. The Town Engineer or his designee in exercising his discretion shall apply Town road or bridge standards that are otherwise applicable throughout the Town for the type of Road or bridge involved.

4. Indemnification.

Each party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and such other party's parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, assigns and any liability insurance carriers that party may have ("Indemnified Party") against any and all losses, claims, expenses, and other liabilities, including, without limitation, attorneys' fees, resulting from or arising out of (i) any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or (ii) any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party. Provided, however, in no event shall either party, its parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, or assigns be liable to any other party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.

5. Captions and Headings.

Captions and heading throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

6. Modifications.

This Agreement cannot be changed orally, but only by agreement in writing signed by the parties against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

7. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any party hereto of a breach of violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

8. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New York.

9. Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

10. Entire Agreement.

The entire agreement of the parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

11. Counterparts.

This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidence by one counterpart.

12. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

13. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (i) upon hand delivery, or (ii) upon the third day following delivery via the United States Postal Service, or (iii) on the first day following delivery via a nationally registered United States overnight courier service, or (iv) on the day when telecopies are sent by facsimile transmission if additional notice is also given under (i), (ii) or (iii) above within three (3) business days thereafter.

For purposes of this Agreement only, any notice to the parties shall be directed to the party as set forth below

For NEETNY: NextEra Energy Transmission New York, Inc.
700 Universe Boulevard
Juno Beach, Florida 33408

For Town: DAVID L. CUMMINGS
SUPERVISOR
David L. Cummings

14. Term.

The term of this Agreement shall be as of the date executed through the completion of remediation/repair of the Town Roads, as required under this Agreement.

15. Termination.

This Agreement may be terminated by the Town, upon NEETNY's failure to initiate, within thirty (30) days of receiving written notice from the Town, reasonable steps to cure any default of this Agreement and/or the filing of a petition in bankruptcy by NEETNY or by its creditors or the appointment of a receiver of all or substantially all of the assets of NEETNY.

16. Assignment.

NEETNY is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or of its right, title, or interest therein, or its power to execute such Agreement, to any other person or corporation without the consent of the Town, such consent not to be unreasonably withheld, conditioned or delayed.

17. Waiver of Jury Trial.

In any litigation arising from or related to this Agreement, the Parties each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement

[Signatures appear on following pages.]

IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

Witnesses:

Town of Newstead, New York,
a municipal corporation

Jennifer L. Herberger
Print Name: Jennifer L. Herberger

By: David L. Cummings
Name: DAVID L. Cummings
Its: SUPERVISOR

Dawn D. Jyzdorzak
Print Name: Dawn D. Jyzdorzak

Acknowledgement

STATE OF NEW YORK)

COUNTY OF ERIE)

On the 29th day of Nov in the year 2018 before me, the undersigned, personally appeared David L. Cummings personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Colleen A. Salmon

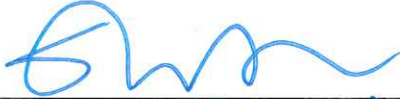
Signature and office of individual taking acknowledgment


COLLEEN A. SALMON
Notary Public, State of New York
No. 01SA4968796
Qualified in Erie County
My Commission Expires July 2, 2022


COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

NextEra Energy Transmission New York, Inc.,
a New York corporation


Print Name: STEVEN DREW


Print Name: JOHN B. V.

By: 
Name: Brian M. Duncan
Its: Asst. Vice President

Acknowledgement

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

On this 3rd day of December, 2018, before me, the undersigned notary public, personally appeared Brian M. Duncan, as Asst. Vice President of NextEra Energy Transmission New York, Inc., a New York corporation, who is personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of said corporation and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public
MICHELLE LALL
Notary Printed Name
My Commission Expires: June 15, 2022



Exhibit A

***List of Roads for Electric Transmission
Activities and/or Construction Activities***

Applewood South Ln
Ashwood Ln
Aspen St
Belmont Dr
Berghorn Rd
Billo Rd
Birchwood Ln
Brackett Rd
Brooklyn St
Brucker Rd
Bruning Rd
Cedar Rd
Chestnut St
Christine Dr
Church St
Churchhill Down Dr
Churchill St
Clair Dr
Clinton St
Colony Pl
Cottonwood Ln
Council House Rd
County Line Rd
Crego Rd
Crescent Dr
Criswell Rd
Cummings Ave
Danita Dr
Dogwood St
Dover Down Dr
Downey Rd
Draper Rd
Dye Rd
Eckerson Ave
Exchange St
Fassett Ave
Flint Ave
Foote Rd
Fox Hill Ln
Franklin St
Front St
Golden Pond Est

Hart St
Havens Rd
Hawthorne St
Helen St
Hemlock Oval
Hemlock St
Hiller Rd
Hoag Ave
Holly St
Howe Rd
Ice Cream Plz
Indianola Ave
Jackson St
John St
Jones Rd
Kathryn Dr
Kelkenberg Rd
Kibler Ave
Kirby Rd
Knapp Rd
Laurel St
Leisurewood
Lesswing Rd
Lewis Rd
Liberty St
Madison Ave
Main St
Maple Rd
Marshall Ave
Martin Rd
Mcneeley Rd
Meadow Dr
Mechanic St
Miland Rd
Mill Rd
Mill St
Monroe St
Moore Rd
Morgan St
N Ayers Rd
Newton Ave
North Millgrove Rd

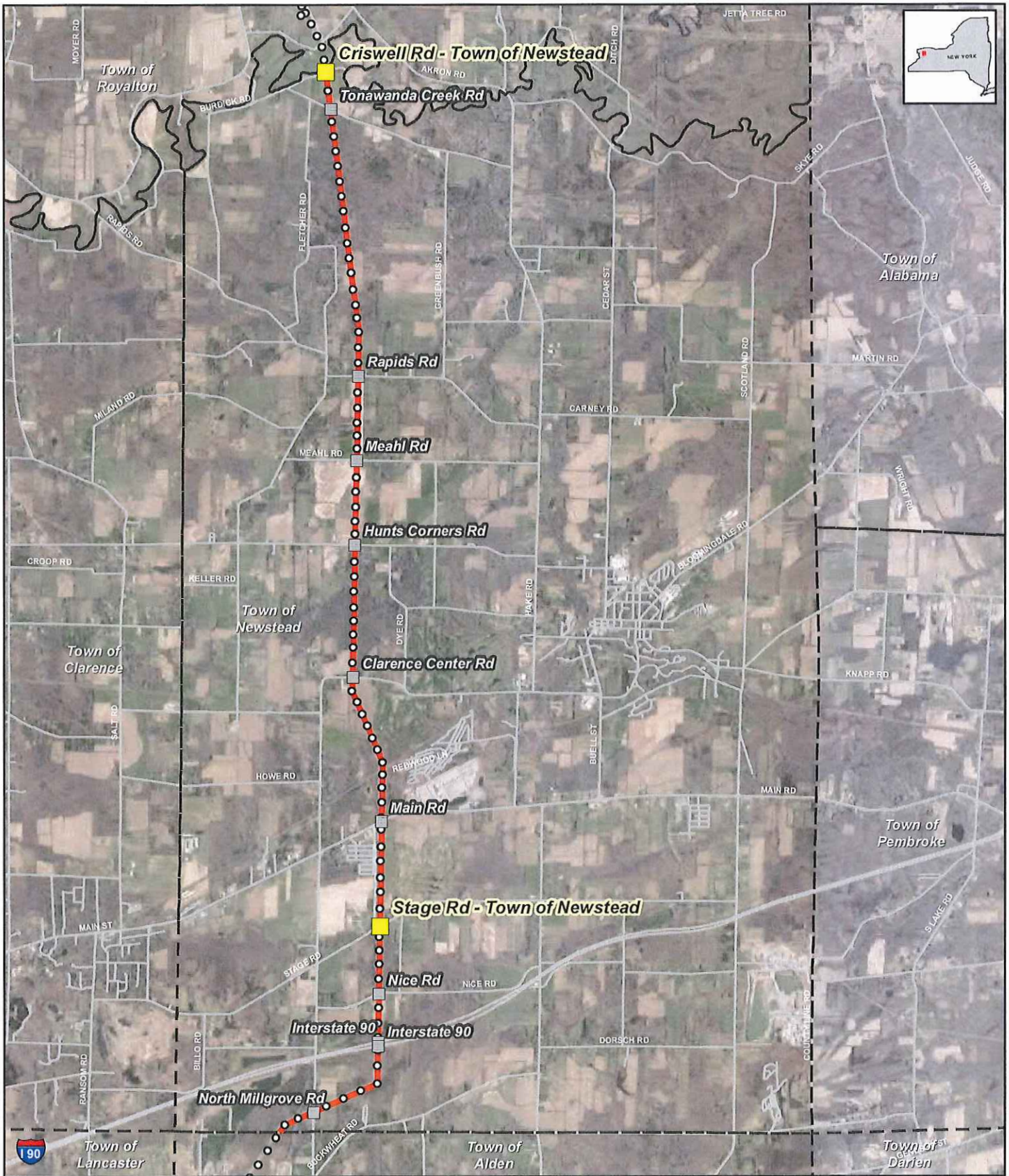
Oak St
Old Steiner Rd
Pearl St
Pohl Rd
Qry Hill Dr
Quarry Hill Dr
Quarry Hill Est
Railroad St
Randy Dr
Redwood Ln
Renns Ln
Roll Rd
S Ayers Rd
Saratoga Ln
Schurr Rd
Schutt Rd
Scotland Rd
Scribner Rd
Shepard Ave
Siehl Rd
Skye Rd
Skyline Dr
South Newstead Rd
Spruce St
Stage Rd
State St
Stoneridge Ln
Sunrise Dr
Sunset Dr
Sylvan Pkwy
Thistle Downs Dr
Thistledowns Dr
Thornwood Ln
Townsend St
Utley Rd
Wahl Rd
Washington St
Wesley Dr
Westgate Ave
Woodbine Ct

