



**Case 19-T-0549**

**Petition to Amend Certificate of Environmental Compatibility and  
Public Need**

**August 8, 2025**

**Attachment B**

**Order Adopting Joint Proposal  
(issued and effective January 21, 2021)**

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 19-T-0549 - Application of LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for Edic/Marcy to New Scotland; Princetown to Rotterdam Project.

ORDER ADOPTING JOINT PROPOSAL

Issued and Effective: January 21, 2021

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on January 21, 2021

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Diane X. Burman, concurring  
James S. Alesi  
Tracey A. Edwards  
John B. Howard

Case 19-T-0549 - Application of LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for Edic/Marcy to New Scotland; Princetown to Rotterdam Project.

ORDER ADOPTING JOINT PROPOSAL

(Issued and Effective January 21, 2021)

BY THE COMMISSION:

I. INTRODUCTION

On August 20, 2019, LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority (collectively, the Applicant) submitted an application to the New York State Public Service Commission (Commission), for a Certificate of Environmental Compatibility and Public Need (Certificate) pursuant to Public Service Law (PSL) Article VII for authority to construct the "Marcy to New Scotland Upgrade Project" (Project). The Project would consist of an approximately 93-mile, 345-kilovolt (kV) transmission line starting at the Edic substation in Marcy and extending through the Towns of Deerfield and Marcy in Oneida County; the Towns of Schuyler, Frankfort, German Flatts, Little Falls, Stark, Danube,

and the Village of Ilion in Herkimer County; the Towns of Minden, Canajoharie, Root, Charleston, Glen, and Florida in Montgomery County; the Towns of Duanesburg, Princetown, and Rotterdam in Schenectady County; and the Towns of Guilderland and New Scotland in Albany County, before terminating at the New Scotland substation in Albany. The Project would include upgrades to the Marcy and Edic substations, construction of a new substation in Princetown, construction of a new substation and upgrades to an existing substation in Rotterdam, and upgrades to the New Scotland substation, along with the removal and replacement of segments of existing transmission lines.

On June 5, 2020, the Applicant filed a Joint Proposal purporting to resolve all the issues between the Applicant, Staff of the Department of Public Service (DPS Staff),<sup>1</sup> Staff of the New York State Department of Environmental Conservation (DEC Staff), and Staff of the New York State Department of Agriculture and Markets (Ag&Mkts Staff) (collectively, the Signatory Parties). The Joint Proposal is opposed by Cricket Valley Energy Center, LLC (Cricket Valley). However, the Joint Proposal addresses all of the statutory and regulatory issues pertaining to the Applicant's request for a Certificate to reconstruct, maintain and operate this rebuild facility, adequately discusses all probable environmental impacts, and addresses the steps needed to ensure that the facility represents the minimal adverse environmental impact considering the state of available technology and the nature and economics of various alternatives and other pertinent considerations. Moreover, as described below the record in this case also fully supports a finding of public need. We determine that the facility is necessary to increase transmission capacity across

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<sup>1</sup> Designated to represent the public interest in this proceeding. PSL §124(2).

the Central East interface, and that need is expected to continue as New York works toward the requirements of the Climate Leadership and Community Protection Act (CLCPA) and the Accelerated Renewable Act. We further determine that by moving power efficiently and cost effectively across the Central East interface, the Project will advance numerous public policies including reducing congestion and production costs, improving market competition and liquidity, enhancing efficiency, reliability, and resiliency, and avoiding refurbishment costs of aging infrastructure.

Therefore, in this Order, we adopt the Joint Proposal with the minor exception of some terms that are self-executing agreements governing the relationships among the parties and unnecessary to our review. Accordingly, we grant to the Applicant, pursuant to PSL Article VII §121, a conditional Certificate of Environment Compatibility and Public Need (Certificate).

## II. BACKGROUND

On August 20, 2019, LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority (collectively the Applicant) submitted an application to the New York State Public Service Commission (Commission), for a Certificate of Environmental Compatibility and Public Need (Certificate) pursuant to PSL Article VII for authority to construct the Project.

The submission of the Art. VII application follows and results from the New York Independent System Operator's (NYISO) Public Policy Transmission Planning Process (PPTPP).<sup>2</sup> The

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<sup>2</sup> The NYISO's PPTPP Public Policy Transmission Planning Process is prescribed under its Open Access Transmission Tariff (OATT). See, OATT, Attachment Y, §31.4, et seq.

NYISO's PPTPP was developed to comply with the Federal Energy Regulatory Commission's (FERC) Order No. 1000, which requires, among other things, a planning process for the consideration of transmission need driven by Public Policy Requirements.<sup>3</sup> The NYISO OATT defines a Public Policy Requirement as:

[A] federal or New York State statute or regulation, including (a Commission Order) adopting a rule or regulation subject to and in accordance with the State Administrative Procedure Act, any successor statute, or any duly enacted law or regulation passed by a local governmental entity in New York State, that may relate to transmission planning on the [Bulk Power Transmission Facilities].<sup>4</sup>

The PPTPP consists of four major processes: (i) the identification of Public Policy Requirements/Public Policy Transmission Needs (PPTNs) by the Commission; (ii) the solicitation of proposed solutions to identified PPTNs by the NYISO; (iii) the evaluation of the viability and sufficiency of proposed transmission and non-transmission solutions to the PPTNs by the NYISO; and, (iv) upon confirmation of the transmission need by the Commission, the evaluation and selection of the more efficient or cost-effective transmission project to satisfy the PPTN by the NYISO.<sup>5</sup>

In December of 2015, the Commission found a PPTN for new 345 kV major electric transmission facilities to cross the Central East and UPNY/SENY interfaces to provide additional

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<sup>3</sup> See FERC Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000 (issued July 21, 2011), rehearing denied, Order No. 1000-A (issued May 17, 2012), rehearing denied, Order No. 1000-B (issued October 18, 2012).

<sup>4</sup> NYISO OATT, Attachment Y, §31.1.1.

<sup>5</sup> NYISO Public Policy Transmission Planning Process Manual; Section 1.1 (July 2015).

transmission capacity to move power from upstate to downstate. The Commission also found that the 2015 State Energy Plan, and portions of State Energy Law "together constitute Public Policy Requirements driving transmission needs."<sup>6</sup> The Commission then directed the NYISO to commence the solicitation and evaluation of proposed solutions to the identified PPTNs.<sup>7</sup>

In February 29, 2016, the NYISO solicited potential solutions to resolve the Commission's identified PPTN. On October 28, 2016, the NYISO filed the results of its Viability and Sufficiency Assessment with the Commission.<sup>8</sup> In January 2017, the Commission, after considering parties' comments regarding the NYISO's report, found that a PPTN continued to exist and directed the NYISO evaluate and select the more efficient or cost-effective transmission solution.<sup>9</sup>

In February 2019, the NYISO Market Monitoring Unit issued its report evaluating the market effects of the proposed AC Public Policy Transmission Projects.<sup>10</sup> On April 8, 2019, the NYISO selected developers to build two transmission projects

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<sup>6</sup> Case 12-T-0502, Proceeding to Examine Alternating Current Transmission Upgrades, Order Finding Transmission Needs Driven by Public Policy Requirements (issued December 17, 2015) p. 68.

<sup>7</sup> Id., Appendix A.

<sup>8</sup> Case 12-T-0502, supra, NYISO AC Transmission PPTN VSA Report (October 28, 2017).

<sup>9</sup> Case 12-T-0502, supra, Order Addressing Public Policy Transmission Need for AC Transmission Upgrades (January 24, 2017), p. 3.

<sup>10</sup> See Paynter Exhibit-1, NYISO MMU Evaluation of the Proposed AC Public Policy Transmission Projects, Potomac Economic, Market Monitoring Unit for the New York ISO, February 2019.

designed to meet the PPTN.<sup>11</sup> In July 2019, the Commission directed the selected developers to file PSL Article VII Applications.<sup>12</sup> The Commission again recognized the continuing “need to enhance the State’s bulk transmission system, as articulated in the PPTN Order and by the NYISO in its analysis.”<sup>13</sup>

In that Order, the Commission also denied a petition for rehearing which argued that there was no need for the AC Transmission upgrades, the costs of the Projects outweigh the benefits, and they should not move forward.<sup>14</sup> The Commission explained that the PPTPP is designed to consider needs other than reliability or cost savings and that the “record in these matters is replete with studies and analysis from the Brattle Group, NYISO, and Department of Public Service Staff, that outlines both the need for these projects and their ability to provide statewide benefits at levels in excess of or commensurate to their costs.”<sup>15</sup>

### III. THE APPLICATION

On August 20, 2019, the Applicants filed an application for a Certificate of Environmental Compatibility and Public Need (Certificate) pursuant to Public Service Law Article

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<sup>11</sup> See, NYISO Board of Directors Decision on Approval of AC Transmission Public Policy Transmission Planning Report and Selection of Public Policy Transmission Projects (issued April 8, 2019), <https://www.nyiso.com/documents/20142/1390750/Board-DecisionAC-Transmission-2019-04-08.pdf/32323d32-f534-a790-1b03-2cb110033320>. (NYISO Board Decision).

<sup>12</sup> Case 12-T-0502, supra, Order Denying Rehearing and Addressing Further Process for Examining Alternating Current Transmission Upgrades (issued July 16, 2019)(Process Order).

<sup>13</sup> Id., p. 12.

<sup>14</sup> Id., p. 13.

<sup>15</sup> Id., pp. 12-13.

VII for authority to construct Segment A of the PPTN.<sup>16</sup> The Application was determined complete in accordance with PSL §122 as of December 18, 2019.<sup>17</sup> On January 7, 2020, the Applicant filed a notice of impending settlement negotiations notifying parties and interested persons that settlement negotiations would begin on or about January 17, 2020.<sup>18</sup>

On June 5, 2020, Dominion Energy Transmission, Inc. (Dominion) and Cricket Valley filed their respective testimony and exhibits. Dominion's filed testimony and exhibits related to its assessment of potential impacts to its natural gas transmission lines occupying or crossing the same right-of-way as the Applicant's project.<sup>19</sup> Cricket Valley filed testimony regarding the economic analysis performed on its behalf by Guidehouse, Inc.<sup>20</sup> and testimony by Ronald E. Paryl regarding "the impact on customers and the electricity and capacity markets of the non-cost-effective nature of the [AC Transmission] Projects and the Applicants' reliance on out-of-date data and analysis to support their case."<sup>21</sup>

Also, on June 5, 2020, the Applicant filed a Joint Proposal signed by the Applicant, DPS Staff, DEC Staff, and

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<sup>16</sup> The Applicant filed supplements on December 18, 2019 (supplemental information on nearby, crossing or connecting rights-of-way or facilities), March 2, 2019 (supplemental information on Princetown substation), May 20, 2019 (interim configuration at the new Rotterdam substation).

<sup>17</sup> Secretary Letter, December 20, 2019.

<sup>18</sup> According to the Applicant, settlement negotiations took place on January 17, 2020, February 14, 2020, March 12, 2020, March 24, 2020, April 9, 2020, and April 28, 2020.

<sup>19</sup> Testimony Daniel R. Younkin (June 5, 2020), p. 2.

<sup>20</sup> Amanvir Chahal and Matthew Tanner Testimony (June 5, 2020).

<sup>21</sup> Testimony of Ronald E. Paryl (June 5, 2020).

Ag&Mkts Staff.<sup>22</sup> The Joint Proposal purports to be in the public interest and consistent with the Commission's settlement guidelines.<sup>23</sup>

A notice inviting comment on the Joint Proposal was issued on June 12, 2020, and letters transmitting the notice were sent to all landowners within 150 feet of the Project right-of-way. Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Iroquois Gas Transmission System LP (Iroquois) and Cricket Valley filed comments.<sup>24</sup>

On June 26, 2020, DPS Staff filed rebuttal testimony and exhibits<sup>25</sup> and the Applicant filed the rebuttal testimony and exhibits of Casey Carrol, Robert Schaerer, Lawrence J. Willick and Jinxiang Zhu and Joshua York.<sup>26</sup> On July 14, 2020, Dominion filed surrebuttal testimony and on July 16, Cricket Valley also filed surrebuttal testimony.

On July 15, 2020, the Applicant filed a motion requesting a procedural ruling: (i) that an evidentiary hearing is unnecessary for lack of contested issues of material fact; (ii) that all testimony and exhibits be received into the record of this proceeding by a written ruling; and (iii) the case proceed directly to the Commission after briefing by the parties

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<sup>22</sup> The Joint Proposal includes proposed Commission Findings Statement (Appendix C) and proposed Certificate Conditions and Monitoring Requirements (Appendix D). The New York Thruway Authority is also a signatory to the Joint Proposal. See Signature Page (July 20, 2020).

<sup>23</sup> Joint Proposal (June 5, 2020), p. 4.

<sup>24</sup> Iroquois Comments, July 2, 2020; National Grid Comments, July 3, 2020; Cricket Valley Comments, July 3, 2020.

<sup>25</sup> Thomas Paynter Testimony (June 26, 2020).

<sup>26</sup> Rebuttal Testimony and accompanying exhibits of Casey Carrol, Robert Schaerer, Lawrence J. Willick and Joint Testimony of Jinxiang Zhu and Joshua York (June 26, 2020). Zhu and York filed clean and redlined versions of revised testimony on July 1, 2020, which corrected various errata.

without issuance of a recommended decision. On July 30, 2020, the Administrative Law Judge ruled that no further hearings were required and directed the parties to address the issues they identified as still being in dispute through submission of legal briefs. The ruling also invited the parties to make written motions to admit, and/or correct their pre-filed testimonies and exhibits and propose new exhibits for inclusion in the record as appropriate, which several parties did, by August 7, 2020.

On August 14, 2020, Cricket Valley moved for interlocutory review of the July 30, 2020 ruling. In its motion, Cricket Valley argued that disputed issues of material fact continue to exist and that it has a right to an evidentiary hearing involving cross-examination.

On October 19, 2020, the Commission denied Cricket Valley's motion stating that "the record has been developed sufficiently for Cricket Valley to make its points in written argument as they are directed at policy and legal considerations for the Commission to determine in granting or denying Article VII approval."<sup>27</sup> The Commission further stated that "the facts underlying the issues pursued by Cricket Valley regarding the costs and benefits of the proposed Project have been thoroughly vetted in testimony and discovery."

#### IV. JOINT PROPOSAL

The Joint Proposal and associated Appendices, filed on June 5, 2020, contain the terms, conditions, practices, and guidelines recommended by the signatory parties for inclusion in a Certificate for the Project. The Joint Proposal provides the most updated description of the Project.<sup>28</sup>

#### Need for the Project

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<sup>27</sup> Case 19-T-0549, supra, Order Denying Interlocutory Appeal (issued October 19, 2020).

<sup>28</sup> See Joint Proposal, Appendix B.

The Joint Proposal explains that in the PPTN Order, issued in accordance the NYISO's OATT,<sup>29</sup> the Commission found a public policy need to expand transmission capacity between upstate power generation sources and downstate consumers on New York's alternating current (AC) bulk electric transmission system. The Joint Proposal also noted the multiple benefits the Project will provide, as described in the PPTN Order.

The Joint Proposal explains that the Signatory Parties agree that Project was selected by the NYISO in a competitive solicitation to address Segment A of the PPTN as determined by the Commission in the PPTN Order. The Joint Proposal notes that the NYISO based this selection upon the finding that the Project, when compared with competing proposals, is more efficient and cost effective, replaces the greatest amount of aging infrastructure, and provides the highest Central East interface capability. The Joint Proposal points out that the NYISO also concluded that the Project will obviate the need for incurring a significant amount of transmission refurbishment costs and will provide benefits related to increased production savings, operability and expandability, and lower electromagnetic field compliance risk due to its double circuit design. According to the Joint Proposal, the Signatory Parties agree that the Project will provide needed increased transmission capacity across the Central East interface, and that by moving power efficiently and cost effectively across that interface, the Project will provide the various economic and public policy benefits set forth in the PPTN Order.<sup>30</sup>

#### Project Costs

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<sup>29</sup> See OATT Attachment Y §31.4.2.1.

<sup>30</sup> Joint Proposal, pp. 7-9 (citing Application Exhibits 6 and E-4).

The Joint Proposal states that the estimated cost of the Project is \$853,752,000 (2018 dollars) which is based on the cost estimates provided by Substation Engineering Company (SECO) in evaluating the PPTN proposals received by the NYISO.<sup>31</sup> The Joint Proposal promises a more definitive cost estimate that includes consideration of the certificate conditions and the requirements of the Environmental Management and Construction Plan (EM&CP).

The Signatory Parties expect a short-term stimulus to the local and regional economy by increasing employment and earnings in the construction industry, during construction of the Project. An increase in demand for goods and services and related tax revenues will provide a positive impact on the local economy through direct and indirect Project-related expenditures. The Signatory Parties do not expect construction and operation of the Project to result in any significant changes in residential, commercial, agricultural or industrial land use patterns in any community crossed by the Project.<sup>32</sup>

#### Environmental Impacts

The Signatory Parties agree that the Project, as described in the Joint Proposal and accompanying Appendices, avoids or minimizes to the extent practicable and significant adverse environmental impacts considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.<sup>33</sup> The environmental impacts are expected to be minimal and limited to temporary, construction-related activities, primarily because the Project will be constructed and operated almost entirely within an approximate 93-mile, existing utility-owned

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<sup>31</sup> Id., p. 9 (citing Application Exhibit 9).

<sup>32</sup> Id., p. 10 (citing Application Exhibit 6).

<sup>33</sup> id., p. 10.

transmission line corridor. The Project design also avoids or minimizes potential disturbances to existing land uses, activities and traffic.

#### Land Use Impacts

Land uses adjacent to or near the Project vary along the existing transmission line route. Because the Project will be constructed within an existing utility owned transmission corridor, there will be very little change in land use conditions as a result of the Project. The Joint Proposal states that land utilization could increase within the ROW after construction because the project will result in significantly fewer structures (675) than exist now (1250).

The Signatory Parties agree that the Project will not impede the goals of the 2016 New York State Open Space Plan, and that the Project is also consistent with various comprehensive land use plans adopted by the local municipalities along the ROW. Existing access roads will be used to the extent practicable. The Project does not require the Applicant to acquire additional property rights for substation upgrades or related construction work. As part of the upgrades at the Edic substation, expected construction will necessitate expansion of the substation fence line by approximately 0.8 acres of previously disturbed land owned by National Grid.

