

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 21-T-0340 - Application of New York Power Authority and Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need for the Rebuild of Approximately 100 Linear Miles of Existing 230 kV to Either 230 kV or 345 kV along with Associated Substation Upgrades Along the Existing NYPA Moses-Willis 1&2, Willis-Patnode, Willis-Ryan, and National Grid's Adirondack-Porter 11, 12 and 13 Lines in Clinton, Franklin, St. Lawrence, Lewis, and Oneida Counties, New York.

**THE DEPARTMENT OF PUBLIC SERVICE STAFF
STATEMENT IN SUPPORT OF THE JOINT PROPOSAL**

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THE STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 21-T-0340 - Application of New York Power Authority and Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need for the Rebuild of Approximately 100 Linear Miles of Existing 230 kV to Either 230 kV or 345 kV along with Associated Substation Upgrades Along the Existing NYPA Moses-Willis 1&2, Willis-Patnode, Willis-Ryan, and National Grid's Adirondack-Porter 11, 12 and 13 Lines in Clinton, Franklin, St. Lawrence, Lewis, and Oneida Counties, New York.

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BACKGROUND

This Statement is filed by the Staff of the Department of Public Service (DPS Staff) designated to represent the public interest in support of the Joint Proposal (JP) dated May 19, 2022. The JP resolves all issues in this proceeding raised by the Power Authority of the State of New York d/b/a New York Power Authority (NYPA) and Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) (collectively, NYPA and National Grid constitute the Applicant), DPS Staff, the New York State Department of Environmental Conservation (NYSDEC), and the New York State Department of Agriculture and Markets (NYSAGM) (collectively, Signatory Parties). Accordingly, DPS Staff supports the JP in its entirety, and recommends that the Commission adopt and approve the JP as filed.

On June 15, 2021, the Applicant filed with the New York State Public Service Commission (Commission) Application documents, pursuant to Article VII of the Public Service Law (PSL) and the Commission's regulations thereunder, for a Certificate of Environmental Compatibility and Public Need (Certificate) authorizing the construction, operation, and maintenance of the Smart Path Connect Project (the Project). The Project consists of rebuilding approximately 100 linear miles of existing 230 kilovolt (kV) transmission lines to either 230 kV

or 345 kV, along with associated substation construction and upgrades. The Project will be primarily located within existing utility rights-of-way. By letter dated August 16, 2021, the Secretary to the Commission (the Secretary) identified certain deficiencies in the Application, which the Applicant addressed in supplemental filings on September 3, 2021, October 1, 2021, October 26, 2021, and December 7, 2021. On December 24, 2021, the Secretary notified the Applicant that the Application complied with PSL §122. Thereafter, the Applicant submitted an additional supplemental filing on March 11, 2022, revising certain exhibits to reflect adjustments to three substations.

Copies of the Application were made available to the public at Badenhausen (Brasher) Branch Library, Massena Public Library, Akwesasne Library & Cultural Center, The Wead Library, Chateaugay Memorial Library, Sarah A. Munsil Free Library, Croghan Free Library, Brantingham Greig Reading and Technology Center, Port Leyden Community Library, Beaver Falls Library, William H. Bush Memorial Library, Erwin Library, Jervis Public Library, Dunham Public Library, Holland Patent Free Library, and Didymus Thomas Library. A procedural conference was held virtually before Administrative Law Judge (ALJ) Anthony Belsito on January 11, 2022. On February 16, 2022, two public statement hearings were held virtually before ALJ Belsito. No public comments were made at either of the hearings. Each hearing was also preceded by a public information forum explaining the PSL Article VII process and information regarding the Project.

DPS Staff has engaged in written discovery of the Applicant. The record for this proceeding, as described in Appendix A of the JP, includes the responses to those respective information requests. DPS Staff additionally conducted field reviews of the Project right-of-way (ROW) and associated facilities.

DESCRIPTION OF THE PROJECT

A detailed description of the Project is provided in the Application and JP Appendix B. The Project was designed to avoid, minimize, or mitigate potential environmental impacts while fulfilling a public policy transmission need to improve reliability and system operability.