Exhibit B

***List and Map of Roads for Electric
Transmission Line Crossing by the Empire State
Line Project***

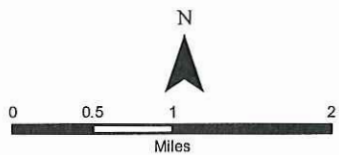
Exhibit B: Town of Newstead Road Crossings by Empire State Line

FULLNAME	LAT	LONG
Criswell Rd	43.09258178610	-78.55078160320
Stage Rd	42.98139866160	-78.54117489130



**Exhibit B - Map of Road Crossings
Town of Newstead**

- Town of Newstead Crossings
- Other Crossings
- Towers
- Empire State Line



NEXTERA™
ENERGY
TRANSMISSION
NEW YORK
 September 2018

ROAD USE AND CROSSING AGREEMENT

This Road Use and Crossing Agreement ("Agreement") is entered into this 19th day of NOVEMBER, 2018 between NextEra Energy Transmission New York, Inc., a New York corporation ("NEETNY"), having an office at 700 Universe Boulevard, Juno Beach, Florida 33408, and the Town of Royalton, New York, a municipal corporation ("Town"), having an office at 5316 Royalton Road, Middleport, New York 14105.

RECITALS

WHEREAS, NEETNY engages in developing, building, owning, operating and maintaining electric transmission facilities in New York; and

WHEREAS, NEETNY intends to develop, construct, own, operate and maintain an electric transmission facility and/or related appurtenances pursuant to orders of the New York State Public Service Commission granting a certificate of environmental capability and public need and pursuant to other permits and authorizations (hereinafter "electric transmission lines") and/or ancillary activities (collectively "electric transmission activities"); and

WHEREAS, in connection with the construction, operation and maintenance of the electric transmission activities, the parties desire to address certain issues relating to the highways, roads, bridges and related fee-owned land, rights-of-way or easements owned, operated and maintained by the Town (collectively, the "Roads") over which it will be necessary for NEETNY and its representative(s) to, among other things: (i) traverse with heavy machinery, including but not limited to, trucks, construction machinery and equipment and other related items; (ii) transport heavy equipment and materials which may be in excess of local design limits of certain Roads, (iii) transport locally sourced materials, such as concrete and gravel, on the Roads; (iv) make specific modifications and improvements (both temporary and permanent) to the Roads (including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and (v) install the electric transmission lines across Roads along NEETNY's electric transmission line route; and

WHEREAS, NEETNY will necessarily need to conduct certain construction and restoration activities and locate electric transmission lines within the Town, some of which may involve construction and restoration activities across Roads (hereinafter "construction activities"); and

WHEREAS, NEETNY further acknowledges that the nature of heavy vehicular traffic during electric transmission activities, construction activities, reworking activities, and other activities will exceed the normal and anticipated use of public roadways within the Town's limits, causing distress to said Roads which may either be structural or functional and which in turn will increase overall maintenance, oversight, repair, and replacement costs to the Town in connection with the electric transmission activities and which distress may be immediate or may be gradual and delayed, and also may exceed the design criteria for said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

WHEREAS, the Town seeks guarantees and assurances from NEETNY that NEETNY will pay and/or otherwise indemnify the Town for any distress or damage to the Roads arising from or related to NEETNY's electric transmission activities and/or construction activities.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, NEETNY and the Town, each intending to be legally bound, agree as follows:

1. NEETNY Responsibilities.

- a. NEETNY shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof, which are required by governing law to use and cross the Roads.
- b. NEETNY agrees that it shall be responsible for insuring that all debris, garbage, and waste upon Roads related to NEETNY's electric transmission activities and/or construction activities are cleaned daily and disposed of in accordance with governing law.
- c. NEETNY shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic for any significant length of time. If traffic is restricted to one lane, a flagman shall be posted at each end of the lane to direct traffic.
- d. NEETNY shall require that its employees, officers, directors, members, managers, agents, licensees, vendors, contractors, subcontractors, haulers and the like will comply with the terms and conditions of this Agreement.
- e. NEETNY shall not permit any excavation made in or upon any Road to remain open or uncovered either day or night, without having or causing the same to be properly barricaded by day and night and, in addition thereto, shall place at such location flares, red lanterns or other warning devices such as advance warning signage, by night, so as to properly warn all persons of the danger of such hole or excavation.

2. Road Surveys and Routes.

- a. Exhibit A is a list of the Roads/bridges that NEETNY is authorized by the Town to traverse as part of the electric transmission activities and/or construction activities and Exhibit B is a list and map of the Roads over which NEETNY is authorized by the Town to install its electric transmission lines. The electric transmission lines will be installed on and occupy the route certified by the New York Public Service Commission.
- b. Prior to the commencement of Road use activities, NEETNY will prepare a pre-construction survey of the Roads and bridges identified on Exhibit A, which survey must be acceptable to the Town in its reasonable discretion. NEETNY shall provide a copy of such survey to the Town.
- c. If, in the reasonable opinion of the Town Engineer, the conditions of a Road change after the date of this Agreement such that any seasonal or dirt Roads included on Exhibit A cannot withstand the structural and functional distress anticipated by heavy vehicular traffic resulting from the Road use activities, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road. NEETNY will have seven (7) business days from its receipt of such notice to notify the Town as to whether it can make alternate route arrangements.
- d. If NEETNY notifies the Town that it can make alternate route arrangements, NEETNY will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify NEETNY within seven (7) business days from its receipt of such alternate proposed route whether or not that proposed route is satisfactory to the Town. If the proposed alternate route is satisfactory to the Town, Exhibit A will be amended to remove the Roads that cannot withstand the structural and functional distress and to add the alternate route. If the proposed alternate route is not satisfactory to the Town, then NEETNY and the Town will repeat the above process until an alternate route that is satisfactory to both parties is agreed upon. In the event the Town does not notify NEETNY that the proposed route is

unsatisfactory to the Town within in such seven (7) business day time period, the proposed route shall be deemed acceptable by the Town.

e. If NEETNY decides that it still needs to use such Roads, then NEETNY prior to continued use of said Road will make the improvements described in the Town's initial notice of changed Road conditions, which repairs will be at NEETNY's cost.

f. If, during the term of this Agreement, the Town Engineer determine in their sole discretion that the condition of any Road/bridge has changed since the date of this Agreement such that the Road/bridge cannot, due to its condition, withstand or continue to withstand the structural and functional distress anticipated by further heavy vehicular traffic, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road/bridge. NEETNY will have seven (7) business days from its receipt of such notice to decide if it can make alternate route arrangements.

g. If NEETNY notifies the Town that it can make alternate route arrangements, NEETNY will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify NEETNY within seven (7) business days from its receipt of such alternate proposed route whether or not that proposed route is satisfactory to the Town. If the proposed alternate route is satisfactory to the Town, Exhibit A will be amended to remove the Roads/bridges that cannot withstand the structural and functional distress and to add the alternate route. If the proposed alternate route is not satisfactory to the Town, then NEETNY and the Town will repeat the above process until an alternate route that is satisfactory to both parties is agreed upon. In the event the Town does not notify NEETNY that the proposed route is unsatisfactory to the Town within in such seven (7) business day time period, the proposed route shall be deemed acceptable by the Town.

h. If NEETNY decides that it still needs to use such Roads/bridges, then NEETNY prior to continued use of said Roads/bridges will make the improvements described in the Town's initial notice of changed Road/bridge conditions, which repairs will be at NEETNY's cost.

3. Road Damage.

a. If any damage occurs to Roads during Road use activities and such damage is, in the reasonable opinion of the Town Engineer, an immediate danger to the public using said Road, then the Town shall undertake immediate emergency repairs to said Road. In the event NEETNY becomes aware of any such damage, it shall notify the Town within seven (7) business days of becoming aware of such damage.

b. Except as otherwise set forth in paragraph 3(a) above, within seven (7) business days of a receipt of an allegation of damage from the Town, NEETNY shall notify the Town in writing of its agreement or disagreement with the allegations. The Town shall then submit a written invoice (hereinafter "invoice") to NEETNY detailing the costs, fees, and/or expenses incurred or to be incurred by the Town to repair the damage which occurred.

c. NEETNY shall pay all undisputed invoiced amounts within thirty (30) days from NEETNY's receipt of the invoice. If NEETNY disputes any amounts set forth on an invoice, or if NEETNY disputes that it caused the damage it is being invoiced for, it shall provide a written statement as to its basis for contesting the disputed amount(s) and/or alleged damage within thirty (30) days after NEETNY's receipt of the invoice.

d. The manner of repair of any Road or bridge damage described in this Agreement shall be at the reasonable discretion of the Town Engineer or their designee. The Town Engineer or their designee in exercising their discretion shall apply Town road or bridge standards that are otherwise applicable throughout the Town for the type of Road or bridge involved.

4. Indemnification.

Each party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and such other party's parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, assigns and any liability insurance carriers that party may have ("Indemnified Party") against any and all losses, claims, expenses, and other liabilities, including, without limitation, attorneys' fees, resulting from or arising out of (i) any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or (ii) any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party. Provided, however, in no event shall either party, its parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, or assigns be liable to any other party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.