The proposed Princetown substation will result in a permanent change in use on an approximately 6-acre parcel located at northwest quadrant of the junction of the two existing electric transmission corridors that constitute the Project ROW for the proposed Princetown substation.<sup>34</sup> The site is currently occupied by the remains of a burned down residence, trailers, outbuildings, and other items that will be removed. Construction support for the substation will require the removal

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<sup>34</sup> Id., p. 12 and Appendix B.

of a residence and outbuildings on a separate approximately 6-acre parcel located in the southwest quadrant where the two existing electric transmission corridors intersect. Existing vegetation on the site will be retained to the maximum extent practicable to provide screening and buffers.

A portion of the Project ROW is located within the Erie Canal-East region of the Erie Canalway National Heritage Corridor (ECNHC). The Signatory Parties agree that the Project will not interfere with the land use or economic development plans outlined in the ECNHC Preservation and Management Plan.<sup>35</sup>

#### A. Agricultural Resource Impacts

The Project ROW crosses active agricultural lands and nine designated New York Agricultural Districts. The ROW also contains both prime soils and soils of statewide significance. The Signatory Parties state that operation of the Project will allow for the co-existence of active farmland and transmission lines within the Project ROW. However, temporary impacts to agricultural lands may occur during construction.

To minimize potential impacts to agricultural resources, the Applicant agrees to adhere to NYSDAM "Guidelines for Electric Transmission Right-of-Way Projects" dated 04-27-11 and will identify and implement measures designed to minimize impacts to active agricultural land in the EM&CP. The Applicant also agrees to adhere to the conditions the Proposed Certificate Conditions.<sup>36</sup> The Project will result in fewer structures sited within agricultural fields, thereby increasing land available for cultivation and facilitating operation of farm equipment within the Project ROW.

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<sup>35</sup> Id., p. 12-13.

<sup>36</sup> Id., p. 13 and Appendix D, Proposed Certificate Conditions, Section N, Agricultural Resources.

B. Visual Resource Impacts

The Signatory Parties agree that the overall visual character and visual quality of the Project corridor for any view group will not be substantially altered. The results of the Applicant's viewshed analysis indicate that there will be some increased visibility due to the increased height of the proposed structures and the construction of two new substations. However, the proposed design is not likely to result in any significant change in the overall visual quality of the corridor. The Joint Proposal states that minimizing visual impacts is achieved by using the existing electric transmission corridor, installing monopoles structures with greater spans between each structure, and reducing the number of structures by nearly fifty percent.

Temporary visual impacts are expected during construction immediately adjacent to the Project ROW and along public roads crossing the ROW. Construction activities associated with the new substations will have a longer duration but will also result in temporary visual effects resulting from construction equipment and workers. The new Princetown and Rotterdam substations will result in new visual elements, but the setting and site characteristics of the substation sites will help minimize visual impacts of the new facilities. Setbacks from roads and minimizing tree clearing in the areas around the substation will also work to minimize visibility.

C. Cultural & Historic Resource Impacts

The study submitted as part of the Application identified 166 documented archaeological sites within the 1-mile radius study area. None of the sites are listed on the National Register of Historic Places (NRHP); 12 sites have been

determined to be NRHP eligible; 21 sites have been determined to be not eligible for the NRHP; and 133 sites have had no NRHP determinations to date.<sup>37</sup> A complete list of the archaeological sites is included in Exhibit 4 of the Application (Evidentiary Record, Exhibit 20, Appendix A).

The Applicant has agreed to conduct a Phase IB archaeological survey of the area of potential effects (APE) to identify potential impacts on archaeological resources due to Project activities. The survey will delineate specific areas of archaeological sensitivity, determine the presence of resources within the direct effect APE, and recommend further archaeological investigations (a Phase II survey) as appropriate. Adverse effects to such NRHP-eligible sites will be mitigated through the implementation of avoidance measures or, if not avoidable, by Phase III data recovery investigations. The Applicant will consult with the OPRHP during the preparation of the EM&CP. Site-specific mitigation recommendations and/or avoidance measures will be developed as necessary to address the OPRHP's determinations of Project effects on archaeological resources.

The Applicant also conducted a review of architectural historic resources within a 3-mile radius of the Project centerline. This review identified 278 individual properties and historic districts listed or determined eligible for listing in the NRHP.<sup>38</sup> No historic architectural resources exist at the Princetown substation site. The Applicant believes that demolition of the structures at this site will not result in significant impacts to historic resources given the current dilapidated condition of the structures.

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<sup>37</sup> Id., p. 15-16 (citing Application Exhibit 4).

<sup>38</sup> Id., p. 16. See Supplemental Application Exhibit 4 for complete lists of NRHP-listed and HRHP-eligible properties.

The Joint Proposal states that the architectural APE for indirect effects includes fourteen properties with twelve having views of the existing transmission lines in the Project ROW. The Project may be visible from the two remaining historic architectural resources, Holy Trinity and Enlarged Double Lock No. 23 of the Old Erie Canal. However, the distances between those sites and the lines in question (1.55 miles and 0.76 miles, respectively), will assure any adverse impacts are avoided or minimal.

The Joint Proposal indicates there are no Native American reservation lands traversed by the Project corridor. Consultations with these nations will be held by the lead federal agency to the extent necessary in accordance with Section 106 of the National Historic Preservation Act. The Signatory Parties agree that the Proposed Certificate Conditions and additional mitigation measures to be proposed in the EM&CP with respect to cultural and historic resource impacts will avoid impacts to these resources to the maximum extent practicable.<sup>39</sup>

#### D. Terrestrial Ecology & Wetland Impacts

##### 1. Vegetation

According to the Joint Proposal, the Project ROW has been subject to periodic vegetation management for decades. Following construction, the Project ROW will continue to be maintained in accordance with a Long-Range Right-of-Way Management Plan, as set forth in the Proposed Certificate Conditions.<sup>40</sup> The Project's siting within existing transmission corridors reduces ROW clearing to the maximum extent practicable. Only minimal tree clearing, necessary to maintain electrical clearances is required.

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<sup>39</sup> Id., p. 17. See Appendix D, Section K.

<sup>40</sup> Id., p. 18. See Appendix D, Section L.

Approximately 3.4 acres of clearing is required within the transmission line ROW, including approximately 1.4 acres near and adjacent to the New Scotland substation. An additional clearing of 2.5 acres of deciduous woodland adjacent to the Project ROW will be necessary for construction of the Princetown substation.<sup>41</sup> The Signatory Parties agree that the proposed ROW clearing represents the required clearing necessary to prevent interference of vegetation with the proposed facility considering design aspects such as structure height and span length in accordance with good utility practice.

2. Invasive Species

The Joint Proposal includes an agreed to Invasive Species Management Plan<sup>42</sup> intended to avoid and minimize impacts related to invasive species. The Invasive Species Management Plan will be made part of the approved EM&CP.

3. Wetlands and Streams

Both temporary and permanent impacts to wetlands are anticipated. Approximately 3.5 acres of wetlands, none of them NYSDEC regulated wetlands, are present within the approximately 12-acre survey area for the proposed Princetown substation site. However, only 0.08 acres are expected to be permanently impacted. Permanent impacts associated with the Project may include fill associated with structure placement, and fill of wetlands and NYSDEC adjacent areas for widening of existing access roads. Temporary impacts associated with construction may include temporary loss of wetland functions for construction access routes and structure construction workspace locations, installation of temporary bridges and culverts to provide construction access across waterways, and limited dewatering of surface or subsurface waters in select work areas. The

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<sup>41</sup> Id., p. 18. See Supplemental Exhibit 2, Figure 2-3.

<sup>42</sup> Id., Appendix G.

Applicant has agreed to the measures contained in the Proposed Certificate Conditions, the Specifications for the Development of the EM&CP, the NYSDEC Supplemental Specifications for Wetland and Waterbodies, and requirements of the Project's EM&CP. The Joint Proposal requires filing of a Wetland Mitigation Plan describing plans for compensatory mitigation for unavoidable net impacts to wetlands.

The Joint Proposal requires the Applicant to minimize impacts to protected streams by minimizing the number of streams crossed by access roads, utilizing existing crossings to the maximum extent feasible, not placing structures in streams, spanning across streams, and additional measures identified in the Proposed Certificate Conditions, and the NYSDEC Supplemental Specifications for Wetland and Waterbodies.<sup>43</sup>

#### 4. Impacts on Protected Wildlife and Plants

The Joint Proposal indicates that several threatened and endangered species in the vicinity of the Project, including the Northern Long-eared Bat (*Myotis septentrionalis*), the Indiana Bat (*Niotsis sodalist*), Least Bittern (*Ixobrychus exilis*), Pied-billed Grebe (*Podilymbus podiceps*), Sedge Wren (*Cistothorus platensis*), King Rail (*Rallus elegans*), Henslow's Sparrow (*Ammodramus henslowii*), Upland Sandpiper (*Bartramia longicauda*), Bald Eagle (*Haliaeetus leucocephalus*), Short-eared Owl (*Asio flammeus*), and Northern Harrier (*Circus cyaneus*). Two state listed plant species: Side-oats Grama (*Bouteloua curtipendula*) and Brown Bog Sedge (*Carex buxbaumii*) are also within the Project vicinity. The proposed Certificate Conditions include specific measures for avoidance, minimization, and mitigation of impacts to these species. The Applicant is required to develop associated mitigation plans in

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<sup>43</sup> See Joint Proposal, Appendices D and F.

consultation with NYSDEC and DPS and these plans will be part of the filed EM&CP to be approved by the Commission.

5. Impacts on Topography & Soils

The Joint Proposal points out that the Project ROW traverses three physiographic regions of New York State: the Tug Hill Plateau, the Hudson-Mohawk Lowlands, and the Allegheny Plateau. Topographic and soil characteristics within the ROW, including a few isolated areas of steep slopes associated with stream and/or river valleys which will influence structure placement and foundation design, but are not expected to affect the long-term integrity of the structures. The Joint Proposal states that construction and operation of the Project are not expected to result in significant effects to topographic and soil conditions and, therefore, significant changes to stormwater runoff are not expected. Minor changes to topography may occur because of grading necessary to prepare work areas and access roads. These areas will be identified in the EM&CP.

The Joint Proposal also provides for post-construction restoration of work areas, access roads and substations which will include decompacting areas of compacted soil, grading the transmission line corridor and substation fringe area back to original grade, where practicable, or otherwise providing appropriate, stabilized conditions, and sowing appropriate seed mixes. Additional measures to minimize soil disturbance and topographic impacts are required to be identified in the EM&CP.

Twenty-one active mines and gravel pits have been identified within three miles of the Project ROW. The Project will not adversely impact these operations due to its use of the existing utility ROW. The Applicant has agreed to conduct geotechnical investigations prior to construction in order to support final Project design and to develop site

specific erosion and sediment control measures which will be provided as part of the EM&CP.

E. Transportation Impacts

The anticipated effects of Project construction and operation on airports, railroads, marine traffic, roadways, and pedestrian ways are described in the Joint Proposal as primarily temporary impacts. The Applicant will perform an evaluation pursuant to the Federal Aviation Administration's (FAA) criteria enumerated in 14 CFR §77.13 during final design and, if necessary, will submit notice to the FAA to determine if the proposed transmission structures and construction activities will impact air navigation or airport operations. If the FAA requires, the final design and construction of the new structures will incorporate appropriate mitigation measures including lighting and/or marking. The Applicant has committed to including details related to any FAA requirements in the EM&CP.

According to the Joint Proposal, the Project crosses three railroad corridors but is not expected to impact the operation of these railroads. The Applicant agrees to review the final designs and coordinate construction activities with the relevant railroad companies and include any construction information related to railroads in the EM&CP. The Project also crosses the New York State Thruway (designated as Interstate 90 in the Project area) in two locations, as well as other state, county, town or private roads.

The Project crosses the New York State Thruway in the towns of Rotterdam (Rotterdam Crossing) and Schuyler (Schuyler Crossing). The New York State Thruway Authority (NYSTA) has stated that the Schuyler Crossing will require a new Occupancy Permit in addition to a Work Permit and that the Rotterdam

Crossing will require a Work Permit. The NYSTA has indicated that underground requirements are not applicable to either location.<sup>44</sup> The Joint Proposal provides that all work associated with the crossings of the Thruway will be compliant with the Utility Occupancy Supplement, the New York State Thruway Authority Occupancy and Work Permit Accommodation Guidelines, Thruway Authority Rules and Regulations, any applicable waivers or exemptions, and all conditions included in the permits to be issued.

The Applicant also commits to submitting a Highway Work Permit Application for Utility Work to install utilities within or adjacent to State highway rights-of-way based upon final design of the Project. The Applicant will also submit a Maintenance and Protection of Traffic (MPT) Plan in accordance with the Proposed Certificate Conditions as part of the EM&CP. Mitigation of local traffic impacts will be governed, to the extent applicable, by the Road Use and Crossing Agreements which were entered into between LS Power Grid New York and the local municipalities. Overall, the Signatory Parties do not expect any discernible impact to traffic as a result of Project operation.

1. Canals

The Project ROW crosses the Erie Canal, part of the New York State Canal System, approximately 5.5 miles southeast of the Edic substation. The Applicant will install the new 345 kV lines on existing structures at the crossing of the Erie Canal and will apply to the New York State Canal Corporation for any work permits necessary for such reconductoring activities. The Applicant has also agreed to be subject to the Special Provisions for Work in or Over Navigable Waterways Operated by the New York State Canal Corporation.

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<sup>44</sup> New York State Thruway Authority Determination Letter (July 10, 2020).

2. Pedestrian Traffic

According to the Joint Proposal, the Project ROW is not commonly visited or accessed by pedestrians, and that in most locations along the ROW, local, county, and state roads provide a preferable route for pedestrian traffic. Where the Project ROW will cross recreational trails and public parks, the Applicant will employ best practices including temporary barricades and fences to avoid or minimize any impact on pedestrian use of these recreational areas.<sup>45</sup> Specific mitigation measures to protect pedestrian traffic during construction are required to be included in the EM&CP.

3. Communications Impacts

Several registered communications antennas and/or towers exist within two kilometers of the Project centerline. The Signatory Parties do not expect the Project to result in any significant interference with radio, television, telephone signal, cellular phone reception, railway signaling and communications, or microwave transmissions. The Applicant has agreed to take appropriate action to address any interference with communications that is reported along the Project ROW. The Applicant has also committed to complying with applicable provisions of the National Electrical Safety Code related to spacing between the proposed transmission lines and communication facilities. The Applicant also states that it has designed the transmission lines to minimize corona effects which may otherwise manifest as audible noise, radio interference, and television interference.

The Applicant has also committed to following the Call Before You Dig protocol and will contact potential third-party underground communication cable operators to confirm the

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<sup>45</sup> These crossing locations are identified in Exhibit 2 of the Application.

locations of any underground communication facilities that would be within or crossed by the Project ROW.

F. Noise Impacts

Noise impacts will primarily be temporary, resulting from construction activities. Construction noise will be mitigated by the attenuating effect of distance, the presence of existing vegetation, the intermittent and short-lived character of the noise, and the use of functional mufflers on all construction equipment. The Applicant has committed to addressing specific noise mitigation impacts in the EM&CP.

The Project will also generate noise during operation including corona noise, Aeolian noise, and noise associated with maintenance and vegetation management activities. Operation of the transmission lines is not expected to cause any significant impact to the ambient noise environment. Similarly, the proposed upgrades to existing substations are not expected to cause appreciable changes to the ambient noise environment.

The Joint Proposal states that the new Princetown substation does not include any noise generating equipment expected to be audible beyond the utility property boundary. The Joint Proposal acknowledges that the new Rotterdam substation is expected to produce operational noise, but states that it has been sited adjacent to the existing Rotterdam substation and distant from noise sensitive areas to minimize impacts. The 345-230 kV three phase transformer and six 345-115 kV single phase transformers proposed for the Rotterdam substation are not anticipated to result in an adverse noise impact based on applicable DEC Guidance. Noise levels expected for the interim configuration will be lower than those of the final configuration.

G. Electric & Magnetic Fields

The Applicant modeled the expected electric and magnetic field levels using winter normal conductor ratings and clearances as required by the Commission. Calculated electric and magnetic field levels at the ROW edge generally decrease as a result of the Project. Moreover, the calculated electric field levels indicated that the Project will not cause an exceedance of the electric field standard of a maximum of 1.6 kV/m at the edge of the ROW, one meter above ground level, with the line at rated voltage and 7 kV/m, 11 kV/m, and 11.8 kV/m measured at 1 meter above ground over public roads, private roads, and other terrain, respectively, as established by the Commission in Opinion No. 78-13, issued June 19, 1978. The calculated magnetic field levels also indicate that the Project will not cause an exceedance of the 200 milligauss (mG) standard for magnetic fields established by the Commission in its Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, issued September 11, 1990.

H. Availability and Impact of Alternatives Routes

The Joint Proposal includes a summary of the alternatives and related impacts that were considered. As indicated in the summary, considered alternatives were limited to those that could fulfill the needed transmission system improvements described by the Commission as Segment A of the PPTN and meet the additional requirement that avoids the acquisition of new permanent transmission rights-of-way, except for de minimis, unavoidable acquisitions. The Joint Proposal indicates that the Applicant evaluated alternatives at two locations where the ROW occupied by the existing 230 kV facilities to be replaced by the Project is split (the Ilion ROW Split and the Charleston ROW Split), and another alternative

where two alternate routes are available in a short segment of the ROW (the Marshville Corridor).

1. Ilion ROW Split Alternatives

In Herkimer County, near the Village of Ilion and the Towns of Frankfort and German Flatts, the existing ROW splits into a northern segment and a southern segment for approximately 4.6 miles. Each segment currently contains one of the two 230 kV circuits to be rebuilt as part of the Project. The Applicant evaluated three potential alternatives in connection with the Ilion ROW Split: both new circuits in the northern segment, both new circuits in the southern segment, and placing one new circuit in each of the northern and southern segments of the split. The first two alternatives would require significant new ROW acquisition with the first alternative displacing several residences, and the second alternative requiring significant tree clearing, adverse system operations impacts and significantly higher costs. The third alternative for the Ilion ROW Split would not require the acquisition of any new ROW, consistent with the Commission's PPTN Order. It also would not require any new tree clearing within the existing ROW. In addition, this alternative avoids near term and long-term impacts on landowners. Therefore, the Joint Proposal recommends the third alternative.