COMPLIANCE WITH THE COMMISSION'S SETTLEMENT GUIDELINES

The Commission's Settlement Guidelines state that all decisions, including those to adopt the terms and conditions of a JP, must be just and reasonable and in the public interest.¹ In addition to compliance with proper procedures, determining whether the terms of the JP are in the public interest involves the substantive consideration of the following:

1. Consistency with the law and regulatory, economic, social and environmental State and Commission policies;
2. Whether the terms of the Joint Proposal compare favorably with the likely result of a fully litigated case and produces a result within the range of reasonable outcomes;
3. Whether the Joint Proposal fairly balances the interests of ratepayers, investors and the long-term soundness of the utility; and
4. Whether the Joint Proposal provides a rational basis for the Commission's decision.

Additional consideration is given to the completeness of the record and whether the JP is contested. The Settlement Guidelines explain that the parties' burden to show the JP compares favorably with a litigated result increases when the record is less developed.²

¹ Cases 90-M-0225 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992), p.30.

² Id., p. 31.

There is sufficient support for the JP to warrant its approval here. The Applicant, DPS Staff, NYSDEC, and NYSAGM have executed the JP. Although the other active parties in the case, the Towns of Massena, Boonville, Burke, and Brasher, did not execute the JP, they have indicated they do not oppose the JP at this time.

A public comment was filed onto the DPS Document and Matter Management system by John Donahue on June 8, 2021. Mr. Donahue raised concerns that the Project design will include the expansion of the ROW 12.5 feet onto his property. After reviewing the location of the property in question and consulting with National Grid, it is Staff's understanding that Mr. Donahue's concerns will be addressed through Project design changes made during development of the Environmental Management and Construction Plan (EM&CP) that no longer require expansion of the ROW onto Mr. Donahue's property. The only remaining property acquisition at this location would be National Grid's acquisition of danger tree rights in order to comply with the proposed Certificate Conditions should they be adopted by the Commission. (JP Appendix A, Exhibit 16 (Response to DPS IR 1-7)). A danger tree is defined by the Commission as "any tree rooted outside of a ROW that due to its proximity and physical condition . . . poses a particular danger to a conductor or other key component of a transmission facility."³ By definition, a danger tree must exist outside of the ROW. Therefore, any necessary acquisition of danger tree rights would not constitute an expansion of the ROW and would only give National Grid the right to remove any trees that pose a risk to the transmission line.

³ Case 04-E-0822, In the Matter of Staff's Investigation into New York State's Electric Utility Transmission Right-of-Way Management Practices, filed in C 27605, Order Requiring Enhanced Transmission Right-of-Way Management Practices by Electric Utilities (issued June 20, 2005), p. 13.

The record is adequate to justify adoption of all the JP's terms. The procedural conference and subsequent correspondence and discovery filed by the Applicant and DPS Staff underscore and explain the rationale and basis for many elements of the JP. Additionally, a review of the Applicant's initial filing shows the range of disputed issues that have been brought to balance in the JP. Moreover, the issues that have been resolved in the JP have been vetted through the foregoing mechanisms and the resolution of such falls within the range established by the parties' respective positions. No issue has been resolved that lies outside the parameters established by the submissions put forward in this case.

The remaining criteria for judging whether a JP is reasonable are directed towards ascertaining whether the proposed terms are in the public interest. As demonstrated below, the JP meets the public interest standard and, thus, should be approved by the Commission.

SETTLEMENT NEGOTIATIONS

Through discovery, exploratory discussions, and site investigations, the parties narrowed the issues. On December 27, 2021, the Applicant filed, and served on all parties on the Commission's Active Party List for this proceeding, a notice of impending settlement negotiations pursuant to 16 NYCRR §3.9.

On December 27, 2021, the Applicant circulated a draft set of proposed Certificate Conditions to all parties on the Commission's Active Party List at that time who indicated that they wished to participate in settlement negotiations (participating parties). As additional parties joined the Commission's Active Party List, those parties were invited to participate in settlement negotiations. Ten settlement conferences were held virtually among the Applicant and the participating parties on January 10, 2022, January 25, 2022, February 8, 2022, February 25, 2022, March 8, 2022, March 22, 2022, April 5, 2022, April 19, 2022, May 3, 2022,

and May 17, 2022. Electronic communications were utilized to finalize settlement discussions. The participating parties worked together on developing a JP, Certificate Conditions and Monitoring Requirements (Certificate Conditions), and Specifications for the Development of Environmental Management and Construction Plan (EM&CP Specifications) that would minimize potential adverse environmental and cultural impacts and protect environmental resources. Based on the record, it was appropriate to resolve the issues raised in connection with the Application through a JP. At the various settlement conferences, the participating parties discussed drafts of the JP, including the Certificate Conditions, EM&CP Specifications, and associated guidance documents. At the conferences and by email, parties submitted proposed additions and revisions to these documents. Many of these modifications and additions were incorporated into the draft JP and its Appendices. As a result of these negotiations, the Applicant, DPS Staff, NYSDEC, and NYSAGM have reached accord on the terms of a JP and supporting documents for approval by the Commission.