5. Captions and Headings.

Captions and heading throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the score or intent of this Agreement nor in any way affect this Agreement.

6. Modifications.

This Agreement cannot be changed orally, but only by agreement in writing signed by the parties against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

7. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any party hereto of a breach of violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

8. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New York.

9. Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

10. Entire Agreement.

The entire agreement of the parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

11. Counterparts.

This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidence by one counterpart. For purposes of this Agreement and electronic signature shall be deemed to be an original.

12. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

13. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (i) upon hand delivery, or (ii) upon the third day following delivery via the United States Postal Service, or (iii) on the first day following delivery via a nationally registered United States overnight courier service, or (iv) on the day when telecopies are sent by facsimile transmission if additional notice is also given under (i), (ii) or (iii) above within three (3) business days thereafter.

For purposes of this Agreement only, any notice to the parties shall be directed to the party as set forth below

For NEETNY: NextEra Energy Transmission New York, Inc.
700 Universe Boulevard
Juno Beach, Florida 33408

For Town: Town of Royalton
5316 Royalton Road
Middleport New York 14105

14. Term.

The term of this Agreement shall be as of the date executed through the completion of remediation/repair of the Town Roads, as required under this Agreement.

15. Termination.

This Agreement may be terminated by the Town, upon NEETNY's failure to initiate, within thirty (30) days of receiving written notice from the Town, reasonable steps to cure any default of this Agreement

and/or the filing of a petition in bankruptcy by NEETNY or by its creditors or the appointment of a receiver of all or substantially all of the assets of NEETNY.

16. Assignment.

NEETNY is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or of its right, title, or interest therein, or its power to execute such Agreement, to any other person or corporation without the consent of the Town, such consent not to be unreasonably withheld, conditioned or delayed.

17. Waiver of Jury Trial.

In any litigation arising from or related to this Agreement, the Parties each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement

[Signatures appear on following pages.]

IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

Witnesses:

Town of Royalton, New York,
a municipal corporation

Carol L. Wittcop
Print Name: Carol L. Wittcop

By: Daniel R Bragg
Name: DANIEL R BRAGG
Its: SUPERVISOR

Lee M Criswell
Print Name: Lee M Criswell

Acknowledgement

STATE OF NEW YORK)
 NIAGARA
COUNTY OF (ERIE)

On the 19th day of November in the year 2018 before me, the undersigned, personally appeared Daniel R. Bragg personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Marie L. Little, MMC/RMC
Signature and office of individual taking acknowledgment




MARIE L LITTLE, MMC/RMC
Notary Public, State of New York
No. 01L16075593
Qualified in Niagara County
Commission Expires June 10, 2022

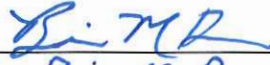
COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

NextEra Energy Transmission New York, Inc.,
a New York corporation


Print Name: STEVEN DRISCOLL


Print Name: JOHN B. SMITH

By: 
Name: Brian M. Duncan
Its: Asst. Vice President

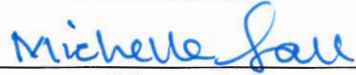
Acknowledgement

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

On this 3rd day of December, 2018, before me, the undersigned notary public, personally appeared Brian M. Duncan as Asst. Vice President of NextEra Energy Transmission New York, Inc., a New York corporation, who is personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of said corporation and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public
MICHELLE LALL
Notary Printed Name
My Commission Expires: June 15, 2022



Michelle Lall
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG189591
Expires 6/15/2022

Exhibit A

***List of Roads for Electric Transmission
Activities and/or Construction Activities***

Akron Rd
Alfred St
Arnold Rd
Ben Way
Berner Pkwy
Block Church Rd
Bolton Rd
Bowen Rd
Boyer Rd
Bulmore Rd
Bunkerhill Rd
Butler Pkwy
Carolyn St
Centennial St
Central Ave
Chestnut Ridge Rd
Church St
Connecting Road
Cottage Ct
Cottage Ln
Cottage Rd
Countyline Rd
Dale Rd
Dewhirst Rd
Ditch Rd
E High St
East Ave
Elizabeth St
Emerson Pl
Ernest Rd
Ertman Rd
Fairview Dr
Fisk Rd
Foote Rd
Forest Rd
Francis St
Freeman Ave
Freeman Rd
Front St
Graham Rd
Grayce Ave
Griswold St

Grove Rd
Hammond Pkwy
Haseley Rd
Hellert Rd
Highland Dr
Hofert Rd
Hollenbeck Rd
Jackson Rd
Jackson St
Jetta Tree Rd
Johnson Rd
Kayner Rd
Kelly Ave
Kinne Rd
Letts Rd
Lincoln Avenue Ext
Lincoln Dr
Locust Dr
Mack Ave
Mack Rd
Mackey Rd
Main St
Mann Rd
Manor Ln
Maple Ave
Maplewood Dr
March Rd
Mcnair Rd
Mechanic St
Mill Rd
Mill St
Miller Rd
Mountain Rd
Moyer Rd
Myrtle Ave
N Hartland St
N Vernon St
Niagara St
Old Dysinger Rd
Orangeport Rd
Orchard Pl
Orchard St

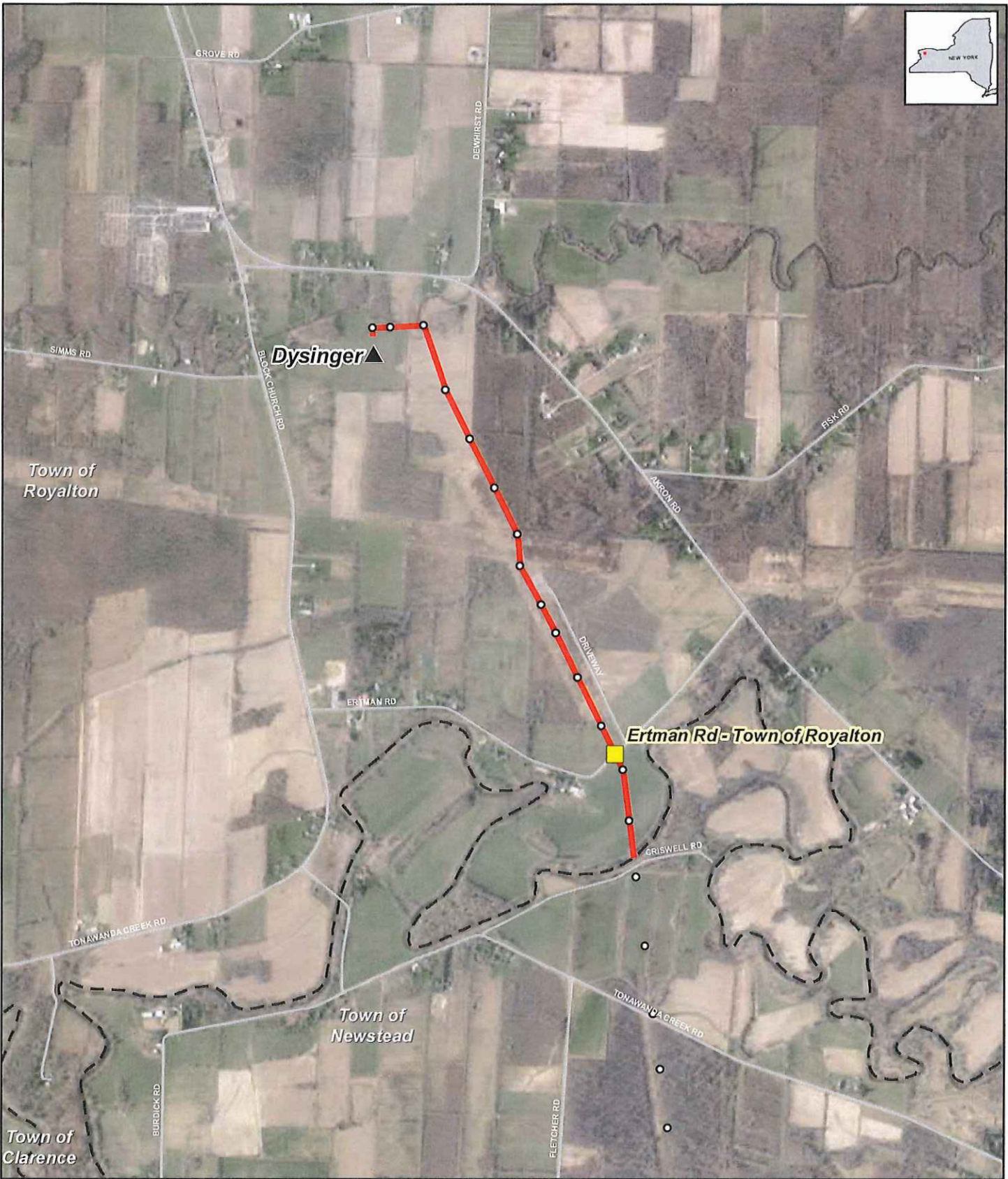
Owen Rd
Park Ave
Pebble Ct
Peet St
Porter Pkwy
Prospect St
Quaker Rd
Raduns Rd
Railroad Ave
Richardson Rd
Robertson St
Rochester Rd
Roosevelt Dr
Root Rd
Royal Dr
Royalton Center Rd
S Hartland St
S Vernon St
Sherman Rd
Simms Rd
Singer Rd
South St
Sprout Rd
State St
Sunset Ter
Taylor St
Telegraph Rd
Terry St
Townline Rd
Vernon St
Wagoner Rd
Ward Rd
Washington Ave
Washington St
Watson Ave
West Ave
William St
Woodridge Dr
Wruck Rd

Exhibit B

***List and Map of Roads for Electric
Transmission Line Crossing by the Empire State
Line Project***

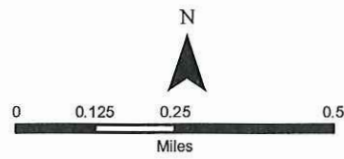
Exhibit B: Town of Royalton Road Crossings by Empire State Line

FULLNAME	LAT	LONG
Ertman Rd	43.09624200000	-78.55168500000



**Exhibit B - Map of Road Crossings
Town of Royalton**

- Town of Royalton Crossings
- Towers
- Proposed Dysinger Switchyard
- Empire State Line



NEXteraTM
ENERGY

**TRANSMISSION
NEW YORK**

September 2018

ROAD USE AND CROSSING AGREEMENT

This Road Use and Crossing Agreement ("Agreement") is entered into this 14th day of December, 2018 between NextEra Energy Transmission New York, Inc., a New York corporation ("NEETNY"), having an office at 700 Universe Boulevard, Juno Beach, Florida 33408, and the Town of Elma, New York, a municipal corporation ("Town"), having an office at 1600 Bowen Road, Elma, New York 14059.