2. Charleston ROW Split Alternatives

Similarly, at the Charleston ROW Split in Montgomery County, near the Towns of Charleston and Glen, the existing ROW splits into a northern segment and a southern segment, each currently containing one of the two 230 kV circuits to be rebuilt as part of the Project. The overall length of the Charleston ROW Split is approximately 3.97 miles. The Applicant evaluated three potential alternatives in connection with the Charleston ROW Split: both new circuits in the northern segment,

both new circuits in the southern segment, and placing one new circuit in each of the northern and southern segments of the split. The first two alternatives require significant new ROW acquisition while the third does not. The third alternative is recommended because in addition to avoiding the acquisition of new ROW, it would also permit the use of shorter structures.

### 3. Marshville Corridor Alternatives

Near the Marshville substation in the Town of Canajoharie in Montgomery County, the existing 230 kV facilities are installed on separate single circuit structures that diverge from each other for approximately 0.6 miles, but remain within the Marshville Corridor, a single broad utility-owned corridor. The Joint Proposal states that two potential alternatives in connection with the Marshville Corridor were evaluated: replacing the existing two sets of single circuit 230 kV facilities with one set of double circuit 345 kV facilities, located in the southern portion of the Marshville Corridor; and removing the existing two sets of single circuit 230 kV facilities and replacing them with separate sets of single circuit 345 kV facilities in both the northern and southern portions the Marshville Corridor. The second alternative requires the construction and maintenance of three additional transmission structures in separate ROWs within the corridor which would increase construction and maintenance costs. Therefore, the Joint Proposal recommends the first alternative. The Joint Proposal acknowledges that the first alternative would require approximately 1.38 acres more tree clearing than the second alternative for required electrical clearances, but notes that the clearing would be within the existing ROW. Further, the second alternative would result in increased impacts to agricultural operations in the area.

#### 4. Alternative Substation Locations

The Applicant identified and evaluated eight alternative locations for the new Princetown substation. Four of the sites are within the existing transmission corridor near the intersection of the two Edic/Marcy to New Scotland 345 kV transmission lines (#14 and #18) and the two Porter to Rotterdam 230 kV transmission lines (#30 and #31) (the Junction). The other four sites are on the closest adjoining parcels to the Junction.<sup>46</sup> The Applicant identified that either the site located on the closest adjoining parcel to the southwest of the Junction (Site 7), or the site located on the closest adjoining parcel to the northwest of the Junction (Site 8) would be suitable for the new Princetown substation with respect to known environmental constraints, site access, outages, line crossings, and transmission line entrances. Based on input from residents and the Town of Princetown regarding the unique opportunity Applicant's acquisition and use of the property would present for cleaning up of the site, the Applicant proposed Site 8 as the preferred site. Site 8 also provides an additional setback distance of approximately 400 feet with additional screening between the proposed substation site and Reynolds Road.

The Joint Proposal states that the Applicant views the western portion of the existing Rotterdam substation parcel as the only feasible location for the new Rotterdam substation. This location has advantages related to existing nearby transmission line and substation infrastructure, topography, access, including deliverability of large new transformers; environmental resources, including surface waters; construction logistics; and outage plans. This location is situated within the existing utility-owned property, minimizes the number of

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<sup>46</sup> See Application Exhibit 3, Appendix 20.

crossings of existing lines, and avoids moving existing lines to the greatest extent practicable.<sup>47</sup>

#### 5. Alternative Structure Designs

The Applicant evaluated multiple structure designs for the Project and determined that a double circuit structure design is best for the Edic to Princetown segment (except for the ROW split areas) and the Princetown to New Scotland segment of the Project ROW. This design complies with the Commission's PPTN Order criteria to avoid acquiring any new ROW other than de minimis areas. It also accommodates the NYISO's goal allowing for an additional 345 kV circuit within the corridor in the future. The double circuit structures also present cost advantages, less permanent surface disturbance, and reduced agricultural impacts.

The Joint Proposal recommends a single circuit structure design for the Princetown to Rotterdam segment due to local reliability considerations. Separating the two 345 kV lines in this segment ensures a single high voltage power source into the Rotterdam substation in the event of the loss of one of the 345 kV lines, preventing a single contingency (i.e., double circuit structure failure) from causing low voltage issues at the substation.<sup>48</sup> The single circuit monopole structure design in this segment also results in less surface disturbance and reduced agricultural impacts in comparison to the existing H-frame structures. A single circuit design is also required in the preferred alternative locations for the Ilion ROW Split and Charleston ROW Split.

The Applicant also evaluated multiple structure types for the Project, including lattice structures, H-frame structures, monopoles, and guyed angle and dead-end structures,

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<sup>47</sup> Joint Proposal, p. 33.

<sup>48</sup> Id., pp. 33-34.

as well as both delta and vertical configuration options.<sup>49</sup> Monopole structures are the preferred structure alternative for the Project due to their faster installation time, smaller surface disturbance and agricultural impact, and most efficient use of the transmission corridor. The delta configuration option is the preferred configuration for the new single circuit structures in the Princetown to Rotterdam segment, and the single circuit split areas between Edic and Princetown. The delta configuration option is preferred because of the ROW width required to accommodate such structures, and because it results in lower structure heights and reduced visibility of the Project. Further, the delta configuration generally provides reduced electromagnetic field values at the edge of the ROW. For the double circuit structures between Edic and Princetown, a delta configuration is also preferred given the available space in the corridor and because it optimizes ruling spans, reducing the number of structures and minimizing structure height. The delta configuration also results in lower electromagnetic field values at the edge of ROW.

For the Princetown to New Scotland segment, where corridor width is limited, a vertical configuration is needed to accommodate the 345 kV double circuit structures and to avoid acquiring new ROW. The Joint Proposal states that this configuration does not create significant change in the overall visual character of the transmission corridor because of the existing Marcy to New Scotland 765 kV capable #18 transmission line.

#### 6. Alternative Transmission Line Technologies

The Signatory Parties acknowledge that, in the PPTN Order, the Commission found that the high voltage direct current (HVDC) alternatives proposed could not address all of the needs

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<sup>49</sup> See Application Exhibit 3, Section 3.6.2.

constituting the PPTN.<sup>50</sup> The Signatory Parties further acknowledge that in the PPTN competitive solicitation process, the NYISO evaluated a 1,000 MW HVDC transmission solution and found that such alternative did not incorporate all required Segment A or Segment B components and did not meet the minimum threshold of 900 MW across the UPNY-SENY interface.

The Signatory Parties acknowledge that HVDC transmission line technology can offer cost advantages over AC transmission in certain applications. However, here, HVDC would not provide such an advantage because of the relatively short line segments associated with the Project. The longest proposed segment is less than 70 miles. Moreover, such technology would require additional ROW for converter stations which is inconsistent with the Commission's criteria in the PPTN Order. Accordingly, HVDC transmission line technology is not proposed as a viable alternative for the Project.

#### 7. Underground Alternative

The Signatory Parties do not propose underground construction, including for crossings of the New York State Thruway, as a viable alternative for the Project. According to the Joint Proposal undergrounding construction for this Project presents disadvantages including significantly higher impacts to streams, wetlands and agricultural resources. In addition, the Joint Proposal indicates that underground construction is generally between 4 to 14 times more expensive than overhead lines of the same voltage and distance. Underground construction would also require more time and significant areas of new ROW for reactive compensation stations which would be needed at regular intervals along the Project ROW. The Joint Proposal lists potential harmonic resonance issues, impacts to traffic at road crossings, and difficulties with respect to

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<sup>50</sup> See PPTN Order.

inspections and repairs as disadvantages to underground versus overhead construction.

8. Alternative Methods to Fulfill Energy Requirements and No Action Alternative

The Joint Proposal states that alternatives involving the expansion of the existing transmission corridor were not considered for the Project, except for the corridor-adjacent alternative sites considered for the new Princetown substation. The Joint Proposal also claims that no alternative, non-transmission methods exist to fulfill the PPTN identified in the PPTN Order with comparable costs. The Joint Proposal notes that as stated in the PPTN Order, DPS Staff has reviewed several non-transmission alternatives, including construction of a new generation facility and promotion of a targeted level of customer-driven energy efficiency and demand reduction benefits and found that none of those non-transmission alternatives would be cost effective or a better alternative for ratepayers relative to new transmission.<sup>51</sup> The Joint Proposal also notes that the NYISO evaluated distributed generation portfolio located in Orange, Ulster, Putnam and Greene Counties, as part of its analysis of the various alternatives presented to meet the Commission's PPTN. The NYISO concluded that a distributed solution did not meet the 350 MW minimum thresholds for transfer capacity across the Central East interface and 900 MW across the UPNY-SENY interfaces. Similarly, the Joint Proposal concludes that the "no action" alternative is not viable because it would not address the PPTN, would leave a demonstrated need for AC transmission upgrades unaddressed, forego at least 350 MW of increased transfer capability across the Central East interface, and fail to take advantage of an opportunity to support renewable energy projects in upstate New York and spur local

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<sup>51</sup> Joint Proposal, pp. 36-37.

economic development through infrastructure investment and new construction jobs.<sup>52</sup>

I. Conformance of the Project to Long-Range Plans for Expanding the Electric Power Grid

The Signatory Parties agree that the Project conforms to the requirements and planning objectives of the NYISO and is consistent with New York's long-range plans as required by PSL §126.1(e)(2) to expand its Bulk Electric System as well as the public policy transmission needs identified in the Commission's PPTN Order. The Joint Proposal also concludes that completion of the Project will improve the reliability of the transmission system, serve the interests of electric system economy and reliability, and provide transmission capability.<sup>53</sup>

J. System Impact Study

The Joint Proposal points out that the Commission's December 13, 2019 Order on Waiver Requests determined that the appropriate NYISO study for the Project is a System Impact Study (SIS). The Joint Proposal also states that the SIS for the Project concluded that the Project will not adversely impact the New York State Transmission System.

K. State and Local Laws

The Signatory Parties agree that the Project, as proposed in this Joint Proposal, fully complies with the substantive provisions of all applicable state laws, including without limitation the PSL, the Environmental Conservation Law and the Agriculture and Markets Law. The Joint Proposal notes that pursuant to PSL §130 procedural requirements to obtain any State or local approval, official review, consent, permit, certificate or other condition for the construction or operation

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<sup>52</sup> Id., p. 37.

<sup>53</sup> Id.

of the Project do not apply except for permits or approvals issued or required by DEC pursuant to regulations implementing federally delegated environmental programs, those provided by otherwise applicable state law for the protection of employees engaged in construction and operation of the Project, and those approvals expressly authorized in the Certificate Conditions.

Exhibit 7 identifies the substantive local legal provisions for each jurisdiction potentially applicable to the Project. The Joint Proposal states that except for those provisions the Applicant specifically requested that the Commission refuse to apply in Exhibit 7 to the Application, the Applicant will comply with, and the location of the Project as proposed conforms to, all substantive local legal provisions that are applicable to the Project.

Exhibit 7 also contains the local legal provisions that the Applicant requests the Commission not apply because, as applied to the Project, each such local legal provision is unreasonably restrictive in view of the existing technology, factors of costs or economics, or the needs of consumers.<sup>54</sup> Examples of local laws that the Applicant is requesting the Commission not apply, as well as the corresponding justifications for such requests listed in the Joint Proposal include: requirements concerning noise, odor emissions, exterior lighting and vibration, on the grounds that such impacts are technologically impossible or impracticable to limit to levels specified in the ordinances; prohibitions on sign placement near utility poles, because warning and safety signs are warranted, and will be used in compliance with, the industry safety requirements and will most effectively warn the general public of dangers associated with energized electrical equipment; various area and use restrictions, fencing or screening

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<sup>54</sup> Id., p. 38.

requirements, road crossing requirements, and limits on the location of structures or the preservation of scenic vistas, because these requirements are not applicable when considered in light of the Applicant's contiguous linear ROW lots and are unreasonably restrictive in view of existing technology because the proposed structure locations and heights are a function of the appropriate span length between transmission structures as well as clearance, reliability and safety requirements, and the size and configuration of the ROW is based on required clearance and reliability criteria rather than minimum lot size and setback requirements.

The Applicant also requests that the Commission refuse to apply a number of local law requirements to the extent that they conflict with the National Electric Safety Code, SPDES General Permit for Stormwater Discharge from Construction Activity, the Stormwater Pollution and Prevention Plan, the Article VII Certificate, or EM&CP approved for the Project. The Joint Proposal notes that no local jurisdiction has filed any objection to the Applicant's requests regarding local laws. The Signatory Parties agree that the justifications set forth in Exhibit 7 provide appropriate basis for the Commission to refuse to apply the identified local ordinances.

L. Public Interest, Convenience and Necessity

The Joint Proposal notes the Applicant's public outreach regarding the Application, including to local officials in areas affected by the Project, property owners abutting the Project ROW and groups interested in the Project. In June 2019, the Applicant held public open house meetings in five locations along the Project ROW, including Oneida County, Herkimer County, Montgomery County, Schenectady County and Albany County. The Applicant had notice regarding the Application published in

local newspapers for two consecutive weeks prior to its filing. Copies of the Application were provided to local libraries including: Holland Patent Free Library, Frankfort Free Library, Weller Library, Little Falls Public Library, Canajoharie Library & Art Gallery, Fort Plain Library, Bethlehem Public Library, Altamont Free Library, Utica Public Library, Ilion Free Public Library, Jordanville Public Library, Fort Hunter Free Library, Frothingham Free Library, Rotterdam Branch Library, Guilderland Public Library and Voorheesville Public Library.

The Joint Proposal also notes the public notices were issued and letters sent regarding the March 2020 public statement hearings and informational sessions held in five locations along the Project ROW, including Oneida County, Herkimer County, Montgomery County, Schenectady County and Albany County.

M. Proposed Commission Findings

The Signatory Parties agree that the record in this proceeding supports all the findings required by PSL §126. The Joint Proposal includes a list of those findings in Appendix C.

N. Proposed Certificate Conditions

The Joint Proposal also includes Proposed Certificate Conditions set forth in Appendix D that the Signatory Parties agree are acceptable and appropriate for inclusion in a Certificate of Environmental Compatibility and Public Need authorizing construction and operation of the Project as described therein and in this Joint Proposal.

O. Environmental Management and Construction Plan Guidelines

The Signatory Parties agree that the specifications for development of the EM&CP set forth in Appendix E of the

Joint Proposal, and the supplemental specifications with respect to wetland and waterbodies set forth in Appendix F of the Joint Proposal, are acceptable and appropriate for application to the Project as described herein.

P. Water Quality Certification

The Signatory Parties agree that the record in this proceeding supports the water quality certification substantially in the form of Proposed 401 Water Quality Certification set forth in Appendix H to the Joint Proposal.

V. PARTIES' POSITIONS REGARDING THE JOINT PROPOSAL

National Grid and Iroquois made clear in their comments that they do not oppose the Commission's adoption of the Joint Proposal or the issuance of an Article VII certificate. Instead, they seek clarification from the Commission as to the appropriate allocation of costs between the Applicant and the pipeline companies related to protection of gas pipelines in the Project vicinity. National Grid also requests that the Commission find that any upgrades to existing substations owned by the New York Transmission Owners (NYTOs) required for the Project will not cause such NYTO-owned substations to become subject to Article VII.

Cricket Valley is the only party opposing the Joint Proposal, claiming that it "did not satisfactorily address" the issues that it raises in testimony. Cricket Valley submitted its substantive arguments opposing the Joint Proposal and the Project in its Brief and Reply as described below.

In its brief, DPS Staff states that the issues resolved through settlement and proposed in the Joint Proposal were vetted thoroughly by potentially adverse parties and through the notice requirement that allows for additional public

input. DPS Staff notes that the Joint Proposal contains safeguards, including specifics to protect the natural and human environment and other public service infrastructure, that taken together, minimize the potential adverse impact on the environment resulting from the construction and operation of the Project. Staff's recommendation to the Commission is that the overall package of the Joint Proposal be approved because it is in the public interest.

Staff notes multiple factors that it argues demonstrate that the Joint Proposal is in the public interest including the Project's ability to ensure continued reliability and delivery of power, utilization of an existing ROW and minimization of adverse environmental impacts by avoiding sensitive areas to the extent practicable. DPS Staff also contends that Joint Proposal protects ratepayers by considering the Project cost, among other factors, in proposing the appropriate route and construction measures.

DPS Staff and the Applicant agree that the record including the Joint Proposal provides a detailed description the probable environmental impacts associated with the Project. They further note that the environmental impacts of the Project are expected to be minimal, and largely limited to temporary, construction-related activities. They note that the Project is not anticipated to change the existing land use conditions adjacent to the ROW or in surrounding areas. The parties claim that the Project is not expected to result in long-term impacts on farming or agricultural activities and short-term impacts due to construction will be minimized to the greatest extent possible.

DPS Staff states that Joint Proposal also requires advance public notice of construction, and establishes complaint handling procedures, environmental supervision requirements, and

stop-work authority in the event of any violations. DPS Staff also notes that the Joint Proposal provides a dispute resolution mechanism to ensure that disagreements are addressed promptly and brought to the Commission for resolution if necessary.

DPS Staff and the Applicant also both argue that the record demonstrates that the parties considered conditions to ensure that the adverse environmental impacts of the Project are minimized the extent practicable. The Applicant and DPS Staff also agree that the Project conforms to the requirements and planning objectives of the NYISO, consistent with the State's long-range plans to expand the bulk electric system and is consistent with the PPTN Order. DPS Staff and the Applicant claim that the Project will serve the interests of electric system economy and reliability because it will improve the reliability of the transmission system.

DPS Staff and the Applicant argue that that Project conforms with state and local laws and regulations. DPS Staff notes specifically that it reviewed the state and local laws and regulations applicable to the proposed Project and has concluded that the Project will conform to those laws and regulations, with the exception of those local laws that the Applicants have requested the Commission to refuse to apply, if constructed and operated in conformance with the Proposed Certificate Conditions. DPS Staff also argues that the justifications provided by the Applicants to support these requests are sufficient to conclude that, as applied to the Project, such local legal provisions are unreasonably restrictive in view of the existing technology, factors of cost or economics, or the needs of consumers.<sup>55</sup>

The Applicant also claims that the parties supporting the Joint Proposal represent broad and potentially adverse

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<sup>55</sup> DPS Staff Initial Brief, p. 23.

interests regarding economy, efficiency, public safety, the preservation of environmental values and conservation of natural resources. The Applicant argues that issues that have been resolved in the Joint Proposal have been vetted appropriately by potentially adverse parties and that appropriate notice allowing for additional public input was provided. The Applicant argues the resolution of all issues embodied by the Joint Proposal falls within the range of reasonable results that would have resulted from a litigated proceeding.<sup>56</sup>

The Applicant agrees with DPS Staff that the Water Quality Certification contained in Appendix H of the Joint Proposal should be issued. The Applicant had requested such issuance in its Application. Moreover, the Applicant filed the pertinent permit application with the U.S. Army Corps of Engineers on July 21, 2020.