SUMMARY OF SETTLEMENT AND PUBLIC SERVICE LAW
ARTICLE VII REQUIRED FINDINGS

The settlement document consists of the JP, including Appendices. In the JP, the Signatory Parties have agreed:

1. The Commission may make the findings required for the grant of a Certificate pursuant to PSL §126(1), as summarized below.
2. The record adequately describes the Project.
3. The record establishes the need for the Project.
4. The record describes the probable environmental impacts and shows that the Project will have minimum adverse impacts on the environment, considering the state of available technology and the nature and economics of various alternatives.
5. The record demonstrates that the Project should not be installed underground.

6. The record indicates that the Project conforms to the State's long-range plan for expansion of the electric power grid of the electric systems serving this State and interconnected utility systems and will serve the interest of electric system economy and reliability.
7. The record shows that the location of the Project as proposed conforms to the applicable State and local laws except those local laws or ordinances which the Applicant has asked that the Commission refuse to apply.
8. The record demonstrates that the Project will serve the public interest, convenience, and necessity. The proposed Certificate Conditions and Monitoring Requirements (contained in JP Appendix D), if implemented, will ensure that the Project will comply with the Signatory Parties' expectations regarding the various topics covered in that Appendix. The proposed EM&CP Specifications and associated guidance documents (contained in JP Appendices E, F, G, H, and I), if carefully followed, will ensure the preparation of an EM&CP that will assure compliance with the terms and conditions contained in the Certificate.

The Project is consistent with the Commission's findings in its October 15, 2020, Order on Priority Transmission Projects in Case 20-E-0197 and is necessary to realizing the full potential of renewable energy development in the Northern New York area and meeting the State's mandates under the Climate Leadership and Community Protection Act. Further, the Project conforms to the requirements and planning objectives of the New York Independent System Operator and is consistent with New York's long-range plans to expand its Bulk Electric System pursuant to PSL §126.1(e)(2). The Project expands both the Smart Path (Case 18-T-0207) and AC Transmission Proceedings (Cases 19-T-0549 and 19-T-0684) to establish a continuous 345 kV path that will greatly expand the deliverability of renewable generation from northern and western New York to load centers. The Project will also significantly reduce congestion and curtailments affecting that renewable generation, thus reducing the costs of the delivered power for customers.

The Project represents the minimum adverse environmental impact, and minimum adverse impact on active farming operations, considering the state of available technology and

the nature and economics of the various alternatives and other pertinent considerations. Any anticipated impacts to wetlands or agricultural lands will be further minimized to the extent practicable by adhering to the requirements set forth in the proposed Certificate Conditions and EM&CP Specifications. Additionally, by utilizing existing transmission corridors to the maximum extent practicable, the effect of the Project on existing land use, activities, and traffic is minimized.

SUFFICIENT NOTICE WAS PROVIDED TO ALL INTERESTED PARTIES

All parties received reasonable and sufficient notice of the settlement negotiations as required by 16 NYCRR §3.9(a). All parties that opted to participate in settlement negotiations received notice of the settlement conferences.

THE JOINT PROPOSAL FAIRLY RESOLVES ALL CONCERNS REGARDING THE CONSTRUCTION, OPERATION AND MAINTENANCE OF THE PROJECT

Because of the nature of the Project, the progress of discovery, and the Project's compliance with the PSL, the parties have not developed litigation positions. Given the nature and scope of the Application, the terms and conditions of the JP are within the range of likely outcomes of litigation, if such litigation had occurred. The JP was reached in compliance with the Commission's settlement regulations and guidelines. The JP represents a fair and equitable balance of all the pertinent interests expressed in this proceeding and is consistent with sound environmental, social, and economic policies of the Commission and the State. Finally, the terms of the JP are, in many respects, consistent with the Commission's previous adoption of similar PSL Article VII proceedings.