RECITALS

WHEREAS, NEETNY engages in developing, building, owning, operating and maintaining electric transmission facilities in New York; and

WHEREAS, NEETNY intends to develop, construct, own, operate and maintain an electric transmission facility and/or related appurtenances pursuant to orders of the New York State Public Service Commission granting a certificate of environmental capability and public need and pursuant to other permits and authorizations (hereinafter "electric transmission lines") and/or ancillary activities (collectively "electric transmission activities"); and

WHEREAS, in connection with the construction, operation and maintenance of the electric transmission activities, the parties desire to address certain issues relating to the highways, roads, bridges and related fee-owned land, rights-of-way or easements owned, operated and maintained by the Town (collectively, the "Roads") over which it will be necessary for NEETNY and its representative(s) to, among other things: (i) traverse with heavy machinery, including but not limited to, trucks, construction machinery and equipment and other related items; (ii) transport heavy equipment and materials which may be in excess of local design limits of certain Roads, (iii) transport locally sourced materials, such as concrete and gravel, on the Roads; (iv) make specific modifications and improvements (both temporary and permanent) to the Roads (including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and (v) install the electric transmission lines across Roads along NEETNY's electric transmission line route; and

WHEREAS, NEETNY will necessarily need to conduct certain construction and restoration activities and locate electric transmission lines within the Town, some of which may involve construction and restoration activities across Roads (hereinafter "construction activities"); and

WHEREAS, NEETNY further acknowledges that the nature of heavy vehicular traffic during electric transmission activities, construction activities, reworking activities, and other activities will exceed the normal and anticipated use of public roadways within the Town's limits, causing distress to said Roads which may either be structural or functional and which in turn will increase overall maintenance, oversight, repair, and replacement costs to the Town in connection with the electric transmission activities and which distress may be immediate or may be gradual and delayed, and also may exceed the design criteria for said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

WHEREAS, the Town seeks guarantees and assurances from NEETNY that NEETNY will pay and/or otherwise indemnify the Town for any distress or damage to the Roads arising from or related to NEETNY's electric transmission activities and/or construction activities.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, NEETNY and the Town, each intending to be legally bound, agree as follows:

1. NEETNY Responsibilities.

- a. NEETNY shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof, which are required by governing law to use and cross the Roads.
- b. NEETNY agrees that it shall be responsible for insuring that all debris, garbage, and waste upon Roads related to NEETNY's electric transmission activities and/or construction activities are cleaned daily and disposed of in accordance with governing law.
- c. NEETNY shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic for any significant length of time. If traffic is restricted to one lane, a flagman shall be posted at each end of the lane to direct traffic.
- d. NEETNY shall require that its employees, officers, directors, members, managers, agents, licensees, vendors, contractors, subcontractors, haulers and the like will comply with the terms and conditions of this Agreement.
- e. NEETNY shall not permit any excavation made in or upon any Road to remain open or uncovered either day or night, without having or causing the same to be properly barricaded by day and night and, in addition thereto, shall place at such location flares, red lanterns or other warning devices such as advance warning signage, by night, so as to properly warn all persons of the danger of such hole or excavation.

2. Road Surveys and Routes.

- a. Exhibit A is a list of the Roads/bridges that NEETNY is authorized by the Town to traverse as part of the electric transmission activities and/or construction activities and Exhibit B is a list and map of the Roads over which NEETNY is authorized by the Town to install its electric transmission lines. The electric transmission lines will be installed on and occupy the route certified by the New York Public Service Commission.
- b. Prior to the commencement of Road use activities, NEETNY will prepare a pre-construction survey of the Roads and bridges identified on Exhibit A, which survey must be acceptable to the Town in its reasonable discretion. NEETNY shall provide a copy of such survey to the Town.
- c. If, in the reasonable opinion of the Town Engineer, the conditions of a Road change after the date of this Agreement such that any seasonal or dirt Roads included on Exhibit A cannot withstand the structural and functional distress anticipated by heavy vehicular traffic resulting from the Road use activities, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road. NEETNY will have seven (7) business days from its receipt of such notice to notify the Town as to whether it can make alternate route arrangements.
- d. If NEETNY notifies the Town that it can make alternate route arrangements, NEETNY will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify NEETNY within seven (7) business days from its receipt of such alternate proposed route whether or not that proposed route is satisfactory to the Town. If the proposed alternate route is satisfactory to the Town, Exhibit A will be amended to remove the Roads that cannot withstand the structural and functional distress and to add the alternate route. If the proposed alternate route is not satisfactory to the Town, then NEETNY and the Town will repeat the above process until an alternate route that is satisfactory to both parties is agreed upon. In the event the Town does not notify NEETNY that the proposed route is

unsatisfactory to the Town within in such seven (7) business day time period, the proposed route shall be deemed acceptable by the Town.

e. If NEETNY decides that it still needs to use such Roads, then NEETNY prior to continued use of said Road will make the improvements described in the Town's initial notice of changed Road conditions, which repairs will be at NEETNY's cost.

f. If, during the term of this Agreement, the Town Engineer determine in their sole discretion that the condition of any Road/bridge has changed since the date of this Agreement such that the Road/bridge cannot, due to its condition, withstand or continue to withstand the structural and functional distress anticipated by further heavy vehicular traffic, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road/bridge. NEETNY will have seven (7) business days from its receipt of such notice to decide if it can make alternate route arrangements.

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h. If NEETNY decides that it still needs to use such Roads/bridges, then NEETNY prior to continued use of said Roads/bridges will make the improvements described in the Town's initial notice of changed Road/bridge conditions, which repairs will be at NEETNY's cost.

3. Road Damage.

a. If any damage occurs to Roads during Road use activities and such damage is, in the reasonable opinion of the Town Engineer, an immediate danger to the public using said Road, then the Town shall undertake immediate emergency repairs to said Road. In the event NEETNY becomes aware of any such damage, it shall notify the Town within seven (7) business days of becoming aware of such damage.

b. Except as otherwise set forth in paragraph 3(a) above, within seven (7) business days of a receipt of an allegation of damage from the Town, NEETNY shall notify the Town in writing of its agreement or disagreement with the allegations. The Town shall then submit a written invoice (hereinafter "invoice") to NEETNY detailing the costs, fees, and/or expenses incurred or to be incurred by the Town to repair the damage which occurred.

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d. The manner of repair of any Road or bridge damage described in this Agreement shall be at the reasonable discretion of the Town Engineer or their designee. The Town Engineer or their designee in exercising their discretion shall apply Town road or bridge standards that are otherwise applicable throughout the Town for the type of Road or bridge involved.

4. Indemnification.

Each party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and such other party's parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, assigns and any liability insurance carriers that party may have ("Indemnified Party") against any and all losses, claims, expenses, and other liabilities, including, without limitation, attorneys' fees, resulting from or arising out of (i) any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or (ii) any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party. Provided, however, in no event shall either party, its parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, or assigns be liable to any other party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.

5. Captions and Headings.

Captions and heading throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

6. Modifications.

This Agreement cannot be changed orally, but only by agreement in writing signed by the parties against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

7. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any party hereto of a breach of violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

8. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New York.

9. Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

10. Entire Agreement.

The entire agreement of the parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

11. Counterparts.

This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidence by one counterpart. For purposes of this Agreement and electronic signature shall be deemed to be an original.

12. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

13. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (i) upon hand delivery, or (ii) upon the third day following delivery via the United States Postal Service, or (iii) on the first day following delivery via a nationally registered United States overnight courier service, or (iv) on the day when telecopies are sent by facsimile transmission if additional notice is also given under (i), (ii) or (iii) above within three (3) business days thereafter.

For purposes of this Agreement only, any notice to the parties shall be directed to the party as set forth below

For NEETNY: NextEra Energy Transmission New York, Inc.
700 Universe Boulevard
Juno Beach, Florida 33408

For Town: Town of Elma
1600 Bowen Road
Elma New York 14059

14. Term.

The term of this Agreement shall be as of the date executed through the completion of remediation/repair of the Town Roads, as required under this Agreement.

15. Termination.

This Agreement may be terminated by the Town, upon NEETNY's failure to initiate, within thirty (30) days of receiving written notice from the Town, reasonable steps to cure any default of this Agreement

and/or the filing of a petition in bankruptcy by NEETNY or by its creditors or the appointment of a receiver of all or substantially all of the assets of NEETNY.