## VI. DISPUTED ISSUES

### A. Cricket Valley Energy

#### 1. Initial Brief

In its initial brief, Cricket Valley argues that the record fails to demonstrate a need for the Project because the Applicant and DPS Staff mistakenly rely on the PPTN process as the basis of the need. Cricket Valley argues that the Commission findings and determination regarding the PPTN do not obviate the requirements for a factual basis within the record of this Art. VII proceeding and that it is impermissible for the Commission to recognize or "transplant" determinations from other proceedings.<sup>57</sup> Cricket Valley argues that previous Commission determinations or conclusions are not frozen in time and must be reexamined in light of new developments.

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<sup>56</sup> Applicant Initial Brief, pp. 14-15.

<sup>57</sup> Cricket Valley Brief, p. 6.

Cricket Valley argues that the Project is not needed because it is not cost effective. Cricket Valley, relying on modelling performed by its consultant, Guidehouse, Inc. (Guidehouse), claims that even after incorporating the Applicant's criticism of the Guidehouse modeling, the Project is not cost beneficial. Cricket Valley argues that granting a Certificate to the Project will impose a long-term burden on ratepayers.

Cricket Valley argues that DPS Staff and the Applicant mistakenly consider \$560 million of avoided cost of refurbishment, as listed in the NYISO AC Transmission Public Policy Transmission Planning Report (June 2018) and Addendum (April 2019), as a benefit of the Project.<sup>58</sup> Cricket Valley claims that the Applicant admits that it has no independent knowledge of the avoided costs because the analysis was performed by the NYISO. Cricket Valley further argues that because it was denied the opportunity to cross-examine the Applicant and/or DPS Staff witnesses regarding the basis for the refurbishment costs or whether such cost should be considered in an Art. VII proceeding, avoided refurbishment costs should be excluded from consideration in this Proceeding. Cricket Valley adds that if it had the opportunity to cross-examine witnesses, it would have addressed the details of the avoided refurbishment costs with witness Willick and/or Staff's witness Paynter including the amount of the upgrade costs and why avoidance of those costs should be considered a saving for purposes of this Article VII proceeding.<sup>59</sup>

Cricket Valley argues that the DPS Staff and the Applicant do not consider recent legislative and policy developments that materially impact the basis of need for the

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<sup>58</sup> Id., p. 9.

<sup>59</sup> Id., p. 10, fn. 19.

Project. Specifically, Cricket Valley argues that the enactment of the Climate Law and Community Protection Act (CLCPA) and other recent legislative and policy developments undermine the basis of need for the Facility. Cricket Valley argues that the Applicant's reliance on the NYISO's AC Transmission Public Policy Transmission Planning Report is in error. Cricket Valley argues that consideration must be given to the impacts related to "the most likely development of new generation resources and, importantly, where much of those required resources - such as 9.0 GW of Downstate offshore wind - will be located."<sup>60</sup> Cricket Valley argues that the Guidehouse analysis appropriately included 6.6 GW of installed offshore wind generation by 2030 and 9.0 GW by 2035 (the CLCPA target) while the NYISO AC Transmission Public Policy Transmission Planning Report, relied on by the Applicant only includes 226 MW of offshore wind installed by 2030.

Cricket Valley also argues that the no determination of need can be made regarding this Project until the Commission has fully developed its plan to implement the CLCPA and the Climate Action Council Scoping plan is complete, both expected in 2021. Cricket Valley further argues that the Commission's expected development of decisional criteria for bulk transmission also factors into the basis of the need for this Facility. Another factor described by Cricket Valley as impacting the need for this Facility, and not considered by the Applicant, is the State's policy of promoting and supporting local, distributed sources of generation. Cricket Valley warns the Commission that New York courts have been "particularly inhospitable to [its] attempts to rely on out-of-date information when updated information is available" and that such

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<sup>60</sup> Id., p. 10.

decision making could be consider "arbitrary."<sup>61</sup> Cricket Valley rejects any argument that postponing a decision in this proceeding will delay necessary AC transmission upgrades, and that the intent of the new legislation is to accelerate transmission upgrades needed to deliver renewable energy.

Cricket Valley also rejects that the Project is needed to permit increased delivery of Upstate and Western New York renewable energy generation to major load centers Downstate. Cricket Valley states that need for delivery of renewable generation must be re-examined in light of "the massive quantities of State-contracted, ratepayer-supported renewable energy resources that will be sited Downstate." Cricket Valley claims that it is the only party to this proceeding that took on the responsibility of considering these developments.

Cricket Valley also argues that the Project will have a negative impact on the State's energy and capacity markets. According to Cricket Valley, the Project will have a negative impact on electric markets because "how or if it would serve the public's needs in the realities of New York's CLCPA-shaped energy and capacity market" has not been addressed. Cricket Valley claims the Project is "out-of-market" and "subsidized" and therefore contravenes the Federal Energy Regulatory Committee's (FERC) policy regarding subsidized generation. Cricket Valley claims the Project will harm competitive energy markets by "subsidized generation to compete with unsubsidized resources." Cricket Valley further claims that the Project degrades price signals by lowering Downstate energy and capacity prices, diminishing investor expectations regarding downstate

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<sup>61</sup> Id., p. 15 (citing N.Y. Tel. Co. v. Public Serv. Comm'n, 29 N.Y.2d 164 (1971); see Rochester Gas & Elec. Corp. v. Public Serv. Comm'n, 64 A.D.2d 345, 349 (3d Dep't 1978); Chenango & Unadilla Tel. Corp. v. Public Serv. Comm'n, 45 A.D.2d 409, 413-14 (3d Dep't 1974)).

generation facilities. Cricket Valley argues that such market distortions may lead FERC to conclude that generation and transmission should be treated similarly. Cricket Valley counsels the Commission not to knowingly create such a confrontation with FERC.

Cricket Valley claims the Project will interfere with federally regulated markets by increasing wholesale energy prices Upstate while lowering wholesale prices Downstate, as well as lowering Downstate capacity prices. Cricket Valley argues such distortions will weaken the price signals meant to be relayed by the capacity market. Cricket Valley argues that the Project will also negatively impact current investors. Cricket Valley further argues that weakened price signals make New York less attractive to private investment. Cricket Valley criticizes DPS Staff's argument that fossil fuel generators are subsidized through "the right to emit certain pollutants at no charge."<sup>62</sup> Cricket Valley argues that it is inappropriate to attempt to balance one subsidy by "[p]utting a thumb on the scale in favor a particular generation and transmission providers."<sup>63</sup>

Cricket Valley also claims that the impact of the additional ratepayer funded transmission line will "certainly impede the achievement of the State's CLCPA goals" and argues that a full analysis of the impact of this Project on the State's CLCPA goals is required prior to granting a Certificate.<sup>64</sup>

Cricket Valley argues that the Project will also increase customer costs, requiring subsidization from customers already struggling financially. Cricket Valley claims that

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<sup>62</sup> Id., 20.

<sup>63</sup> Id.

<sup>64</sup> Id.

imposing the cost of the Project on ratepayers when they can least afford it, does not serve the public interest.<sup>65</sup>

Cricket Valley notes that the Commission determined that its facility was in the public interest when granting it a Certificate of Public Convenience and Necessity (CPCN) in 2013.<sup>66</sup> Cricket Valley claims that its role in the public interest is particularly important because it replaces approximately 50% of the capacity related to the retirements of Indian Point 2 and 3. Cricket Valley argues that because it is serving the needs of the State's electric system, the Commission must specifically consider the impacts to its revenue from the Project. Cricket Valley warns that the Commission should not expect it to continue to provide services in the public interest if its revenues are impaired by the Project.<sup>67</sup>

Cricket Valley argues that in making decisions to invest in the construction and operation of its facility, the company and its investors are "entitled to rely on the granting of the CPCN."<sup>68</sup> Cricket Valley argues that at the time key decisions were made regarding its facility, it expected the PPTN process to result in a smaller increase in the UPNY/SENY transfer capability and that the NYISO Board of Director's 2019 decision to include Segment B upset those expectations after the its facility was financed and close to completed.<sup>69</sup> Cricket Valley equates the experience with unknowingly walking into a

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<sup>65</sup> Id., p. 22.

<sup>66</sup> Id., (citing Case 11-E-0593, Petition of Cricket Valley Energy Center, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation, Order Granting Certificate of Public Convenience and Necessity and Establishing Lightened Ratemaking Regulation (issued February 14, 2013)).

<sup>67</sup> Id., p. 25.

<sup>68</sup> Id.

<sup>69</sup> Id., pp. 25-26.

"buzz-saw."<sup>70</sup> Cricket Valley argues that the risk assumed by merchant generation is "well-defined and limited"<sup>71</sup> and does not include being ignored by the Commission or suffering a diminution in value from "the Commission's approval of excess, unneeded, ratepayer funded transmission capacity"<sup>72</sup> without considering recent legislative and policy developments. Cricket Valley argues that it did not sign-up for such treatment and dismisses arguments to the contrary.

Cricket Valley concludes that the Applicant has failed to demonstrate the Project should be approved under PSL Art. VII and recommends that the Commission deny the requested Certificate. Cricket Valley recommends, in the alternative, that the Commission require amendments and refiling of the Application to address the deficiencies it claims exist in the current record.

## 2. Cricket Valley's Reply Brief

In its reply brief, Cricket Valley broadly dismisses the Applicants' and Staff's arguments in favor of the Project claiming the rationales provided by those parties in support of the Project are "defective and legally indefensible."<sup>73</sup> Cricket Valley continues to argue that the Applicant and Staff are relying on obsolete data related to the Commission's 2015 PPTN determinations and are inappropriately discounting the impact of the CLCPA and related initiatives. Cricket Valley reiterates its argument that the Commission's 2015 PPTN determination is not a substitute for a need determination pursuant to PSL §126 in this proceeding.

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<sup>70</sup> Id., p. 26.

<sup>71</sup> Id.

<sup>72</sup> Id., p. 2.

<sup>73</sup> Cricket Valley Reply,

Cricket Valley also argues that DPS Staff and the Applicant are not appropriately considering the cost of the Project to ratepayers and other stakeholders including existing generators. Cricket Valley continues to claim that the Project will have the negative impacts on the wholesale energy and capacity markets discouraging investment in new generation and that the record lacks appropriate analysis regarding market impacts. Cricket Valley argues that most of the factors the Commission assessed in its 2015 PPTN determination cannot be quantified and were not analyzed solely in relation to the Project under consideration in this proceeding. Cricket Valley dismisses any argument that the Project is needed to fulfill policies that may be difficult to quantify or estimate.<sup>74</sup>

Cricket Valley also challenges the premise that the Commission reaffirmed the need for the Project in its Process Order<sup>75</sup> claiming that the Commission only rejected a narrow challenge related to the cost benefit ratio of the Project and that the Process Order failed to address the CLCPA and other recent State energy policy developments. Cricket Valley rejects use of the NYISO Queue as an indication of the location of future generation. Cricket Valley argues that the Queue only provides short-term guidance through 2025 and that most projects in the Queue do not get developed. Cricket Valley does note that the NYISO Queue indicates a large amount of generation being planned, proposed and developed for Upstate (Zone A-F, 8.7 GW) and Downstate (Zone G-K, 11 GW).<sup>76</sup> Cricket Valley continues to argue that the Commission should deny the Applicant's request for a Certificate until further studies can be completed in the

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<sup>74</sup> Id., p. 13.

<sup>75</sup> Case 12-T-0502, supra, Order Denying Rehearing and Addressing Further Process for Examining Alternating Current Transmission Upgrades (issued July 16, 2019)

<sup>76</sup> Cricket Valley Reply, pp. 7-8

context of the CLCPA including a study on the State's bulk transmission system. Cricket Valley claims that the Guidehouse analysis is the only analysis specific to the Project that accounts for the impacts of the CLCPA and that, even adjusting for the Applicant's and Staff's criticisms, its analysis indicates that the Project is not cost beneficial.<sup>77</sup>

Cricket Valley notes that the Project is cost beneficial if avoided costs of refurbishing existing transmission facilities is included in the analysis. However, Cricket Valley argues that the Commission cannot attribute any amount of such avoided costs to the Project because it was precluded from cross-examining the Applicant's and Staff's witnesses on avoided refurbishment costs, and because neither the Applicant's, nor Staff's witnesses have any independent knowledge of the avoided costs.

Cricket Valley rejects the Applicant's criticism regarding a lack of backcasting to validate the Guidehouse modeling. Cricket Valley argues that the Applicant did not present any results of the NYISO 2019 CARIS Study because such results would undermine the basis of need for the Project and asks that the Commission take administrative notice of the study.<sup>78</sup> However, Cricket Valley argues that the Applicant's use of the NYISO 70x30 study and other studies as "benchmarks" to demonstrate that the Guidehouse analysis is an outlier regarding projected congestion levels on Central East and other interfaces is unfair.<sup>79</sup>

Cricket Valley also claims the Applicant's criticism of Guidehouse's capacity cost savings projections is unfair. Cricket Valley argues that the Applicant selectively relies on

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<sup>77</sup> Cricket Valley Reply, p. 12.

<sup>78</sup> Id., pp. 13-14, fn. 43.

<sup>79</sup> Id., p. 14.

the 2019 CARIS Study<sup>80</sup> to undermine Guidehouse's incorporation of the MMU's analysis. Cricket Valley concludes that "the Applicants' hypothesis on how the system would react to the 2019 CARIS Study scenario should not be a substitute for actually running that scenario for the record in this proceeding."<sup>81</sup>

Cricket Valley also argues that the Applicant's criticism overstates the importance of certain omissions from the Guidehouse analysis, including the impact of the Oswego Generating Stations on the Central East interface, and complains that the record does not include an analysis of whether the Oswego Units will continue to effect the Central East interface after the AC Transmission Projects are constructed.

Cricket Valley again argues the record is clear that the only party to consider recent developments is Cricket Valley and warns that if the Commission fails to consider these developments, its determination in this proceeding may fall to legal challenge.

Cricket Valley claims that the Applicant and DPS Staff attempt to parry criticism regarding the proffered economic analysis with arguments related to public policy requirements and citing to the Commission's 2015 PPTN Order. Cricket Valley acknowledges that qualitative factors are relevant to an Art. VII review, but claims these factors are not enough to determine the basis of need without a vigorous quantitative analysis demonstrating that the Project is cost beneficial.

Cricket Valley also criticizes the Applicant's reliance on the NYISO/MMU analysis as outdated and claims that the NYISO CARIS Study analysis is more relevant because it includes consideration of 6 GW of offshore wind Downstate by

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<sup>80</sup> New York ISO, 2019 Congestion Assessment and Resource Integration Study (July 2020)(2019 CARIS Study).

<sup>81</sup> Id., p. 14.

2030. Cricket Valley also claims the NYISO/MMU fails as an economic analysis because it "lacks a matrix" assigning different weights to different cost factors and that statements explaining how these factors were considered in the report are not enough.<sup>82</sup>

Cricket Valley argues that the Applicant incorrectly considers O&M costs in its analysis.<sup>83</sup> Cricket Valley also argues that despite the accommodations Guidehouse made in accepting some of the criticisms of its analysis, the conclusion that AC Transmission upgrades will increase ratepayer costs is unwavering. Cricket Valley argues that treatment of ratepayers' costs by the Applicant and DPS Staff is inconsiderate and is unlikely to reflect the Commission's interest in the matter.

Cricket Valley continues to argue that Article VII requires the Commission to consider the Project's impacts on the market. Cricket Valley acknowledges that transmission plays a role in enabling markets and requiring local generation to compete with cheaper or cleaner generation located in other areas.<sup>84</sup> Cricket Valley claims that DPS Staff fails to address how the Project will impact ratepayers, investors or how the Project will conform with or be affected by State and Commission policies.<sup>85</sup>

Cricket Valley laments that Commission approval of this Project would negatively impact markets by adding another subsidized facility to a market already "saturated" with price

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<sup>82</sup> Id., p. 18.

<sup>83</sup> Id. (citing the MMU Report p. 10, fn. 33 [stating the overall cost of \$1.99 billion (for the PPTN Projects) includes \$1.23 billion overnight cost for the projects, \$113 million for the local upgrades, \$123 million for interest during construction and other financing costs, and \$521 million for the net present value of 45 years of O&M.]

<sup>84</sup> Id., p. 23, fn. 80 (citing Paynter Rebuttal Testimony, p. 8).

<sup>85</sup> Id., p. 25.

distorting, State-favored generation sources and argues that the Commission needs to analyze the potential for the Project to negatively impact ratepayers. Cricket Valley notes that it is likely to suffer negative impacts if the Project is approved and demands that the Commission, in balancing the anticipated impacts of the proposed Project, consider the \$1.5 billion invested in its Facility. Cricket Valley argues that investors will hesitate to invest in New York electrical infrastructures if the AC Transmission Projects are approved and, that as a result, meeting the State's renewable energy generation goals will require State programs rather than simply relying on wholesale markets.<sup>86</sup> Cricket Valley concludes that the impacts of the Project on markets in the context of the CLCPA, upcoming transmission planning, and the recent FERC determination has not been considered on this record.

Cricket Valley argues that the fact that the Project was approved pursuant to a FERC tariff is not enough to demonstrate that it meets the standards FERC established related to over-subsidized generation. Cricket Valley argues that there is a gap in the record as to how this transmission project meets those recently stated FERC standards regarding generation.

B. Dominion Energy Transmission, Inc. (Dominion)

1. Dominion Initial Brief

Dominion argues that the Project will have material adverse effects on the cathodic protection systems and physical conditions of its natural gas pipelines co-located on the Project right-of-way including: AC interference effects and AC density effects. Dominion argues that these effects will violate proposed Certificate Condition 12,<sup>87</sup> and that the Applicant is responsible for the cost correcting the adverse

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<sup>86</sup> Id. p. 28.

<sup>87</sup> Joint Proposal, Appendix D, p. 3.

effects. Dominion rejects the Applicant's characterization of the issues as a contractual dispute governed by the easement providing for the construction and operation of the pipeline. Dominion further argues even if the easement is controlling, the Project's adverse impacts to the pipeline would unreasonably interfere with Dominion's rights to the use and enjoyment of the easement to operate its pipeline. Therefore, the Applicant retains the responsibility for the cost of measures required to protect Dominion's pipeline from the adverse impacts of the Project.

2. Dominion's Reply Brief

In its reply, Dominion argues that proposed Certificate Condition 12 does not resolve the pipeline protection issues unless the Applicant is responsible for the cost of the protection system. They further argue that the Applicant incorrectly interprets the easement to require Dominion to cover the costs of Applicant's compliance with the Certificate. Dominion states that the Easement only applies to one of the two Dominion pipeline segments affected by the Project because the second pipeline is located adjacent to, but not within, the Easement area.

C. Department of Public Service Staff

1. DPS Staff Initial Brief

DPS Staff argues that the Project will serve the Public Interest and is needed and that the record does not support disturbing the balance among the various elements contributing to the basis of need and other factors that are proposed by the Joint Proposal. Staff notes that the Commission previously determined a need for the Project during the PPTN process and argues that need determination establishes the basis for a finding of need in this proceeding. DPS Staff notes the length and thoroughness of the proceedings regarding the need

for the Project and argues there is nothing in the present record requiring the Commission to revisit the prior determination.<sup>88</sup>

DPS Staff also notes the evidence in this proceeding detailing the PPTN process and the specific Commission findings supporting the need for the Project.<sup>89</sup> DPS Staff points out that the Commission's PPTN findings were supported by the Comparative Evaluation of Alternating Current Transmission Upgrade Alternatives report filed in Case 12-T-0502, a report issued in September 2015 by Department Staff with the assistance of an independent consultant, the Brattle Group (2015 Staff Report). DPS Staff explains that the report recommends AC transmission upgrades across the Central-East interface in the Mohawk Valley and across the Upstate New York/Southeast New York (UPNY/SENY) interface in the Hudson Valley based on the Brattle Group's determination that the upgrades would provide economic benefits greater than their costs and result in other public policy benefits to New York State.<sup>90</sup> DPS claims that the 2015 Staff Report provides a comprehensive analysis of economic and other public policy benefits and included potential costs and rate impacts which the Commission has already recognized.<sup>91</sup> DPS Staff notes that in 2019 the Commission rejected a rehearing petition claiming there was no economic need for the AC transmission upgrades.<sup>92</sup> That rehearing order also directed further processes "necessary to allow for the prompt filing and review of the

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<sup>88</sup> Id., pp. 11-12 (citing Case 12-T-0502, supra, Order Finding Transmission Needs Drive by Public Policy Requirements, Appendix A (issued December 17, 2015) (PPTN Order)).

<sup>89</sup> Id., pp. 12-13 (citing Paynter Rebuttal Testimony (filed June 26, 2020)).

<sup>90</sup> Id., p. 13.

<sup>91</sup> Id. (citing PPTN Order at pp. 13-14).

<sup>92</sup> Id., (citing Case 12-T-0502, supra, Process Order (issued July 16, 2019) p. 11).

respective PSL Article VII Applications to be filed by LS Power/NYPA and National Grid/Transco.”<sup>93</sup>

DPS Staff argues that the Commission’s reaffirmation of need in the Process Order similarly applies to this case and that, therefore, the required statutory need finding can be made here. DPS Staff rejects Cricket Valley’s argument that passage of the CLCPA undermines the Commission’s need findings. DPS Staff further argues that public policy transmission projects are not required to pass an economic benefit/cost test, and that the PPTPP is intended to address “broader public policy issues.”<sup>94</sup> DPS Staff contends that many public policies are difficult to quantify monetarily, and that even quantifiable economic benefits can be difficult to estimate.

DPS Staff counters the claim that approval of the Project contravenes FERC policy, noting that the NYISO followed its FERC-approved tariff for the PPTPP in selecting the AC Transmission projects. DPS Staff also notes that most transmission is “ratepayer-backed” and without it “there would be no competitive market for generation – ratepayers would be forced to rely solely on local generators, which would not have to compete with cheaper or cleaner but more distant generators.”<sup>95</sup> DPS Staff also rejects Cricket Valley’s arguments concerning government subsidized generation, pointing out that “[f]ossil-fueled generators benefit from subsidies for oil and gas drilling and from the right to emit certain pollutants at no charge.”<sup>96</sup>

DPS Staff claims that Cricket Valley’s arguments against the Project amount to challenges against New York

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<sup>93</sup> Id.

<sup>94</sup> Id., p. 16.

<sup>95</sup> Id., (citing Paynter Testimony at p. 8).

<sup>96</sup> Id.

State's official public policies, and that an Article VII proceeding is not an appropriate forum to reexamine such policies. DPS Staff argues that Cricket Valley's arguments regarding need ignore the primary purpose of the AC Transmission Upgrades: to allow the delivery of generation from future Upstate renewable resources to Downstate load centers.<sup>97</sup>

DPS Staff disagrees with Cricket Valley regarding the impact of recent legislation on the need for the Project. DPS Staff argues that the AC transmission upgrades should not be postponed for further planning, stating that the intent of the Accelerated Renewable Act is to accelerate new transmission upgrades including those capable of accessing renewable resources and delivering to the regions of the State requiring those resources. DPS Staff contends that the Legislature, "[b]y acknowledging that both alternating current upgrades and submarine transmission facilities" will be needed to deliver on the State's renewable energy goals, recognized geographically diverse resources will be required to meet those goals. DPS Staff also points out that the Legislature approved the CLCPA at the time the Commission issued the July 2019 Rehearing Order and there is a clear overlap between the Commission's actions regarding the PPTN and the enactment of the CLCPA.<sup>98</sup> DPS Staff also claims Cricket Valley is ignoring the length of time required for the development of large transmission projects and points out that AC upgrades in the Mohawk and Hudson Valleys have been under consideration for years.<sup>99</sup> Further, DPS Staff argues that, given "the critical omissions" in the Guidehouse

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<sup>97</sup> Id., p. 17.

<sup>98</sup> Id., p. 17.

<sup>99</sup> Id., p. 17-18.

analysis, it cannot be rationally be relied upon as a basis for delaying the AC transmission upgrades.<sup>100</sup>

DPS Staff argues that Cricket Valley's economic analysis of the Project fails to include consideration of the Commission's primary rationale for the AC Transmission upgrades, to encourage the build-out of new Upstate renewable resources and to avoid costs of refurbishing aging transmission infrastructure. DPS Staff notes that "the additional renewable generation enabled by the AC transmission upgrades is expected to reduce Upstate energy prices," minimizing or eliminating the increase in energy payments claimed by Cricket Valley.

DPS Staff also notes that the AC Transmission upgrades will result in avoiding the cost of refurbishing or replacing aging transmission infrastructure, a cost otherwise borne by Upstate ratepayers. DPS Staff points out that the NYISO estimates that the AC transmission upgrades will provide \$600 million in savings over a 45-year period.<sup>101</sup> DPS Staff acknowledges that the NYISO did not calculate a single benefit to cost ratio for the AC Transmission upgrades but states that the NYISO report did provide many qualitative and quantitative metrics. DPS Staff explains that the NYISO's independent Market Monitoring Unit (MMU) developed a benefit/cost ratio estimate of 1.54 based on a combination of these benefits.<sup>102</sup>

DPS Staff argues that the Signatory Parties appropriately agreed that the Project will provide needed increased transmission capacity and provide the various economic and public policy benefits put forth in the Commission's PPTN Order and concludes that Cricket Valley has failed to

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<sup>100</sup> Id., p. 20.

<sup>101</sup> Id., p. 19-20.

<sup>102</sup> DPS Staff Brief, p (citing NYIO MMU Evaluation of the Proposed AC Public Policy Transmission Projects [February 2019][MMU Report]).

demonstrate any reason that the Commission's findings in the PPTN Order should be different here.

2. DPS Staff's Reply

DPS Staff rejects Cricket Valley's argument regarding the relationship between the Commission's prior need determination and the need determination required by PSL Article VII. DPS Staff acknowledges that pursuant to Article VII, the Commission must determine the need for the Project. However, DPS Staff argues that the Commission's previous determination regarding the need for the Project, as incorporated in the Application here, provides the basis of need for the Project in this proceeding. DPS Staff also notes the thoroughness with which the Commission and the NYISO considered the basis of need through the FERC-approved PPTPP.<sup>103</sup>

DPS Staff also rejects Cricket Valley's argument that PSL Article VII requires a Project to satisfy a benefit-cost test. DPS Staff points out that Cricket Valley's arguments continue to ignore two important benefits of the Project: the ability to deliver increased renewable generation, and the avoided refurbishment costs of older existing lines. DPS Staff argues that Cricket Valley is incorrect to claim that only the NYISO has studied the avoided refurbishment costs. DPS Staff points out that the 2015 Staff Report estimated avoided refurbishments costs to be \$998 million.

DPS Staff dismissed Cricket Valley's suggestion that transmission owners should be responsible for the cost of refurbishment. DPS Staff states that the argument ignores that these facilities are a critical part of the State's transmission system, that they are currently included in utility ratebase, and that the transmission owners would have the right to recover

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<sup>103</sup> DPS Staff Reply, pp. 4-5.

prudent maintenance and replacement costs.<sup>104</sup> DPS Staff also argues that the AC Transmission Projects benefit Upstate ratepayers that would otherwise bear the full cost of the upgrades and refurbishments and Downstate ratepayers that rely on the lines to transmit power from Upstate renewable generators. DPS Staff concludes that consideration of the avoided refurbishment costs as a benefit of, and supporting the need for, the Project is appropriate.

DPS Staff also contests Cricket Valley's continuing claims that the CLCPA and other legislations will decrease the need for the Project. DPS Staff reiterates that the CLCPA is not limited to one type of renewable resource and that the Accelerated Renewable Act supports this by addressing the need for additional transmission to accommodate additional Upstate renewable generation. DPS Staff argues that an increase in Downstate offshore wind will not eliminate the need for renewable generation Upstate or the associated need for this Project. DPS Staff reiterates that a primary purpose of the AC Transmission Upgrades is to enable delivery of renewable generation and, in doing so, the Project will further "the State's policy of encouraging development of renewable energy and reducing reliance on fossil-fueled power plants."<sup>105</sup> DPS Staff concludes that the Commission can reasonably find that the need for the Project remains.

DPS Staff rejects Cricket Valley's entreatments to delay the Project until plans from the Climate Action Council and the Commission. DPS Staff explains that to the extent the Climate Action Council and the Commission are currently examining transmission needs in the State and, to the extent this Project may impact those proceedings, this Project should

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<sup>104</sup> Id., p. 6

<sup>105</sup> Id., p. (citing Paynter Testimony).

be considered. DPS Staff argues that the parties have invested significant time negotiating a Joint Proposal, and that it is unreasonable to stay this proceeding in anticipation of studies, which are not anticipated until 2021, when all that remains in this proceeding is the Commission's determination.

DPS Staff counters Cricket Valley's arguments regarding FERC noting that the Commission and the NYISO were acting in compliance with a FERC-approved tariff in selecting the AC Transmission upgrades. DPS Staff argues that Cricket Valley's complaint regarding its effect on market prices could equally apply to all transmission lines and as DPS Staff previously noted, "without transmission, there would be no market for electricity."<sup>106</sup> DPS Staff further argues that Cricket Valley's concerns regarding market prices are concerns for its own interests and, if heeded, would result in denying Downstate consumers the benefits of accessing cleaner Upstate renewable resources.

DPS Staff also rejects Cricket Valley's contention that need for the Project must be re-examined considering legislative and policy changes, noting that Cricket Valley relies on a 2013 Commission finding that its facility was in the public interest. DPS Staff argues that if the Commission's 2015 and 2019 findings related to the AC Transmission Upgrade projects are outdated, a 2013 finding must be viewed similarly. DPS Staff argues that Cricket Valley's selective application regarding legislative changes reveals Cricket Valley's primary concern is its own interests, not those of ratepayers. DPS Staff concludes that potential harm to one generating facility should not outweigh the benefits of this Project to the State or its ratepayers.<sup>107</sup>

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<sup>106</sup> Id., p. 8.

<sup>107</sup> Id., p. 9

DPS Staff also counters Cricket Valley's argument that the NYISO Board approved a larger facility than anticipated. DPS Staff reiterates that the AC Transmission Projects were selected as the result of an extensive process conducted pursuant to the NYISO's FERC-approved PPTPP and should not be undone to serve the interest of one party. DPS Staff further argues that pursuant to the PPTPP, the Commission must make its determination based on projects selected by the NYISO Board, and, therefore, it is appropriate for the Commission to rely on its findings in the underlying proceeding.

D. The Applicant

1. The Applicant's Initial Brief

The Applicant argues that the need for the Project is well established and that the record provides substantial support for approving the Joint Proposal. The Applicant notes that Cricket Valley is the only party opposing the Joint Proposal and contends that is because Cricket Valley has an individual economic interest in preventing new sources of supply into the downstate electricity market.

The Applicant argues that the Joint Proposal and the remainder of the evidentiary record demonstrate that the Project meets the required Art VII findings. Like DPS Staff, the Applicant argues that there was no need in this proceeding to reevaluate the Commission's previous need determinations regarding the AC Transmission upgrades. The Applicant argues that the multiple public policy requirements previously identified by the Commission as underlying the public policy need for the AC Transmission upgrades in addition to the \$636 million in production cost and capacity savings benefits

acknowledged by Cricket Valley are enough for the Commission to confirm the need for the Project.<sup>108</sup>

The Applicant argues that there is no requirement to apply a strict benefit-cost test to a project selected through the PPTPP. The Applicant argues that given that the PPTN Order identified twelve public policy requirements driving the public policy need for the AC Transmission Upgrade, Cricket Valley's singular focus on energy production cost savings and capacity cost savings is without merit. The Applicant further claims that the record demonstrates that the quantifiable benefits of the AC Transmission upgrades, including the avoided refurbishment costs, exceed the total costs of the upgrades.<sup>109</sup> The Applicant claims that the benefits of the AC Transmission upgrades are greater than the costs, even when using the Guidehouse production cost savings estimate and the MMU "baseline" capacity estimate, which, the Applicant argues, significantly understate the benefits.<sup>110</sup> The Applicant argues that these benefits, along with the non-monetary benefits of the Project, are more than sufficient for the Commission to approve the Project.

The Applicant further argues that the Guidehouse analysis contains fatal modeling errors. Specifically, the Applicant argues that the analysis is based on defective assumption concerning the location of future renewable resources required to meet New York's clean energy goals, an assumption that is inconsistent with the NYISO's projections concerning the location of future renewable resources.<sup>111</sup>

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<sup>108</sup> Id., pp. 16-17 (citing December 2015 PPTN Order at pp. 66-67).

<sup>109</sup> Id., (citing Willick Rebuttal at pp. 14-15).

<sup>110</sup> Id., p. 54.

<sup>111</sup> Id., p. 44-45 (citing Paynter Rebuttal at p. 12, line 21, to 13, line 9.)

The Applicant claims that Cricket Valley's argument regarding an additional 9 GW of offshore wind capacity Downstate as eliminating the need for the Project grossly oversimplifies the issues and ignores the relative balance between the regions. The Applicant acknowledges that the offshore wind and significant distributed solar resources in Zones F-K will provide some Central East congestion relief but notes that these changes are not isolated. The Applicant argues that expected retirements in natural gas fired generation in Zone J related to the DEC Peaker Rule;<sup>112</sup> other retirements of generation resources in Zones F-K, and the addition of on-shore wind and utility scale solar in Zones A-E shift the balance the other way, ultimately resulting in "a need for future Central East transmission capacity even greater than the Project can deliver."<sup>113</sup> The Applicant argues that the Commission should apply no weight to the Guidehouse Report based on these errors.

The Applicant also argues that the Guidehouse analysis includes defective assumptions regarding the operation of the bulk electric system resulting in an under-estimation of the production cost savings attributable to the AC Transmission Upgrades. The Applicant contends that the Guidehouse analysis inaccurately models the impact of the Oswego, Independence and Athens Generating Stations on the transfer capability of the Central East interface, and that the modeling failed to model the dynamic nature of the operation of the Marcy South Series Compensation ("MSSC") Project.<sup>114</sup> The Applicant argues that inaccurate modeling invalidates Cricket Valley's analysis of the production cost savings associated with the Project.

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<sup>112</sup> See 6 NYCRR Subpart 227-3.

<sup>113</sup> Id., 46-47 (citing Willick Rebuttal, pp. 29-30).

<sup>114</sup> Id., 48 (citing Exhibit 56 (Tab J of Excel sheet "Sur-rebuttal Discovery Question Responses\_2xlsx").

The Applicant also contends that the Guidehouse analysis is further undermined by an absence of backcasting to confirm the accuracy of the modeling. The Applicant points to the discrepancy between Cricket Valley's forecast of congestion on the Central East interface and the levels of congestion forecast by other studies prepared in the NYISO stakeholder process. The Applicant notes that the NYISO's 2019 CARIS study, which reflects the addition of the offshore wind capacity required by the CLCPA, expects considerable congestion at the Central East interface even with the AC Transmission upgrades. The Applicant also notes a presentation to NYISO's Electric System Planning Working Group made on April 23, 2020, which projected similar levels of congestion and identified a continuing need for an increase in transfer capability across Central East, even after the addition of the AC Transmission upgrades and 9,000 MW of offshore wind in order to meet the CLCPA clean energy objectives.<sup>115</sup>

The Applicant also dismisses Cricket Valley's argument regarding minimal capacity cost savings associated with the Project. The Applicant argues that the increased transfer capability associated with the AC transmission upgrades "will reduce capacity costs by increasing the ability of Load Serving Entities to purchase lower-cost capacity from upstate resources and by reducing the total amount of capacity required to meet the loss of load expectance ("LOLE") requirement."<sup>116</sup> The Applicant notes that the NYISO estimated the 20-year NPV of the capacity cost savings to be between \$744 million and \$1,936 million and the NYISO's MMU provided more conservative estimates of \$237 million in the baseline scenario and \$596 in the

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<sup>115</sup> Id., pp. 52-53.