16. Assignment.

NEETNY is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or of its right, title, or interest therein, or its power to execute such Agreement, to any other person or corporation without the consent of the Town, such consent not to be unreasonably withheld, conditioned or delayed.

17. Waiver of Jury Trial.

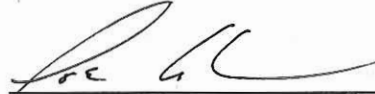
In any litigation arising from or related to this Agreement, the Parties each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement

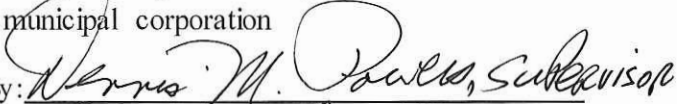
[Signatures appear on following pages.]


IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

Witnesses:

Town of Elma, New York,
a municipal corporation


Print Name: Joe Colean

By: 
Name: DENNIS M. POWERS
Its: SUPERVISOR

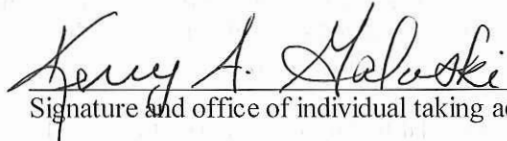

Print Name: Ray Balcerzak

Acknowledgement

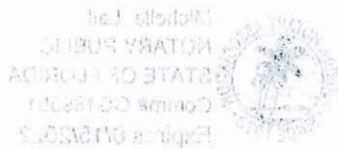
STATE OF NEW YORK)

COUNTY OF ERIE)

On the 11 day of DEC in the year 2018 before me, the undersigned, personally appeared DENNIS M. POWERS personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Signature and office of individual taking acknowledgment

KERRY A. GALUSKI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES 6/1/22



COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

NextEra Energy Transmission New York, Inc.,
a New York corporation

Andrea Williams
Print Name: Andrea Williams

By: [Signature]
Name: Brian M. Duncan
Its: Asst. Vice President

Debra L. Jean Baptiste
Print Name: Debra L. Jean Baptiste

Acknowledgement

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

On this 14th day of December, 2018, before me, the undersigned notary public, personally appeared Brian Duncan, as Asst. Vice President of NextEra Energy Transmission New York, Inc., a New York corporation, who is personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of said corporation and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Michelle Lall
Notary Public
MICHELLE LALL
Notary Printed Name
My Commission Expires: June 15, 2022



Michelle Lall
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG189591
Expires 6/15/2022

Exhibit A

***List of Roads for Electric Transmission
Activities and/or Construction Activities***

Bartlett Rd
Beech Rd
Billington Heights Rd
Billington Rd
Boll Dr
Bowen Rd
Bridle Ln
Briggswood Dr
Buffalo Creek Rd
Carnoustie Dr
Carol Ln
Caroline Ln
Cemetary Rd
Chairfactory Rd
Clark Ct
Clinton Hts
Cloverlane Dr
Colony Ct
Conley Rd
Cookman Rd
Crag Burn Dr
Creek Rd
Crimson Ln
Deer Crest Ct
Dellwood Dr
Dorris Dr
Douglas Ln
E Center Rd
E Jerge Dr
Easy St
Elderberry Ln
Elma Meadow Ln
Esther Dr
Fairway Dr
Fernott Dr
Finnegan Dr
Gaylord Ct
Geyer Rd
Golfview Dr
Griffin Ln

Hall Rd
Handy Rd
Henry Dr
Herrick Rd
Hessland Ct
Hickory Hill Dr
Hidden Valley Dr
Highland Dr
Hillside Dr
Hilltop Dr
Homeward Pl
Howard Mason Estate
Rd
Hunter Ct
Huntington Ct
Jackman Ln
June Dr
Kalla Ln
Kettle Run
Kings Rd
Kinsley Rd
Kirkwood Dr
Knabb Rd
Lees Lndg
May Dr
Meadow Dr
Meadowbrook Dr
Midway Ln
Muirfield Dr
N Blossom Rd
N Star Rd
N Woodland Rdg
Nanette Dr
New Bullis Rd
North Davis Rd
Northrup Rd
Oakgrove Ct
Oaknoll Ct
Old Jamison Rd
Old Mill Cir
Old Pound Rd

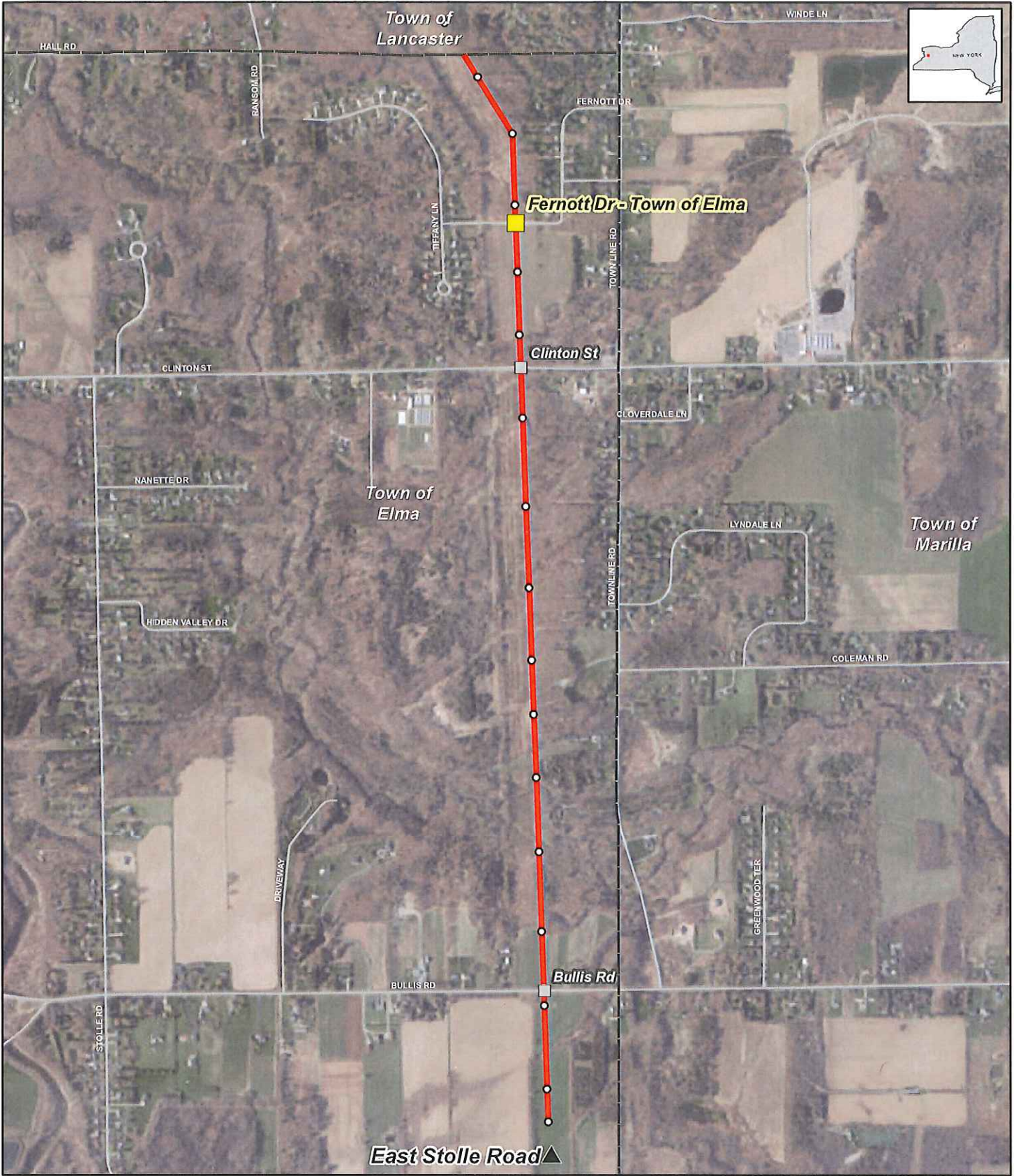
Ostrander Rd
Pearl Ter
Pinewood Trl
Pleasantview Dr
Pond Brook Dr
Porterville Rd
Queensway Rd
Reserve Rd
Rice Rd
Rolling Green Ln
Roycroft Pkwy
S Blossom Rd
S Herrick Rd
S Jerge Dr
S Ostrander Rd
S Schultz Rd
S Woodland Rdg
Sawmill Ct
Schultz Rd
Sigman Ln
South Rd
Stolle Rd
Streif Rd
Sullivan Dr
Summerdale Dr
Terrace Ln
Tiffany Ln
Timberline Dr
Tracy Dr
Treehaven Ln
Troon Rd
Valley View Dr
W Jerge Dr
W Maple Ct
Wedemeyer Dr
Winona Rd
Woodard Rd
Woodland Rdg
Woodside Dr

Exhibit B

***List and Map of Roads for Electric
Transmission Line Crossing by the Empire State
Line Project***

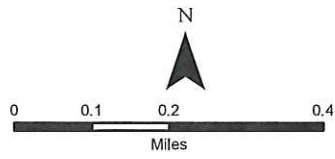
Exhibit B: Town of Elma Road Crossings by Empire State Line

FULLNAME	LAT	LONG
Fernott Dr	42.86015941240	-78.58135593310



**Exhibit B - Map of Road Crossings
Town of Elma**

- Town of Elma Crossings
- Other Crossings
- Towers
- Proposed East Stolle Road Switchyard
- Empire State Line



NEXtera™
ENERGY

**TRANSMISSION
NEW YORK**

September 2018

ROAD USE AND CROSSING AGREEMENT

This Road Use and Crossing Agreement ("Agreement") is entered into this 31st day of October, 2018 between NextEra Energy Transmission New York, Inc., a New York corporation ("NEETNY"), having an office at 700 Universe Boulevard, Juno Beach, Florida 33408, and the Town of the Town of Lancaster, New York, a municipal corporation ("Town"), having an office at 21 Central Avenue, Lancaster, New York 14086.