<sup>116</sup> Id., p. 53.

scenario including the Clean Energy Standard (CES).<sup>117</sup> The Applicant argues that Cricket Valley witnesses selected the lowest of these values, \$237 million, without valid support for their choice. The Applicant argues that the lowest figure does not reflect either the 50x30 requirement of the Commission's CES Order or the 70x30 requirement of the CLCPA and does not match Cricket Valley's other assumptions regarding offshore wind. The Applicant contends that even under the MMU's methodology, the more accurate value for capacity cost savings is the \$592 million which includes the CES requirements. The Applicant argues that best available analyses of the quantifiable benefits of the AC transmission upgrades are the analyses prepared by NYISO and its MMU, noting that these entities do not have a financial interest in the outcome of this proceeding, and that both their analysis indicate energy production cost savings and avoided capacity costs in excess of total Project costs.<sup>118</sup>

The Applicant counters Cricket Valley's assertion that the Project will distort price signals and impair competitive NYISO markets. The Applicant argues that claims related to subsidizing nuclear and renewable energy are not relevant to this proceeding.<sup>119</sup> The Applicant contends that the remainder of Cricket Valley's market distortion claims are based on the false conclusion that the Project must satisfy a narrow benefit/cost test to be in the public interest. The Applicant concludes that the uncontested facts in this proceeding demonstrate that the quantifiable benefits of the Project alone exceed its costs and that the Project results in numerous other non-quantifiable benefits.

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<sup>117</sup> Id., 53-54 (citing Willick Rebuttal p. 13, lines 1 to 5).

<sup>118</sup> Id., p. 54.

<sup>119</sup> Id.

The Applicant argues that the Project will not increase payments to Upstate generators and that Cricket Valley's claims otherwise are based on mistaken assumptions regarding the location of new renewable resources required to meet the goals established in the CLCPA. The Applicant argues that the Guidehouse analysis fails to consider the impact of additional renewable generation enabled by the AC Transmission upgrades and the associated reduction in Upstate energy prices. The Applicant further argues that Cricket Valley's conclusions and long-term assumptions contradict the Commission's recognition that fluctuations in wholesale market prices resulting from the entry of new facilities will, over time, lead to new entry tending to levelized prices.

The Applicant argues that postponing approval of the Project is contrary to the public interest and that Cricket Valley's recommendation to do so is based on the incorrect assumption that future generation development will reduce congestion on the Central East interface. The Applicant notes various studies, all of which anticipate significant congestion across the Central East interface to continue. Moreover, the Applicant claims that the intent of the CLCPA is to accelerate, not delay, transmission upgrades needed to deliver renewable energy.<sup>120</sup> The Applicant notes that Cricket Valley has not challenged most of the benefits associated with the Project as previously determined by the Commission, and argues that Cricket Valley's proffered analysis fails to support the challenges it does make.

The Applicant also rejects Dominion's concerns, arguing that the pipeline issues are addressed by Proposed Certificate Condition 12 which requires the Certificate Holder to engineer and construct the Project to be fully compatible

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<sup>120</sup> Id., p. 58 (citing Paynter Rebuttal at p. 9, lines 20 to 22.)

with the operation and maintenance of nearby gas and other utility facilities. The proposed Certificate Condition also requires the Certificate Holder to provide details of the other facilities and measures to protect them in the EM&CP.<sup>121</sup>

The Applicant argues that Dominion will be responsible for the cost of any required protection system based on the terms of the easement under which Dominion occupies the ROW. However, the Applicant argues that this matter is a private contractual matter in which the Commission has previously refrained from intervening.<sup>122</sup>

## 2. The Applicant's Reply

In its reply, the Applicant argues that Cricket Valley's opposition to the Project rests on two mutually inconsistent grounds. The Applicant claims that Cricket Valley relies on the Guidehouse analysis claiming that it demonstrates a lack of need for the Project due to recent initiatives increasing renewable generation in Downstate markets that will reduce transmission congestion across the Central East interface by 2030. The Applicant then notes that Cricket Valley also argues that the Project will allow an abundance of lower-priced electricity from Upstate generators into Downstate markets, negatively impacting existing generators through unfair competition. The Applicant claims that both these claims cannot be true, and that neither claim constitutes a basis to deny

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<sup>121</sup> Joint Proposal, Appendix D. (requiring the Certificate Holder to engineer and construct the Project to be fully compatible with the operation and maintenance of nearby electric, gas, telecommunication, water, sewer, and related facilities and to Details of such other facilities and measures to protect the integrity, operation, and

<sup>122</sup> Applicant's Brief, p. 34 (citing Case 94-E-0995, Complaint of Sithe Energies, Inc. against Consolidated Edison Company of New York, Inc. Concerning S.C. 11 Buy-Back Tariff, Order on Rehearing (issued Jan. 16, 1996).

approval of the Project. The Applicant further argues that the record in this proceeding establishes that the Project is needed to provide a variety of benefits including cost savings related to congestion reduction, that Central East will remain the top congested interface in New York State in 2030 even with addition of the Project and generation resources contemplated by the CLCPA, that the cost savings associated with the congestion reduction due to the Project will exceed the Project's cost, and that Cricket Valley's claims regarding market distortions energy and capacity markets in New York are without merit.

The Applicant acknowledges that the Commission's previous PPTN findings do not supplant the need determination in this proceeding. The Applicant argues, however, that the previous finding is relevant in this proceeding countering Cricket Valley's claim otherwise and noting that the Commission has previously determined the need in an Article VII proceeding based on a prior PPTN determination together with the NYISO's subsequent determination that the project is the most efficient and cost-effective solution to address that need.<sup>123</sup> The Applicant concludes that the record in this proceeding demonstrates that the Commission's prior PPTN determination remains valid and includes evidence that quantifies the specific benefits of the Project where applicable.

The Applicant rejects Cricket Valley's contention that the Commission's need finding depends on a finding that production cost savings, avoided capacity costs, and other quantifiable benefits exceed the Project's costs, arguing that

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<sup>123</sup> Applicant's Reply, p. 3 (citing Case 18-T-0499, NextEra Energy Transmission New York, Inc. - Article VII, Order Granting Certificate of Environmental Compatibility and Public Need, p 16 (issued June 16, 2020)).

it contradicts the purpose of the PPTPP.<sup>124</sup> The Applicant argues that, in any event, the quantifiable benefits of this Project do exceed its costs.

The Applicant argues that Cricket Valley's conclusion that the CLCPA will eliminate the need for the Project is incorrect. The Applicant states that to support this claim Cricket Valley relies on the contention that the renewable generation developed to meet the requirements of the CLCPA will be primarily located in Downstate areas, reducing congestion on the Central East interface, and diminishing the need for the Project. The Applicant argues that Cricket Valley's contradicts other evidence of expected congestion levels over the Central East interface.<sup>125</sup>

The Applicant argues the impact of 9.0 GW of offshore wind mandated by the CLCPA does not eliminate congestion on the Central East interface according to the NYISO's 2019 CARIS Study. The Applicant further charges that the 2019 CARIS Study is an independent study, conducted with stakeholder review and comment, and that it contradicts the Guidehouse analysis regarding anticipated levels of congestion in 2030 with or without the AC Transmission upgrades in service. The Applicant also points to evidence that the NYISO's analysis concerning location of future generation development is consistent with land availability Upstate versus Downstate and accurately reflects operation of the New York State Transmission System.<sup>126</sup> The Applicant notes that the Brattle Group and the Analysis

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<sup>124</sup> Applicant's Reply, p. 5 (citing Case 12-T-0502, Proceeding to Examine Alternating Current Transmission Upgrades, Order Denying Rehearing and Addressing Further Process For Examining Alternating Current Transmission Upgrades (issued July 16, 2019), p. 14.

<sup>125</sup> Id., pp. 6-7 (citing Willick Testimony, pp. 18-19 and MMU 2019 State of the Market Report).

<sup>126</sup> Id., p. 10.

Group studies both confirm the results of the NYISO CARIS Study. Taken together, the Applicant argues, these three studies demonstrate that Cricket Valley's claim that Central East interface congestion will be substantially lower by 2030 is unfounded.

The Applicant further argues that even using Cricket Valley's own estimates of the Project's production and capacity cost savings, the quantifiable benefits of the Project exceed its costs if avoided refurbishment costs are considered. The Applicant also rejects Cricket Valley's argument that avoided refurbishment estimate incorrectly considers O&M costs. The Applicant notes that the Application clearly identifies avoided refurbishment costs and includes citation to the NYISO AC Transmission Public Policy Transmission Planning Report. The Applicant notes that neither the Application, nor the NYISO report indicate that O&M cost are included in the estimate. The Applicant also notes that the NYISO report identifies the source of the \$839 million cost estimate as the Brattle Group's Benefit-Cost Analysis of Proposed New York AC Transmission upgrades which indicates that the \$839 million figure is due to avoided capital costs.

The Applicant also dismisses Cricket Valley's claim that owners, rather than ratepayers, should be responsible for the cost of refurbishment, noting that a utility is unlikely to invest in the needed refurbishments and not seek recovery in rates. The Applicant further notes that the Commission recognized the value of avoided refurbishment in a previous order.<sup>127</sup>

The Applicant also argues the Cricket Valley ignores the non-quantifiable benefits of the Project, including at least nine public policy requirements the Commission identified in a

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<sup>127</sup> Id., p. 14.

previous order. The Applicant argues that each of these previously identified policy requirements further supports the basis of need for the Project and that Cricket Valley has only challenged the Project's impacts on market competition.

The Applicant counters Cricket Valley's claims regarding potential distortion to energy and capacity markets arguing that it is directly contradictory to Cricket Valley's other claim that the Project is not needed or oversized. The Applicant argues that Cricket Valley would not be challenging the Project if it trusted the conclusion of the Guidehouse analysis that the Project will not significantly reduce congestion over the Central East interface.

The Applicant also dismisses Cricket Valley's argument regarding FERC, claiming that Cricket Valley is conflating FERC's treatment of wholesale capacity markets with its treatment of cost-of-service transmission projects. The Applicant claims that FERC has frequently approved regionally planned transmission projects like this Project and notes that Cricket Valley offered no citations to a FERC decision rejecting a regional transmission project. The Applicant also notes that the Commission's PPTN determination was made pursuant to a FERC approved tariff. The Applicant argues that, pursuant to Order No. 1000, any FERC review of a Public Policy Transmission Need finding made in this proceeding will be limited to ensuring that the project selected meets the identified transmission needs in an efficient and cost-effective manner. The Applicant notes that the Commission and the NYISO have already made those determinations, and that they remain unchallenged, concluding that Cricket Valley's argument regarding FERC concerns is phantasmal.

The Applicant also responds to Dominion, arguing that its concerns are premature. The Applicant notes that Dominion

does not oppose either the Joint Proposal, or proposed Certificate Condition 12 in Appendix D. The Applicant notes that proposed Certificate Condition 12 requires the Applicant to provide details of required protections systems in the EM&CP and that it is premature for Dominion to conclude that the Applicant has not met the condition until its EM&CP has been proposed. The Applicant does state that the question of who should bear the cost of necessary upgrades to cathodic protection systems is ripe, and, that in the first instance, the proposed certificate condition puts the onus on the Certificate Holder, but that the Commission should answer the question of whether the certificate condition governs notwithstanding the private easement agreements.

#### VII. PUBLIC COMMENTS

Five public statement hearings and information sessions were held along the route from March 3 through March 5, 2020.<sup>128</sup> Four individuals made comments at the public statement hearings. The commenters discussed the Project's use of AC instead of direct current (DC) lines,<sup>129</sup> the need to keep gates and fences closed in agricultural areas of the Project,<sup>130</sup> the need for transmission upgrades beyond those proposed in the immediate proceeding,<sup>131</sup> and the potential land use benefits of using the underlying right-of-way for renewable energy

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<sup>128</sup> March 3, 2020: Utica and Herkimer, New York; March 4, 2020: Fonda, New York; March 5, 2020: Duanesburg, New York on March 5, 2020; and in Guilderland, New York on March 5, 2020.

<sup>129</sup> Transcript of Public Statement Hearing - Duanesburg (March 5, 2020) pp. 5-7.

<sup>130</sup> Transcript Public Statement Hearing - Herkimer (March 3, 2020) pp. 5-6.

<sup>131</sup> Transcript Public Statement Hearing - Guilderland, (March 5, 2020) pp. 5-6.

projects.<sup>132</sup> Public Comments reiterated the suggestion of using the area within the transmission right-of-way to site solar photovoltaic generation facilities, noted the importance of acknowledging any potential for the Project to negatively impact upstate energy prices, and complained of insufficient notice regarded the public statement hearings.

#### VIII. LEGAL AUTHORITY

Public Service Law §126 provides that the Commission may only grant a Certificate for the construction or operation of a major electric transmission facility if it determines the basis of the need for the facility and the nature of the facility's probable environmental impacts.<sup>133</sup> PSL §126 also requires the Commission to find that the facility avoids or minimizes to the extent practicable any significant adverse environmental impacts, including impacts to agricultural lands, wetlands, parklands and river corridors the facility will cross, and that the facility avoids or minimizes to the extent practicable any significant adverse impact on active farming operations.<sup>134</sup> Further, the Commission must find that the location of the facility as proposed conforms to applicable state and local laws and regulations except those that, as applied to the proposed facility, are unreasonably restrictive considering existing technology, factors of cost or economics, or of the needs of consumers.<sup>135</sup> PSL §126 requires the Commission to determine that the facility conforms to a long-range plan for expansion of the electric power grid of the State

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<sup>132</sup> Id., pp. 7-10.

<sup>133</sup> PSL §126(a), (b).

<sup>134</sup> PSL §126(c), (d).

<sup>135</sup> PSL §126(g).

and that the facility will serve the public interest, convenience, and necessity.<sup>136</sup>

Public Service Law §126 does not require the Commission to determine whether the project is economically feasible and nonmonetary aspects of a facility are enough to support findings that a project is needed and in the public interest.<sup>137</sup>

In evaluating the terms of a joint proposal submitted for our consideration, we must determine if the joint proposal, considered as a whole, produces a result that is in the public interest. Our Settlement Guidelines set forth factors to be used in conducting that analysis.<sup>138</sup> Those factors include consideration of whether the terms of the joint proposal are consistent with the environmental, social and economic policies of the Commission and the State; produce results within the range of outcomes that might result if the issues in the case were fully litigated; appropriately balance the interests of the utility's ratepayers, its investors and the long-term viability of the utility; and provide a rational basis for our ultimate decision.

The Commission's Procedural Guidelines for Settlement provide that all decisions, including those adopting the terms and conditions of a Joint Proposal, must be just and reasonable and in the public interest. The following considerations pertain to this determination: (1) Whether the Joint Proposal is

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<sup>136</sup> PSL §126(e), (h).

<sup>137</sup> Entergy Nuclear Power Marketing, LLC v New York State Public Service Com'n, 122 AD3d 1024, 1028 (finding that three nonmonetary aspects of the project, including increasing transmission capacity, "validated the Commission's findings of need and public interest," id., at 1029).

<sup>138</sup> Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992) (Settlement Guidelines).

consistent 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 produce a result within the range of reasonable litigated outcomes; (3) Whether the Joint Proposal fairly balances the interests of ratepayers, investors and the long-term soundness of the utility; (4) Whether the Joint Proposal provides a rational basis for the Commission's decision.<sup>139</sup>

## IX. DISCUSSION AND CONCLUSION

### A. Nature of Environmental Impacts

The Joint Proposal filed here is supported by the Applicant, DPS Staff, DEC Staff and Ag&Mkts Staff, all of which have been active participants throughout this proceeding. Further, no party challenges the adequacy of the Joint Proposal in considering the probable environmental impacts of the Project and detailing the steps necessary to ensure that adverse impacts are avoided or minimized to the extent practicable. Additional detail regarding mitigation measures will be considered during the review of LS Power's EM&CP.

We find that the public and all interested parties have had a full and fair opportunity to participate during this proceeding, including participation in settlement discussions, multiple public statement hearings, and the opportunity to submit comments during the pendency of the proceeding. The Parties had an extensive opportunity to conduct discovery, prior to submitting pre-filed testimony and related exhibits.<sup>140</sup> The Parties were afforded an additional opportunity to move evidence

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<sup>139</sup> Cases 90-M-0255, et al., Procedures for Settlements and Stipulation Agreements, Opinion 92-2 (issued March 24, 1992).

<sup>140</sup> Cricket Valley and Dominion were even allowed to submit surrebuttal testimony.

into the record prior to briefing,<sup>141</sup> and both briefs and reply briefs were submitted and fully considered.

The Signatory Parties' proposed certificate conditions appear in Appendix D to the Joint Proposal. There are 133 proposed Certificate Conditions in approximately 19 different categories including: Public Health and Safety; Environmental Management and Construction Plan; Notices and Public Complaints; Construction, Operation, Maintenance, and Restoration; Herbicide Use; Inspection and Oversight; Roads and Highways; Cultural Resources; Terrestrial and Wildlife Resources; Water Resources; Agricultural Resources; Petroleum and Hazardous Substances; Contractors and Contractor Supplies/Materials; Invasive Species; and Water Quality Certification. The proposed Certificate Conditions, together with the Specifications for Development of Environmental Management and Construction Plan (EM&CP),<sup>142</sup> Supplemental Specifications for Wetlands and Waterbodies,<sup>143</sup> and Invasive Species Management plan, are all intended to ensure that construction and operation of the Project will avoid or minimize adverse impacts to the environment and active farming operations.

These certificate conditions comprehensively reflect the parties' agreements as set forth in the body of the Joint Proposal. We find that they adequately protect public health and safety and are otherwise in the public interest, as they minimize the Project's potential adverse impacts to the maximum extent practicable.

B. State and Local Laws

We agree with the Signatory Parties that the Project, as proposed in the Joint Proposal, complies with the substantive

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<sup>141</sup> Case 19-T-0549, supra, Ruling on Procedural Schedule, p. 19.

<sup>142</sup> Joint Proposal, Appendix E.

<sup>143</sup> Joint Proposal, Appendix F.

provisions of all applicable state laws, including the PSL, the Environmental Conservation Law and the Agriculture and Markets Law. Similarly, we agree with that the Project will comply with the local laws the Applicant has identified as likely applicable to the Project with the exception of those that the Applicant requests that the Commission not apply because, as applied to the Project, such local legal provision is unreasonably restrictive in view of the existing technology, factors of costs or economics, or the needs of consumers.<sup>144</sup>

The Applicant has requested the Commission refuse to apply local laws concerning noise, odor emissions, exterior lighting and vibration, on the grounds the requirements are technologically infeasible. Other types include those the enforcement of which would interfere with proper safety precautions including signs, fencing, reliability or would conflict with National Electric Safety Code, SPDES General Permit for Stormwater Discharge from Construction Activity, the Stormwater Pollution and Prevention Plan, and the proposed Certificate Conditions.

No municipality has opposed the Applicant's requests regarding local laws. Further, we find the justifications the Applicant provides appropriate. Therefore, we find that the local laws listed in Exhibit 7 of the Application, as applied to this Project, to be unreasonably restrictive in view of existing technology.

#### C. Basis of the Need for the Project

Cricket Valley's arguments regarding a lack of need for the Project are misguided. The record here demonstrates that our previous PPTN Determination remains valid. We find that the Project is needed to relieve constraints across the Central East interface which will advance numerous public

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<sup>144</sup> Application Exhibit 7.

policies including reducing congestion and production costs, improving market competition and liquidity, enhancing efficiency, reliability, and resiliency, and avoiding refurbishment costs of aging infrastructure. Moreover, we find and determine that the enactment of the CLCPA, the Accelerated Renewable Energy Growth and Community Benefit Act, our recent Order on Priority Transmission Projects, and other recent developments further reinforce the need for the AC Transmission upgrades.

Cricket Valley's stated opposition to the Project is primarily based on an argument that the AC Transmission upgrades are not cost effective. However, that argument is shortsighted and completely ignores the numerous public policy needs that the Project is intended to fulfill. Further, there is no requirement in the Public Service Law that the Commission determine a Project is economically feasible to support a determination that the Project is needed and in the Public Interest. In any event, the record in this proceeding is enough to conclude that the AC Transmission upgrades will provide benefits in excess of their costs.<sup>145</sup>

The conclusions of the Guidehouse analysis that the upgrades are not needed ignores the public policy benefits the AC Transmission upgrades will provide. Moreover, even if the Project is viewed in the light of a strict cost/benefit, as Cricket Valley suggests, the Guidehouse analysis does not compel the conclusion the Project does not meet such a standard. Cricket Valley's analysis refused to consider any avoided cost of refurbishment benefits provided by the Project. That the AC

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<sup>145</sup> Paynter Testimony, p. 11-12 (citing NYISO MMU Evaluation of the Proposed AC Public Policy Transmission Projects, Potomac Economic, Market Monitoring Unit for the New York ISO, February 2019)(MMU Evaluation).

Transmission upgrades will avoid the cost of refurbishing and replacing aging equipment is well established,<sup>146</sup> and Cricket Valley offers no reasoned argument for ignoring that benefit.<sup>147</sup>

Cricket Valley's arguments that the AC Transmission upgrades are not needed also relies on its conclusion that the offshore mandate in the CLCPA will eliminate congestion along the relevant interfaces. However, as DPS Staff recognized, the CPCLA is not limited to one source of generation, and constraints along the Central East interface are expected to remain a concern even with the additional of the offshore wind capacity required by the CLCPA.<sup>148</sup> As importantly, Cricket Valley's argument ignores the importance of resource diversity in meeting the CLCPA efficiently, while maintaining reliability.<sup>149</sup>

Cricket Valley's arguments regarding the Project's impact to FERC regulated markets is belied by the fact that the selection of the Project was conducted pursuant to NYISO's FERC approved tariff.<sup>150</sup> Moreover, it is recognized that transmission

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<sup>146</sup> MMU Evaluation, Proceeding Exhibit No. 72 (incorporating Case 12-T-0502, Proceeding to Examine Alternating Current Transmission Upgrades, Comparative Evaluation of Alternating Current Transmission Upgrade Alternatives (filed September 22, 2015)) (2015 Staff Report)

<sup>147</sup> Cricket Valley's complains that it was unable to cross-examine witnesses regarding avoided refurbishment but also argues that the information should be considered because such witnesses do not have "independent knowledge of [avoided] costs and could not respond to questions about them." Cricket Valley's Brief, p. 9.

<sup>148</sup> 2019 CARIS Study.

<sup>149</sup> Case 15-M-0302, Proceeding to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020).

<sup>150</sup> See NYISO OATT, Attachment Y, §31.1.1.

supports markets and enhances competition.<sup>151</sup> Finally, given the uncertainty regarding New York's capacity markets,<sup>152</sup> ensuring that needed transmission infrastructure is approved and placed in service promptly is of critical importance.<sup>153</sup> Similarly, Cricket Valley's argument that negative impacts to its revenues may override the demonstrated public benefits of the Project is unsupportable. Finally, postponing approval of the Project, as suggested by Cricket Valley, will only act to postpone the multiple public benefits the Project will provide.

Therefore, for the reasons explained above, that the record in this case also fully supports a finding of public need and that the Project conforms with the State's long-range plans for the transmission system.

D. Pipeline Protection

As indicated by Proposed Certificate 12, the Certificate Holds is required to design and construct the Project in a manner that avoids adverse effects on the cathodic protection systems and physical conditions of existing structures and any fuel gas pipelines within the Project ROW and within 25 feet of the edge of the ROW. To the extent that such design and construction involves additional and/or upgraded protection equipment, the Certificate Holder is responsible for providing that such design measures are in place and operational prior to placing its Facility in service. To the extent that further disputes arise, we agree with the Applicant that such

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<sup>151</sup> See FERC Order No. 1000.

<sup>152</sup> See FERC Docket No. EL21-7-000, Notice of Complaint filed by Cricket Valley Energy Center, LLC and Empire Generating Company, October 14, 2020 (complaining that the capacity offer floor measures set forth in NYISO's Market Administration and Control Area Services Tariff is unjust, unreasonable, and unduly discriminatory).

<sup>153</sup> See Case 12-T-502, supra, Process Order, p. 11.

disputes are contractual in nature and, therefore, we decline further involvement in such.

E. Upgrades to Existing Substations

We determine that existing New York Transmission Owner (NYTO) owned substations will not be subject to Article VII solely as the result of the upgrades to those substations.

Finally, the Joint Proposal contains proposed findings in Appendix C. The findings are detailed and well-supported by the record. Accordingly, we adopt them as our findings in this matter and incorporate them here by reference.

In light of all of the above, we grant LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority, a Certificate of Environmental Compatibility and Public Need subject to the discussion in this order and the certificate conditions in Appendix D to the Joint Proposal.

The Commission orders:

1. With the exception of some of the "General Provisions" discussed above, the terms of the June 5, 2020 Joint Proposal, Attachment A to this order, including the conditions in Appendix D, subject to the discussion in the body of this order, are adopted and incorporated into and made a part of this Order.

2. The motion of LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority for Commission waiver of certain local laws as identified in the application and in the body of this Order is granted.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

**Case 19-T-0549 Application of LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for Edic/Marcy to New Scotland; Princetown to Rotterdam Project**

**JOINT PROPOSAL**

By: LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the  
New York Power Authority  
Staff of the New York State Department of Public Service  
New York State Department of Environmental Conservation  
New York State Department of Agriculture and Markets

Dated: June 5, 2020

Albany, New York

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**BEFORE THE  
PUBLIC SERVICE COMMISSION  
STATE OF NEW YORK**

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**Application of LS Power Grid New York, LLC, LS  
Power Grid New York Corporation I, and  
the New York Power Authority for a  
Certificate of Environmental Compatibility  
and Public Need Pursuant to Article VII for Edic/Marcy  
to New Scotland; Princetown to Rotterdam Project**

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**Case 19-T-0549**

**JOINT PROPOSAL**

LS Power Grid New York, LLC, and LS Power Grid New York Corporation I (collectively, “LS Power Grid New York”) and the New York Power Authority (“NYPA” and together with LS Power Grid New York, the “Applicant”), the Staff of the New York State Department of Public Service designated to represent the public interest in this proceeding (“DPS Staff”), the New York State Department of Environmental Conservation (“NYSDEC”), the New York State Department of Agriculture and Markets (“NYSDAM”), and any other parties executing this Joint Proposal (collectively, the “Signatory Parties”) respectfully submit this Joint Proposal, which includes Appendices A through I, on the 5th day of June, 2020.

**INTRODUCTION AND**  
**BACKGROUND**

On August 20, 2019, the Applicant submitted its application to the New York State Public Service Commission (“Commission”), in accordance with Article VII of the Public Service Law (“PSL”) and the Commission’s regulations thereunder, for a Certificate of Environmental Compatibility and Public Need (the “Application”) to construct, operate and maintain the Marcy to New Scotland Upgrade Project extending from the Town of Marcy in Oneida County, New York to the Town of New Scotland in Albany County, New York, as further described in detail in the Application and **Appendix B** hereto (the “Marcy to New Scotland Upgrade Project” or the “Project”). The Application was accompanied by a motion seeking waivers of application requirements under Sections 3.3 and 3.6 of the Commission’s Rules and Regulations, 16 N.Y.C.R.R. §§ 3.3 and 3.6 (2019). On December 13, 2019, the Commission issued an Order granting the Applicant’s motion, with the exception of the Applicant’s request for a waiver of Rule 86.3(b)(2)(iv). By a filing dated December 18, 2019, the Applicant provided a Revised Figure 2-2, as a supplement to Application Exhibit 2, that depicted additional utility information described in Rule 86.3(b)(2)(iv). No deficiencies were identified in the Application.

Thereafter, by a letter dated December 20, 2019, the Commission’s Secretary (the “Secretary”) informed the Applicant that the Application was in compliance with PSL § 122, effective December 18, 2019. On January 17, 2020, the Secretary issued a Notice of Availability of Intervenor Funding. On the same day, the Secretary issued a notice for a procedural conference, in which Administrative Law Judge Anthony Belsito was designated as the presiding administrative law judge in this proceeding (the “ALJ”). On February 28, 2020, the Applicant filed a supplemental filing revising Exhibits 2, 3, 4, 7, and E-2, regarding the location of the

proposed Princetown substation.<sup>1</sup> On April 24, 2020, the Applicant filed another supplemental filing further revising Exhibit 7.<sup>2</sup> Lastly, on May 19, 2020, the Applicant filed a supplemental filing revising Exhibits 4 and E-2, regarding the interim configuration at the new Rotterdam substation.

Public Statement Hearings were held by the ALJ in Utica, New York on March 3, 2020; in Herkimer, New York on March 3, 2020; in Fonda, New York on March 4, 2020; in Duanesburg, New York on March 5, 2020; and in Guilderland, New York on March 5, 2020. Each hearing was preceded by a public informational forum. Judge Belsito also held a procedural conference in Albany, New York, on March 6, 2020.

DPS Staff, NYSDEC, NYSDAM, the Towns of Canajoharie, Charleston, Florida, Minden and Rotterdam are parties to this proceeding pursuant to PSL § 124(1). Additionally, the Municipal Electric Utilities Association of New York (“MEUA”), Niagara Mohawk Power Corporation (d/b/a National Grid), the New York State Thruway Authority, Consolidated Edison Company of New York, Inc., and two individuals also requested party status in this proceeding, which requests were unopposed. Cricket Valley Energy Center, LLC (“CVEC”) requested to intervene as a party in this proceeding. After the Applicant filed an opposition to CVEC’s party status request in this proceeding on September 25, 2019, the ALJ granted party status to CVEC in a January 17, 2020 ruling. In addition, in a March 18, 2020 ruling, the ALJ granted intervenor funding in the amount of \$33,700 to the Town of Rotterdam, \$58,900 to the Town of Florida, and \$134,100 jointly to the Towns of Canajoharie, Charleston, and Minden.

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<sup>1</sup> All references to Exhibits 2, 3, 4 and E-2 in this Joint Proposal refer to the revised exhibits which are included in **Appendix A**, Evidentiary Record Exhibits 20 and 22

<sup>2</sup> All references to Exhibit 7 in this Joint Proposal refer to the revised Exhibit 7 as filed on April 24, 2020, which is included in **Appendix A**, Evidentiary Record Exhibit 21.

The Applicant filed a Notice of Impending Settlement Negotiations on January 7, 2020, and settlement discussions were held pursuant to that Notice on January 17, 2020, February 14, 2020, March 12, 2020, March 24, 2020, April 9, 2020, and April 28, 2020. In addition, technical meetings, conference calls and electronic communications facilitated the settlement process.

After thorough discussion of the issues, the Signatory Parties agreed that settlement is now feasible. The Signatory Parties believe that this Joint Proposal gives fair and reasonable consideration to the interests of all parties and that its approval by the Commission is in the public interest.

The Joint Proposal ensures an appropriate balance among (1) the protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the Applicant; is consistent with sound environmental, social, and economic policies of the Commission and the State; and produces an outcome that is within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding, as described in the settlement guidelines in Case 90-M-0255.

## **TERMS OF THE JOINT PROPOSAL**

### **I. GENERAL PROVISIONS**

1. The support of the Signatory Parties for this Joint Proposal is expressly conditioned upon approval by the Commission of all provisions thereof, without material change or condition. If the Commission does not adopt the terms of this Joint Proposal, the Signatory Parties are free to pursue their respective positions in this proceeding without prejudice.

2. The terms and provisions of this Joint Proposal apply solely to, and are binding only in, the context of the present Article VII proceeding and do not necessarily reflect the position any Signatory Party would take in a future adjudicatory proceeding. Each Signatory Party reserves

the right in future Article VII proceedings to propose or include such terms and conditions as it may deem appropriate.

3. The Signatory Parties agree that construction and operation of the Project described in this Joint Proposal, in compliance with the Joint Proposal and with the Proposed Certificate Conditions (set forth in **Appendix D**), will comply with PSL Article VII and with the substantive provisions of applicable state law referenced in the Proposed Commission Findings set forth in **Appendix C** attached hereto.

4. The discussions that produced this Joint Proposal have been conducted with the explicit understanding, pursuant to Rule 3.9(d) of the Commission’s Rules and Regulations, 16 N.Y.C.R.R. § 3.9(d) (2019), that any discussions among the Signatory Parties with respect to this Joint Proposal prior to its execution and filing shall not be subject to discovery or admissible as evidence.

5. Except as expressly provided in Paragraph 9 of this Joint Proposal, nothing in this Joint Proposal or any attached appendices is intended to directly impose any obligations on or limit any pre-existing rights of any of the parties other than the Applicant.

6. Any disagreement over the interpretation of this Joint Proposal or implementation of any of its provisions that cannot be resolved informally among the Signatory Parties shall be resolved in the following manner:

- i. the Signatory Parties shall promptly convene a conference and make good faith attempts to resolve any such disagreement; and,
- ii. if such disagreement cannot be resolved by the Signatory Parties, any Signatory Party may petition the Commission for resolution of the disputed matter.

7. This Joint Proposal is not a waiver of the Applicant’s rights to apply for additional or modified permits, approvals, or certificates from the Commission or any other agency.

8. Nothing in this Joint Proposal shall be construed as either waiving or expanding in any way the authority of any state agency to enforce the laws and regulations that are the subject of its jurisdiction.

9. All of the Signatory Parties fully support approval of the Joint Proposal in its entirety. The Signatory Parties recognize this Joint Proposal may require future actions by various parties and agree to undertake, in good faith, these future actions.

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

## **II. EVIDENTIARY RECORD**

11. **Appendix A** of this Joint Proposal lists the testimony, affidavits and exhibits agreed upon by the Signatory Parties to be admitted as record evidence in this proceeding (collectively, the “Evidentiary Record”). The Evidentiary Record also includes responses to information requests produced in this proceeding.

## **III. DESCRIPTION OF THE PROJECT**

12. As described in more detail in the Application and Appendix B hereto, the Project involves removing existing transmission lines and installing new lines within approximately 93 miles of existing transmission right-of-way (“ROW”), constructing two new substations and upgrading four other substations. Approximately 1,250 existing H-frame structures will be removed, and approximately 675 new structures, predominantly monopole, will be installed as part of the Project.

13. The Project’s route will extend from the Edic substation in Marcy, New York through the Towns of Deerfield and Marcy in Oneida County; the Towns of Schuyler, Frankfort, German Flatts, Little Falls, Stark, Danube, and the Village of Ilion in Herkimer County; the Towns of Minden, Canajoharie, Root, Charleston, Glen, and Florida in Montgomery County; the Towns

of Duaneburg, Princetown, and Rotterdam in Schenectady County; and the Towns of Guilderland and New Scotland in Albany County.

14. The Signatory Parties agree that Appendix B, attached hereto, accurately describes the location, configuration and design of the Project, which the Signatory Parties recommend that the Commission approve.

#### **IV. ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED**

15. The Commission must consider the totality of all relevant factors in making its determination of environmental compatibility and public need. The relevant factors include, without limitation, the need for the Project, the cost of the Project, the environmental impacts of the Project, impacts on active farming operations, the availability and impacts of alternatives, undergrounding considerations, conformance to the State's long-range plans, electric system reliability, state and local laws and the public interest, convenience and necessity.

##### **A. The Need for the Project**

16. Exhibit E-4 of the Application (Evidentiary Record Exhibit 13, **Appendix A**), entitled Engineering Justification, explains in detail why the Project is needed.

17. The Signatory Parties acknowledge that the Project was selected by the New York Independent System Operator, Inc. ("NYISO") in a competitive solicitation for projects to address Segment A of the Public Policy Transmission Need ("PPTN") determined by the Commission in its December 17, 2015 Order in Case 12-T-0502 (the "PPTN Order").

18. In accordance with § 31.4.2.1 of Attachment Y of the NYISO's Open Access Transmission Tariff ("OATT"), the Commission issued the PPTN Order, finding a public policy need to expand transmission capacity between upstate power generation sources and downstate consumers on New York's alternating current (AC) bulk electric transmission system.

19. In the PPTN Order, the Commission identified a number of important benefits that would flow from the transmission upgrades to be constructed pursuant to the identified PPTN – namely, that such updates would:

- i. Reduce transmission congestion so that large amounts of power can be transmitted to regions of New York where it is most needed;
- ii. Reduce production costs through congestion relief;
- iii. Reduce capacity resource costs;
- iv. Improve market competition and liquidity; to enhance system reliability, flexibility, and efficiency;
- v. Improve preparedness for and mitigation of impacts of generator retirements;
- vi. Enhance resiliency/storm hardening;
- vii. Avoid refurbishment costs of aging transmission;
- viii. Increase diversity in supply, including additional renewable resources, and will reduce costs of meeting renewable resource standards;
- ix. Promote job growth and the development of new efficient generation resources in Upstate New York;
- x. Reduce environmental and health impacts through reductions in less efficient electric generation;
- xi. Increase tax receipts from increased infrastructure investment;
- xii. Obtain synergies with other future transmission projects; and
- xiii. Relieve gas transportation constraints, in the balanced and cost-effective manner that would be accomplished by the construction and operation of a portfolio of 345 kV transmission projects to reconfigure and upgrade transmission facilities from the Edic

or Marcy substations to the New Scotland substation with a tie-in to the Rotterdam substation, in conjunction with other components of the AC transmission upgrades.