RECITALS

WHEREAS, NEETNY engages in developing, building, owning, operating and maintaining electric transmission facilities in New York; and

WHEREAS, NEETNY intends to develop, construct, own, operate and maintain an electric transmission facility and/or related appurtenances pursuant to orders of the New York State Public Service Commission granting a certificate of environmental capability and public need and pursuant to other permits and authorizations (hereinafter "electric transmission lines") and/or ancillary activities (collectively "electric transmission activities"); and

WHEREAS, in connection with the construction, operation and maintenance of the electric transmission activities, the parties desire to address certain issues relating to the highways, roads, bridges and related fee-owned land, rights-of-way or easements owned, operated and maintained by the Town (collectively, the "Roads") over which it will be necessary for NEETNY and its representative(s) to, among other things: (i) traverse with heavy machinery, including but not limited to, trucks, construction machinery and equipment and other related items; (ii) transport heavy equipment and materials which may be in excess of local design limits of certain Roads, (iii) transport locally sourced materials, such as concrete and gravel, on the Roads; (iv) make specific modifications and improvements (both temporary and permanent) to the Roads (including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and (v) install the electric transmission lines across Roads along NEETNY's electric transmission line route; and

WHEREAS, NEETNY will necessarily need to conduct certain construction and restoration activities and locate electric transmission lines within the Town, some of which may involve construction and restoration activities across Roads (hereinafter "construction activities"); and

WHEREAS, NEETNY further acknowledges that the nature of heavy vehicular traffic during electric transmission activities, construction activities, reworking activities, and other activities will exceed the normal and anticipated use of public roadways within the Town's limits, causing distress to said Roads which may either be structural or functional and which in turn will increase overall maintenance, oversight, repair, and replacement costs to the Town in connection with the electric transmission activities and which distress may be immediate or may be gradual and delayed, and also may exceed the design criteria for said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

WHEREAS, the Town seeks guarantees and assurances from NEETNY that NEETNY will pay and/or otherwise indemnify the Town for any distress or damage to the Roads arising from or related to NEETNY's electric transmission activities and/or construction activities.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, NEETNY and the Town, each intending to be legally bound, agree as follows:

1. NEETNY Responsibilities.

a. NEETNY shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof, which are required by governing law to use and cross the Roads.

b. NEETNY agrees that it shall be responsible for insuring that all debris, garbage, and waste upon Roads related to NEETNY's electric transmission activities and/or construction activities are cleaned daily and disposed of in accordance with governing law.

c. NEETNY shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic for any significant length of time. If traffic is restricted to one lane, a flagman shall be posted at each end of the lane to direct traffic.

d. NEETNY shall require that its employees, officers, directors, members, managers, agents, licensees, vendors, contractors, subcontractors, haulers and the like will comply with the terms and conditions of this Agreement.

e. NEETNY shall not permit any excavation made in or upon any Road to remain open or uncovered either day or night, without having or causing the same to be properly barricaded by day and night and, in addition thereto, shall place at such location flares, red lanterns or other warning devices such as advance warning signage, by night, so as to properly warn all persons of the danger of such hole or excavation.

2. Road Surveys and Routes.

a. Exhibit A is a list of the Roads/bridges that NEETNY is authorized by the Town to traverse as part of the electric transmission activities and/or construction activities and Exhibit B is a list and map of the Roads over which NEETNY is authorized by the Town to install its electric transmission lines. The electric transmission lines will be installed on and occupy the route certified by the New York Public Service Commission.

b. Prior to the commencement of Road use activities, NEETNY will prepare a pre-construction survey of the Roads and bridges identified on Exhibit A, which survey must be acceptable to the Town in its reasonable discretion. NEETNY shall provide a copy of such survey to the Town.

c. If, in the reasonable opinion of the Town Engineer and Highway Superintendent, the conditions of a Road change after the date of this Agreement such that any seasonal or dirt Roads included on Exhibit A cannot withstand the structural and functional distress anticipated by heavy vehicular traffic resulting from the Road use activities, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road. NEETNY will have seven (7) business days from its receipt of such notice to notify the Town as to whether it can make alternate route arrangements.

d. If NEETNY notifies the Town that it can make alternate route arrangements, NEETNY will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify NEETNY within seven (7) business days from its receipt of such alternate proposed route whether or not that proposed route is satisfactory to the Town. If the proposed alternate route is satisfactory to the Town, Exhibit A will be amended to remove the Roads that cannot withstand the structural and functional distress and to add the alternate route. If the proposed alternate route is not satisfactory to the Town, then NEETNY and the Town will repeat the above process until an alternate

route that is satisfactory to both parties is agreed upon. In the event the Town does not notify NEETNY that the proposed route is unsatisfactory to the Town within in such seven (7) business day time period, the proposed route shall be deemed acceptable by the Town.

e. If NEETNY decides that it still needs to use such Roads, then NEETNY prior to continued use of said Road will make the improvements described in the Town's initial notice of changed Road conditions, which repairs will be at NEETNY's cost.

f. If, during the term of this Agreement, the Town Engineer and Highway Superintendent determine in their sole discretion that the condition of any Road/bridge has changed since the date of this Agreement such that the Road/bridge cannot, due to its condition, withstand or continue to withstand the structural and functional distress anticipated by further heavy vehicular traffic, the Town will so notify NEETNY and include in its notice the improvements that would be necessary for NEETNY to continue using such Road/bridge. NEETNY will have seven (7) business days from its receipt of such notice to decide if it can make alternate route arrangements.

g. If NEETNY notifies the Town that it can make alternate route arrangements, NEETNY will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify NEETNY within seven (7) business days from its receipt of such alternate proposed route whether or not that proposed route is satisfactory to the Town. If the proposed alternate route is satisfactory to the Town, Exhibit A will be amended to remove the Roads/bridges that cannot withstand the structural and functional distress and to add the alternate route. If the proposed alternate route is not satisfactory to the Town, then NEETNY and the Town will repeat the above process until an alternate route that is satisfactory to both parties is agreed upon. In the event the Town does not notify NEETNY that the proposed route is unsatisfactory to the Town within in such seven (7) business day time period, the proposed route shall be deemed acceptable by the Town.

h. If NEETNY decides that it still needs to use such Roads/bridges, then NEETNY prior to continued use of said Roads/bridges will make the improvements described in the Town's initial notice of changed Road/bridge conditions, which repairs will be at NEETNY's cost.

3. Road Damage.

a. If any damage occurs to Roads during Road use activities and such damage is, in the reasonable opinion of the Town Engineer and Highway Superintendent, an immediate danger to the public using said Road, then the Town shall undertake immediate emergency repairs to said Road. In the event NEETNY becomes aware of any such damage, it shall notify the Town within seven (7) business days of becoming aware of such damage.

b. Except as otherwise set forth in paragraph 3(a) above, within seven (7) business days of a receipt of an allegation of damage from the Town, NEETNY shall notify the Town in writing of its agreement or disagreement with the allegations. The Town shall then submit a written invoice (hereinafter "invoice") to NEETNY detailing the costs, fees, and/or expenses incurred or to be incurred by the Town to repair the damage which occurred.

c. NEETNY shall pay all undisputed invoiced amounts within thirty (30) days from NEETNY's receipt of the invoice. If NEETNY disputes any amounts set forth on an invoice, or if NEETNY disputes that it caused the damage it is being invoiced for, it shall provide a written statement as to its basis for contesting the disputed amount(s) and/or alleged damage within thirty (30) days after NEETNY's receipt of the invoice.

d. The manner of repair of any Road or bridge damage described in this Agreement shall be at the reasonable discretion of the Town Engineer and Highway Superintendent or their designee. The Town Engineer and Highway Superintendent or their designee in exercising their discretion shall apply Town road or bridge standards that are otherwise applicable throughout the Town for the type of Road or bridge involved.

4. Indemnification.

Each party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and such other party's parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, assigns and any liability insurance carriers that party may have ("Indemnified Party") against any and all losses, claims, expenses, and other liabilities, including, without limitation, attorneys' fees, resulting from or arising out of (i) any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or (ii) any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party. Provided, however, in no event shall either party, its parent corporations, subsidiaries, affiliates, companies, administrators, shareholders, agents, employees, directors, officers, successors, or assigns be liable to any other party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.

5. Captions and Headings.

Captions and heading throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the score or intent of this Agreement nor in any way affect this Agreement.

6. Modifications.

This Agreement cannot be changed orally, but only by agreement in writing signed by the parties against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

7. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null and void, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect. The waiver by any party hereto of a breach of violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

8. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New York.

9. Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

10. Entire Agreement.

The entire agreement of the parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and offers of judgment or statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

11. Counterparts.

This Agreement may be entered in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidence by one counterpart. For purposes of this Agreement and electronic signature shall be deemed to be an original.

12. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

13. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (i) upon hand delivery, or (ii) upon the third day following delivery via the United States Postal Service, or (iii) on the first day following delivery via a nationally registered United States overnight courier service, or (iv) on the day when telecopies are sent by facsimile transmission if additional notice is also given under (i), (ii) or (iii) above within three (3) business days thereafter.

For purposes of this Agreement only, any notice to the parties shall be directed to the party as set forth below

For NEETNY: NextEra Energy Transmission New York, Inc.
700 Universe Boulevard
Juno Beach, Florida 33408

For Town: Town of Lancaster
21 Central Avenue
Lancaster, New York 14086

14. Term.

The term of this Agreement shall be as of the date executed through the completion of remediation/repair of the Town Roads, as required under this Agreement.

15. Termination.

This Agreement may be terminated by the Town, upon NEETNY's failure to initiate, within thirty (30) days of receiving written notice from the Town, reasonable steps to cure any default of this Agreement and/or the filing of a petition in bankruptcy by NEETNY or by its creditors or the appointment of a receiver of all or substantially all of the assets of NEETNY.

16. Assignment.

NEETNY is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or of its right, title, or interest therein, or its power to execute such Agreement, to any other person or corporation without the consent of the Town, such consent not to be unreasonably withheld, conditioned or delayed.

17. Waiver of Jury Trial.

In any litigation arising from or related to this Agreement, the Parties each hereby knowingly, voluntarily and intentionally waive the right each may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement.

18. Insurance.

At all times during times of construction during the term of this Agreement, NEETNY will maintain the insurance designated in this section in accordance with the terms and conditions required by this section.

The Town shall be listed as an additional insured on all liability policies including general liability, automobile and any excess coverage. Insurance should cover ongoing and completed operations and should be written on a primary and non-contributory basis. The policies shall meet or exceed the following minimum limits:

a. Workers Compensation:

Part 1: Workers Compensation: Statutory
Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2.

b. New York Disability Benefits Liability: Statutory coverage if New York State domiciled employees are used.

c. Commercial General Liability:

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Town of Lancaster to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Aggregate limit to apply per Project

- Insurance to be primary and non-contributory

d. Automobile Liability:

- \$1,000,000. Each Accident
- Town of Lancaster to be scheduled as an Additional Insured.

e. Umbrella Liability:

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate
- Town of Lancaster to be scheduled as an Additional Insured

f. Certificates of Insurance to be provided to the Town prior to start of work as follows:

- ACORD 25 and ACORD 855 (Item a-e) including copy of Additional Insured Endorsement
Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

NEETNY has the right to meet the insurance designated in this section through any combination of self-insurance, primary, umbrella, or excess coverage to satisfy these requirements.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

Witnesses:

Town of Lancaster, New York,
a municipal corporation

Janice Korzeniewski
Print Name: JANICE KORZENIEWSKI

By: Johanna M. Coleman
Name: Johanna M. Coleman
Its: Town Supervisor

Print Name: _____

Acknowledgement

STATE OF NEW YORK)

COUNTY OF ERIE)

On the 16th day of October in the year 2018 before me, the undersigned, personally appeared Johanna M. Coleman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Leza E. Braun
Signature and office of individual taking acknowledgment

Leza E. Braun
Notary Public, State of New York
Qualified in Erie County
No. 01BR6214076
Commission Expires 11/23/2021

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, NEETNY and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

NextEra Energy Transmission New York, Inc.,
a New York corporation

Brian Rambo
Print Name: BRIAN RAMBO
EJC
Print Name: EJC MOONEY

By: B. M. Duncan
Name: Brian M. Duncan
Its: Asst. Vice President

Acknowledgement

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

On this 31st day of October, 2018, before me, the undersigned notary public, personally appeared Brian Duncan, as Asst. Vice President NextEra Energy Transmission New York, Inc., a New York corporation, who is personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he/she executed the same on behalf of said corporation and that he/she was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Candace S. Weaver
Notary Public
Candace S. Weaver
Notary Printed Name
My Commission Expires:

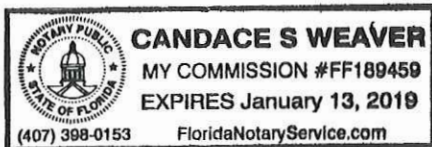
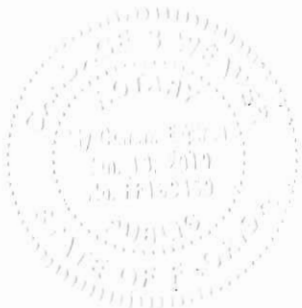


Exhibit A

***List of Roads for Electric Transmission
Activities and/or Construction Activities***

1St Ave
2Nd Ave
4Th Ave
5Th Ave
6Th Ave
Access Rd
Adams Ave
Adolf Pl
Albert Dr
Allen St
Alyssum Ct
Ann Marie Dr
Anna Dr
Anthony Dr
Antoinette Dr
Apple Blossom Blvd
Argus Dr
Arlington Pl
Arrow Trl
Asbury Pl
Ashford Pl
Ashley Dr
Ashwood Ct
Assumption Ave
Aurora St
Autumn Park
Avenue B
Avenue C
Avian Way
Banner Ave
Barton Rd
Beach Ave
Beatrice Cir
Beaver Brook Ct
Bellwood Ln
Belmont Ave
Belmont St
Benson Dr
Bentley Cir
Benzel Ct
Birchwood Cmn
Biscayne Dr
Bloomfield Ave

Bluejay Cir
Bostwick Pl
Botimer St
Bowen Ave
Box Factory Rd
Bradley Dr
Brady Ave
Brandel Ave
Breck St
Brewster St
Briarwood Dr
Bridgewater Ct
Bridlepath Ln
Briggs Pl
Broadmoor Ct
Broezel Ave
Brookfield Pl
Brookhaven Ln
Brunck Rd
Brunswick Rd
Bryan St
Bryant Pl
Buckingham Ct
Burlington Ave
Burwell Ave
Butler Dr
Cadby Industrial Pkwy
Cadet Cir
Caladium Ct
Calumet St
Cambria St
Cambridge Ct
Camner Ave
Candice Ct
Candlestick Ct
Cardinal Ct
Carter St
Caswell St
Cayuga Ave
Cedarbrook Dr
Cemetery Rd
Center Dr
Central Ave

Chapin Cir
Charlton Pl
Chestnut Cor
Christen Ct
Christophel Dr
Church St
Cidermill Ct
Clark St
Clermont Ct
Cloverfield Ct
Clowerside Dr
Cloyes Ave
Cobblestone Ct
Colonial Ave
Colony St
Columbia Ave
Commerce Pkwy
Commerce Pkwy W
Como Park Blvd
Conner Dr
Conrad St
Conway St
Cotton St
Country Pl
Country View Way
Court St
Coventry Green Cir
Cowing St
Crane St
Crawford St
Creekwood Dr
Daniel Dr
Darwin Dr
David Rd
Deepwood Pl
Deeridge Dr
Deerpath Dr
Devonshire Ln
Didion Rd
Division St
Doehaven Cir
Domino Ct
Donna Lea Dr

Dorchester Ct
Doris Ave
Dorset Dr
Dresser Rd
Ducey Ave
Dudley Pl
E Drullard Ave
E Garfield St
E Home Rd
E Payne St
Eagle Ter
Easton St
Eastport Cross
Eastport Dr
Eastwood Pkwy
Edgewood Rd
Edward St
Eliot Ave
Ellicott Pl
Ellie Ct
Elm Pl
Elmwood Ave
Embry Pl
Enchanted Frst N
Enchanted Frst S
Enterprise Dr
Entry Pl
Erie Pl
Erie St
Evergreen Dr
Fairfield Ave
Falcon Dr
Farmingdale Ct
Farmview Ct
Field Ave
Fieldstone Ln
Fillmore Ave
Florence Ave
Forestream Dr
Forestview Dr
Forton Dr
Fox Trce
Foxhunt Rd

Foxwood Row
Franklin St
Freeman Rd
French Rd
Gale Dr
Garfield St
George Dr
Giallanza Dr
Giele Ave
Glendale Dr
Glenhollow Dr
Gordon Ave
Gould Ave
Grace Way
Grafton Ct
Grambo Dr
Grant St
Greenbriar Dr
Greenmeadow Dr
Hall Rd
Halstead St
Hampton Ct
Hanna St
Hanwell Pl
Harding Ave
Harewood Run
Harlan St
Harold Pl
Harrison Ave
Harvey Dr
Haskell Dr
Hawley St
Hawro Pl
Hawthorne Trl
Hayes Ave
Heather Ln
Heathrow Ct
Hedge Ln
Hemlock Ln
Heritage Dr
Hess Pl
Hidden Trl
Highland Pl

Hill Valley Dr
Hillside Pkwy
Hinchey Ave
Holland Ave
Home Rd
Homeward Pl
Hopkins Pl
Houston St
Hunters Dr
Huntington Ct
Huntley Dr
Huntley Pl
Ida Pl
Idlebrook Ct
Impala Pkwy
Inwood Pl
Iroquois Ave
Iroquois Pl
Irwinwood Rd
Ivy Way
James Pl
Jaycee Pkwy
Jefferson Ave
Jenny Ln
Jillian Ln
Johnson Ave
Joseph Dr
Katelyn Ln
Katherine St
Kayla Ln
Kelly Ann Dr
Kelly Ct
Kennedy Ct
Kibler Dr
Kieffer Ave
Kokomo St
Krieger St
Kurtz Ave
Lake Ave
Lake Forest Pkwy
Lakeside Cres
Lancaster Ave
Lancaster Pkwy

Larkspur Ln
Laverack Ave
Legion Pkwy
Lenox Ave
Leonard Dr
Liberty St
Lincoln St
Lindan Ct
Lindan Dr
Linden Ave
Link Ave
Litchfield Ave
Little Pl
Livingston St
Lombardy St
Louis Dr
Lucia Ct
Madeira Dr
Madison St
Main St
Manitou St
Maple Ave
Maple Dr
Marengo St
Margaretta St
Markey Ave
Marrano Dr
Martha Dr
Mason Pl
Matthews Dr
Mc Kinley St
Meadow Lea Dr
Mechanic St
Meridian St
Michael Anthony Ln
Michaels Walk
Middlesex Rd
Miller St
Milton Dr
Minden St
Mohawk Pl
Monroe St
Montauk Ln

Morgan St
Mount View Pl
Muskingum St
N Aurora St
N Maple Dr
Nashua Ct
Nathans Trl
Neoga St
Newberry Ln
Newell Ave
Norris Ave
Northbrook Ct
Northwood Dr
Nottingham Ln
Oakwood Ave
Oakwood Cmn
Olanta St
Old Genesee Rd
Old Mill Run
Old Orchard Cmn
Old Post Rd
Old Schoolhouse Rd
Olde Stone Ln
Olmstead Ave
Overlook Ct
Overton Ct
Oxford Ave
Palmer Pl
Pardee Ave
Park Blvd
Park Pl
Park Walk
Parkdale Dr
Parkedge Dr
Parkside Dr
Parkview Court Blvd
Parkview Ct
Partridge Walk
Pasquale Dr
Pauline Ct
Peachtree Ct
Pearl St
Penora St

Peppermint Rd
Pershing Ave
Petersbrook Cir
Pheasant Run Ln
Pierce Ave
Pine View Ln
Pinetree Dr
Pleasant Ave
Pleasant Ave W
Plumb Creek Trl
Polk Ave
Pondview Ct
Preston St
Primrose Ln
Quail Holw
Quail Run Ln
Queens Way
Quincy Ave
Ramp
Randolph St
Ravenwood Dr
Raynor Pl
Redlein Dr
Regency Ct
Rehm Rd
Remwood Ave
Richmond Ave
Ridgeview St
Ridgeway St
Riemers Ave
Robert Dr
Robins Nest Ct
Robinwood Ct
Rollingwood Dr
Ronald Dr
Roosevelt Ave
Rose Hill Cir
Rotech Dr
Rue Madeleine Way
Rumford St
Running Brook Dr
Ryan St
S Irwinwood Rd

S Miller St
S Penora St
Sagebrush Ln
Saint James St
Saint John St
Saint Joseph St
Saint Marys Hl
Saint Marys St
Sanilac St
Sara Ln
Sawyer Ave
Schiffler Ct
Schilling Ct
Schlemmer Rd
School St
Scott St
Seitz Ave
Seneca Pl
Shadow Rdg
Shadyside Ln
Sheldon Ave
Sherborne Ave
Sherwood Rd
Shisler Rd
Short St
Siebert Rd
Signal Dr
Simcoe Rd
Simme Rd
Slate Bottom Dr
Southpoint Dr
Southwest Pkwy
Spohn Dr
Spring Way
Spruceland Ter
Squirrel Run
Steinfeldt Rd
Stephens Ct
Stone Hedge Dr
Stony Brook Dr
Storer Ave

Stream View Ln
Sturm St
Stutzman Rd
Suffield Ave
Sugar Mill Ct
Sugarbush Ln
Summerfield Dr
Summit St
Sussex Ln
T J P Ct
Taft Ave
Tanglewood Dr
Taylor Pl
Terrace Blvd
Terrell St
Thomas Dr
Thornapple Ln
Tomahawk Trl
Towne Square Dr
Traceway
Trails End
Transit Blvd
Trenton Ave
Trentwood Trl
Tyler St
Upton St
Valley Overlook Dr
Vandenberg Ave
Veterans Dr
Via Donato
Via Tripodi
Villa Pl
Village Vw
W Drullard Ave
W Home Rd
W Main St
W Payne St
W Pleasant Ave
Wainwright Ct
Walden Ave
Walden Business Centre

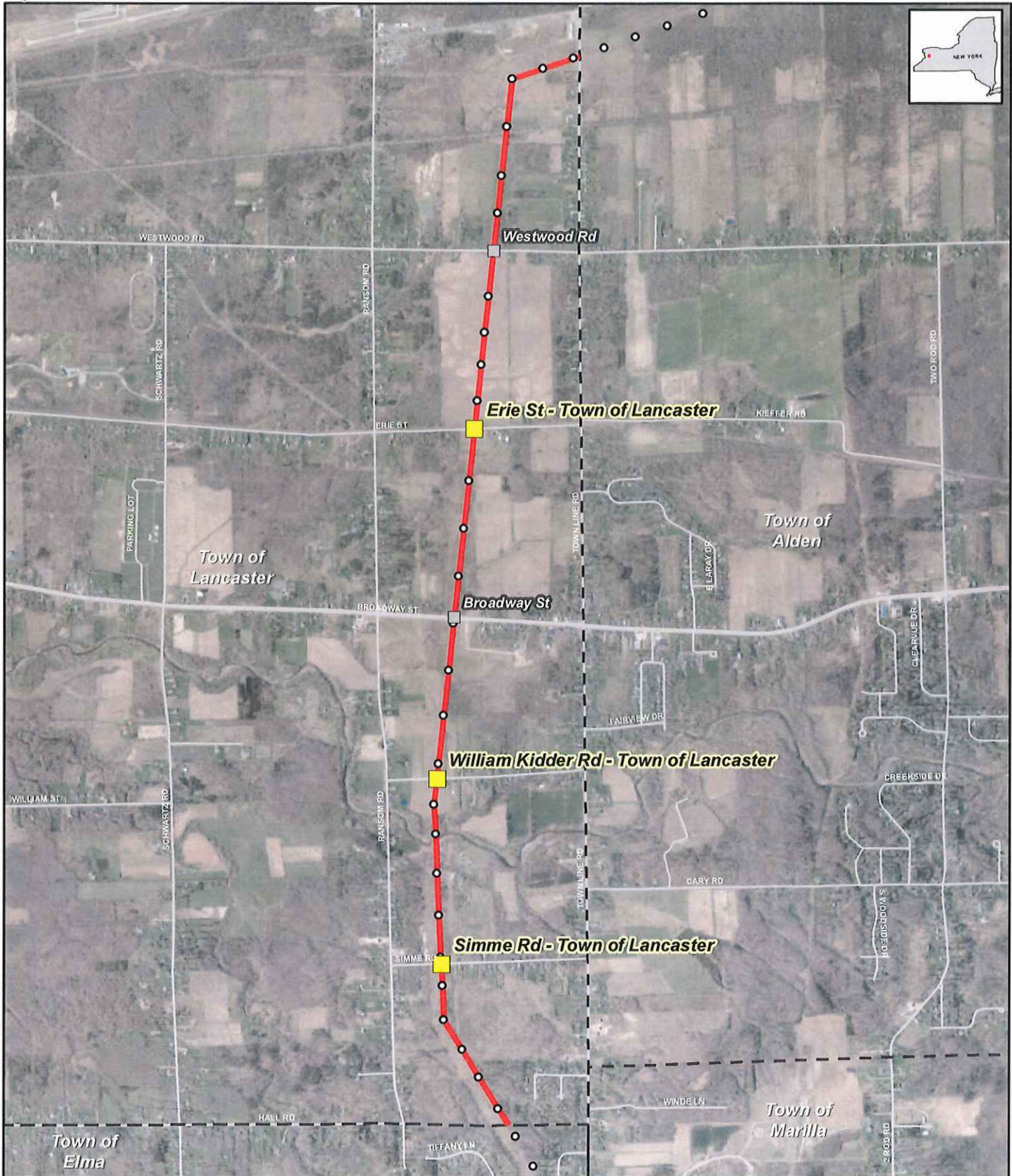
Walden Pond Access Rd
Walnut Creek Trl
Walter St
Walter Winter Dr
Waltham Ave
Ward Rd
Warner Rd
Warsaw St
Washington St
Wayne St
Wayside Dr
Wendel St
Wendling Ct
Wendtworth Ct
Wenona St
West Ave
Westbury Ln
Westfield Ave
Whitestone Ln
Wildwood Dr
Wilkshire Pl
William Kidder Rd
Williamsburg Ln
Willow Ridge Ct
Willow Ridge Ln
Wilma Dr
Wilson Ave
Wilton St
Windcroft Ln
Winding Way
Windsor Ridge Dr
Winfield Ave
Woodgate Dr
Woodlawn Ave
Woodstream Dr
Woodview St
Wren Ave
Wyandotte St

Exhibit B

***List and Map of Roads for Electric
Transmission Line Crossing by the Empire State
Line Project***

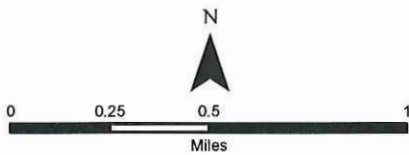
Exhibit B: Town of Lancaster Road Crossings by Empire State Line

FULLNAME	LAT	LONG
Erie St	42.90099423360	-78.58575974070
William Kidder Rd	42.88275450850	-78.58838700200
Simme Rd	42.87309140500	-78.58805930180



**Exhibit B - Map of Road Crossings
Town of Lancaster**

- Town of Lancaster Crossings
- Other Crossings
- Towers
- Empire State Line



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NEW YORK**

September 2018