20. Thereafter, the NYISO solicited proposals from qualified developers to address this identified PPTN, as required by Section 31.4.3 of the OATT. In April 2019, the NYISO Board of Directors selected the Project for implementation from among the seven viable and sufficient proposals for the Segment A portion of the PPTN. The NYISO based this selection upon the finding that the Project, when compared with the competing proposals, is more efficient and cost effective, replaces the greatest amount of aging infrastructure, and provides the highest Central East interface capability. The NYISO also concluded that the Project will obviate the need for incurring a significant amount of transmission refurbishment costs and will provide benefits of increased production savings, excellent operability and expandability, and a lower electromagnetic field compliance risk due to its double circuit design.

21. The Signatory Parties further agree that the Project will provide needed increased transmission capacity across the Central East interface, and further, that by moving power efficiently and cost effectively across that interface, the Project will provide the various economic and public policy benefits set forth in the PPTN Order, as discussed in more detail in Exhibit 6 of the Application (Evidentiary Record Exhibit 6, **Appendix A**).

**B. The Cost of the Project**

22. The estimated cost of the Project is \$853,752,000 (in 2018 dollars) as detailed in Exhibit 9 of the Application (Evidentiary Record Exhibit 9, **Appendix A**).

23. The cost estimate provided in Exhibit 9 of the Application is based upon the independent cost estimates provided by Substation Engineering Company (“SECO”). SECO was hired by the NYISO to evaluate the proposals submitted as part of the PPTN process.

24. A more refined and definitive cost estimate will occur after the Certificate is issued, taking into account all Certificate Conditions and requirements of the Environmental Management & Construction Plan (“EM&CP”) and associated monitoring plans. Actual costs will be based on the final design of the Project facilities and prices at the time of construction.

Construction and operation of the Project is anticipated to provide a short-term stimulus to the local and regional economy by increasing employment and earnings in the construction industry, as detailed in Exhibit 6 of the Application (Evidentiary Record Exhibit 6, **Appendix A**).

25. In addition, both direct and indirect Project-related expenditures will have a positive impact on the local economy by increasing the demand for goods and services and related tax revenues.

26. Also, as detailed in Exhibit 6, construction and operation of the Project is not expected to result in any significant changes in residential, commercial, agricultural or industrial land use patterns in any community crossed by the Project.

**C. Environmental Impacts of the Project**

27. The Evidentiary Record describes the nature of the probable environmental impacts of the Project with respect to land uses, visual resources, cultural resources, terrestrial ecology, wetlands and water resources, topography and soils, noise, transportation, communications, and electric and magnetic fields.

28. The Signatory Parties agree that the Project, as proposed to be located and configured in this Joint Proposal and the accompanying Appendices, avoids or minimizes to the extent practicable significant adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.

29. The Project will be constructed and operated almost entirely within an approximate 93-mile, existing utility-owned transmission line corridor. Therefore, the environmental impacts are expected to be minimal and largely limited to temporary, construction-related activities. The Project design also avoids or minimizes potential disturbances to existing land uses, activities and traffic.

**1. Land Use Impacts**

30. Land uses adjacent to or near the Project vary along the existing transmission line route. Given that the Project will be constructed within approximately 93 miles of existing utility-owned transmission line corridor, there will be virtually no discernable change in land use conditions as a result of the Project.

31. As noted in Exhibit 4 of the Application (Evidentiary Record Exhibit 20, **Appendix A**), the Project will remove approximately 1,250 existing H-frame structures in the ROW, and will install only approximately 675 new, predominantly monopole structures. As a result, land utilization could increase within the ROW after construction. Due to the use of the existing utility-owned transmission line corridor, the Project will not impede the goals of the *2016 New York State Open Space Plan*, and it will have a negligible effect, if any, on local and regional land use patterns or planning. As explained in detail in Exhibit 4 of the Application, the Project is also consistent with various comprehensive land use plans adopted by the local municipalities along the ROW.

32. Because the Project will be constructed within an existing utility transmission corridor, access to the Project ROW will be provided by existing roads to the maximum extent practicable. The Project will improve existing access roads and construct new roads where sufficient access does not exist. Additional specifications for Project access roads are provided in **Appendix E** (EM&CP Specifications).

33. The Applicant does not need to acquire additional property rights for substation upgrades or related construction work, all of which will occur within the existing substation parcels. As part of the upgrades at the Edic substation, a new breaker-and-a-half bay will be constructed on the substation's north side, necessitating expansion of the substation fence line by approximately 0.8 acres on land owned by National Grid, all of which has been previously disturbed. No new property is expected to be acquired to accommodate this expansion.

34. The construction and operation of the new Princetown substation will result in a permanent change in land use on an approximately 6-acre parcel located within the northwest quadrant of the junction of the two existing electric transmission corridors that constitute the Project ROW (*see Appendix B* for details). Situated off Reynolds Road in the Town of Princetown, the site is currently occupied by the remains of a burned down residence, trailers, outbuildings, and other items that will be removed to accommodate the development of the new substation. Construction support for the substation will require the removal of a residence and outbuildings on a separate approximately 6-acre parcel located in the southwest quadrant where the two existing electric transmission corridors intersect. Existing wetlands and wooded areas located on the site will be retained to the maximum extent practicable to provide screening and vegetated buffers for the adjacent and nearby properties.

35. A portion of the Project ROW is located within the Erie Canal-East region of the Erie Canalway National Heritage Corridor ("ECNHC"). Project segments within the ECNHC include: a small reconductoring segment that crosses the Erie Canal in the Town of Schuyler, Herkimer County; and other segments between the Edic and New Scotland substations that cross in and out of the ECNHC, farther removed from the Erie Canal and Mohawk River.

36. The Erie Canal-East Region extends from Albany to Rome and is characterized by agriculture, forests, and historic small towns and cities that developed around the Mohawk River.

The Erie Canalway National Heritage Corridor Commission Preservation and Management Plan (October 2006) provides guidance to the ECNHC Commission in terms of development and construction near the ECNHC.

37. The Project will not interfere with the land use or economic development plans outlined in the ECNHC Preservation and Management Plan.

## **2. Agricultural Resource Impacts**

38. The Project ROW crosses active agricultural lands and nine designated New York Agricultural Districts. Hayland/pasture and cultivated cropland are the predominant agricultural uses within the Project ROW, which also contains both prime soils and soils of statewide significance.

39. The operation of the Project will allow for the co-existence of active farmland and transmission lines within the Project ROW.

40. During the construction phase, some agricultural operations may be temporarily disrupted. To minimize potential impacts to such agricultural resources, the Applicant will adhere to NYSDAM “*Guidelines for Electric Transmission Right-of-Way Projects*” dated 04-27-11 and will identify and implement measures designed to minimize impacts to active agricultural land in the EM&CP. The Applicant will also adhere to the conditions set forth in Section N, Agricultural Resources, of the Proposed Certificate Conditions attached hereto as **Appendix D**.

41. As stated above, on a net basis, the Project will remove approximately two wooden H-frame structures for each new double-circuit steel monopole structures installed, thereby reducing the total number of structures within the Project ROW while increasing the span between each. As a result, the Signatory Parties agree that the Project footprint will be considerably reduced compared with existing conditions, benefiting agricultural operations overall. Following construction and restoration, with fewer structures to navigate, farm operators should realize a net

increase in land available for cultivation and easier operation of farm equipment within the Project ROW.

**3. Visual Resource Impacts**

42. The Applicant conducted a viewshed analysis, a field evaluation, and photographic simulations to evaluate the Project's impact on visual and aesthetic resources. The Signatory Parties agree that, in general, the overall visual character and visual quality of the Project corridor will not be substantially altered for any viewer group.

43. The results of the analysis, submitted with the Application, indicate that there will be some increased visibility of transmission structures due to the increase in height of the proposed structures and the construction of two new substations. This proposed design is likely to result in no significant change in the overall visual impact of the existing transmission lines being upgraded.

44. The potential visual impacts of the Project are minimized through the use of the existing electric transmission corridor, the installation of monopoles rather than H-frame structures with greater spans between each monopole, and the net reduction in the number of structures by nearly fifty percent.

45. During construction there may be temporary visual impacts experienced by those immediately adjacent to the Project ROW and along public roads crossing the ROW where construction equipment, crews and materials may be dominant in the foreground. Views of Project construction from areas not immediately adjacent to the existing transmission line ROW will be mostly screened by vegetation and topography.

46. Construction activities associated with the new substations will have a longer duration but similar temporary visual effects resulting from construction equipment and workers. Best Management Practices (BMPs) will be implemented to maintain the Project area free of debris, trash, and waste during construction.

47. The new Princetown and Rotterdam substations will result in new visual elements, but the setting and site characteristics of both substations effectively limit potential visibility of these new facilities. The new Princetown substation site is located off Reynolds Road in Princetown at the junction of two major transmission line corridors. Preliminary design and site layout indicate that the substation will be set back more than 400 feet from the road, and tree clearing along Reynolds Road will be kept to a minimum. Remaining vegetation and wide electric corridors bordering the site will effectively limit potential views of the new substation from public locations. Construction activities at this location will be mostly shielded from nearby residences with only intermittent views for travelers along Reynolds Road.

48. The relatively remote location of the new Rotterdam substation and its proximity to the existing Rotterdam substation (as explained in detail in **Appendix B**) will limit potential visibility and resulting impacts from construction and operation at that location. It is anticipated that most local residents and travelers in the area will be unaware of the new Rotterdam substation.

#### **4. Cultural & Historic Resource Impacts**

49. As part of the Application, the Applicant conducted a review of the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) online Cultural Resource Information System (“CRIS”) database within a 1-mile radius of the Project centerline (“Archaeological Study Area”), identifying 166 documented archaeological sites.

50. The Archaeological Study Area contains no archaeological sites listed on the National Register of Historic Places (“NRHP”); 12 sites have been determined to be NRHP-eligible; 21 sites have been determined to be not eligible for the NRHP; and 133 sites have had no NRHP determinations to date. A complete list of the archaeological sites is included in Exhibit 4 of the Application (Evidentiary Record, Exhibit 20, **Appendix A**).

51. The Application describes five archaeological sites of undetermined status under the NRHP that occur within the Project’s archaeological area of potential effects (“APE”). The Applicant will conduct a Phase IB archaeological survey of the direct effects APE to identify potential impacts on archaeological resources due to Project activities. The survey will delineate specific areas of archaeological sensitivity, determine the presence of resources within the direct effects APE, and recommend further archaeological investigations (a Phase II survey) for sites identified as potentially eligible for listing on the NRHP. Adverse effects to such NRHP-eligible sites will be mitigated through the implementation of avoidance measures or, if not avoidable, by Phase III data recovery investigations.

52. The Applicant will consult with the OPRHP regarding the results of the archaeological surveys during the preparation of the EM&CP. Site-specific mitigation recommendations and/or avoidance measures will be developed at that time to address the OPRHP’s determinations of Project effects on archaeological resources.

53. The Applicant also conducted a review of the OPRHP online CRIS database for architectural historic resources within a 3-mile radius of the Project centerline. This review identified 278 individual properties and historic districts listed or determined eligible for listing in the NRHP. Two complete lists, identifying NRHP-listed and NRHP-eligible properties, are set forth in Exhibit 4 of the Application.

54. No historic architectural resources exist at the Princetown substation site located in the northwest quadrant where the two existing transmission corridors intersect. Construction support for the substation will require the removal of a residence and two outbuildings in the southwest quadrant where the two existing electric transmission corridors intersect. While the residence and one of the two outbuildings (a shed) on that southwest parcel are more than fifty years old, they no longer retain sufficient integrity or significance to be recommended as

potentially eligible to the NRHP. Therefore, the Applicant believes that demolition of these structures will not result in significant impacts to historic resources.

55. The architectural APE for indirect effects includes all or part of fourteen properties, twelve of which have views of the existing transmission lines in the Project ROW. For the two remaining historic architectural resources, Holy Trinity and Enlarged Double Lock No. 23 of the Old Erie Canal, the Project has the potential to introduce a view of the transmission line where no view currently exists. Based on the distances between those sites and the lines in question (1.55 miles and 0.76 miles, respectively), the Applicant believes it is unlikely that the Project will adversely affect either of these properties.

56. The Applicant also conducted an analysis of the U.S. Department of Housing and Urban Development Tribal Directory Assessment Tool. While there are six Indian Nations with historic affiliations connected to the local counties within the Project area, there are no Native American reservation lands traversed by the Project corridor. Consultations with these nations will be held by the lead federal agency to the extent necessary in accordance with Section 106 of the National Historic Preservation Act.

57. The Project EM&CP will identify mitigation measures with respect to cultural and historic resource impacts, including steps to be taken when archaeological materials are encountered during Project construction. To avoid impacts to cultural and historic resources to the maximum extent practicable, Applicant will adhere to the conditions contained in the Proposed Certificate Conditions attached as **Appendix D** and all other protective measures identified in the EM&CP.

**5. Terrestrial Ecology & Wetland Impacts**

*a. Vegetation*

58. The Project ROW has been subject to periodic vegetation management for decades in accordance with the applicable vegetation management programs. Aside from agricultural areas, the Project ROW is largely in early successional vegetation and will continue to be maintained in a similar manner upon completion of the Project. Following construction, the Project ROW will continue to be maintained in accordance with a Long-Range Right-of-Way Management Plan, as set forth in the Proposed Certificate Conditions, attached hereto as **Appendix D**.

59. Due to its siting within existing transmission corridors already cleared and maintained by incumbent transmission owners, the Project reduces ROW clearing to the maximum extent practicable. Only minimal tree clearing, necessary to maintain electrical clearances and to support access and work pads, will be undertaken, as described in the next section.

60. In some areas, clearing of woody species will be necessary to provide work areas for new structures and to provide required clearance for the 345 kV lines. A review of these areas indicates a total of approximately 3.4 acres of required clearing within the transmission line ROW, including approximately 1.4 acres near and adjacent to the New Scotland substation. Development of the Princetown substation will require clearing of approximately 2.5 acres of deciduous woodland on the substation and substation construction support site, both adjacent to the Project ROW. All areas identified for tree clearing are shown on Figure 2-3 of Exhibit 2 of the Application (Evidentiary Record Exhibit 20, **Appendix A**).

61. The Signatory Parties agree that the amount of ROW clearing required for the Project represents the required clearing necessary to prevent interference of vegetation with the proposed facility, subject to design considerations such as structure height and span length in accordance with good utility practice.

*b. Invasive Species*

62. The Signatory Parties agree that the Applicant will implement the Invasive Species Management Plan as set forth in **Appendix G**, which will be made part of the approved EM&CP.

*c. Wetlands and Streams*

63. Wetland field delineations identified a total of 383 wetland polygons comprising approximately 711 acres within the Project corridor. Approximately 687 acres (97%) of the wetlands delineated within the Project area were identified as emergent or scrub shrub, with the remaining acreage identified as forested communities, due to the presence of greater than 30% tree canopy cover.

64. Thirty of the 383 wetlands intersected by the Project ROW were identified as NYSDEC wetlands. State regulated delineated wetlands (including regulated adjacent areas) and the associated acreages within the Project ROW are identified in the Wetland Delineation Report, provided as Appendix D to Exhibit 4 of the Application (Evidentiary Record Exhibit 4, **Appendix A**).

65. The delineation of wetlands at the proposed Princetown substation site identified approximately 3.5 acres of wetlands present within the approximately 12-acre survey area, none of which are NYSDEC wetlands. However, permanent impacts to delineated wetlands associated with Princetown substation are estimated at only approximately 0.08 acres.

66. Impacts to wetlands cannot be entirely avoided because of the size and nature of the Project. Permanent impacts associated with the Project may include: (i) fill associated with structure placement; and (ii) fill of wetlands and NYSDEC adjacent areas associated with the widening of existing access roads. Temporary impacts associated with Project construction may include: (i) temporary loss of wetland functions for construction access routes and structure construction workspace locations where wetland avoidance is not practicable; (ii) installation of

temporary bridges and culverts to provide construction access across waterways; (iii) limited dewatering of surface or subsurface waters in select work areas.

67. The Applicant will avoid and minimize impacts to the identified wetlands, to the maximum extent practicable, by adhering to the measures contained in: (i) the Proposed Certificate Conditions set forth in **Appendix D** hereto; (ii) the Specifications for the Development of the EM&CP set forth in Appendix E hereto; (iii) the NYSDEC Supplemental Specifications for Wetland and Waterbodies set forth in **Appendix F** hereto; and (iv) the Project’s EM&CP.

68. For unavoidable net impacts, compensatory mitigation will be required. Where such is the case, a wetland mitigation plan will be filed with the Commission in accordance with the Certificate Conditions approved by the Commission in this proceeding.

69. Field delineations identified a total of 299 streams (132 perennial, 126 intermittent, and 41 ephemeral). At the Princetown substation, the delineation identified two perennial and three ephemeral streams within the survey area, all located within the parcel in the southwest quadrant where the two existing transmission corridors intersect.

70. The Applicant will minimize impacts to protected streams by minimizing the number of streams crossed by access roads, by utilizing existing crossings to the maximum extent feasible, not placing structures in streams, spanning across streams, and adhering to all other measures identified in the Proposed Certificate Conditions (**Appendix D** hereto) and the NYSDEC Supplemental Specifications for Wetland and Waterbodies (**Appendix F** hereto).

## **6. Impacts on Protected Wildlife and Plants**

71. The New York Natural Heritage Program (“NYNHP”) identified several Federal and State protected threatened and endangered species in the vicinity of the Project, including the Northern Long-eared Bat (*Myotis septentrionalis*), Least Bittern (*Ixobrychus exilis*), Pied-billed Grebe (*Podilymbus podiceps*), Sedge Wren (*Cistothorus platensis*), King Rail (*Rallus elegans*),

Henslow's Sparrow (*Ammodramus henslowii*), Upland Sandpiper (*Bartramia longicauda*), Bald Eagle (*Haliaeetus leucocephalus*), Short-eared Owl (*Asio flammeus*), and Northern Harrier (*Circus cyaneus*), as well as two state listed plant species: Side-oats Grama (*Bouteloua curtipendula*) and Brown Bog Sedge (*Carex buxbaumii*). A review of the U.S. Fish and Wildlife Service Information for Planning and Consultation (IPaC) online system also identified the Indiana Bat (*Myotis sodalis*) in the general Project vicinity.

72. Avoidance, minimization, and mitigation measures will be implemented in accordance with the Proposed Certificate Conditions set forth in **Appendix D** of this Joint Proposal, the associated mitigation plans (including the Grassland and Marsh Bird Net Conservation Benefit Plan which will be developed in consultation with, and accepted by, NYSDEC and DPS and included as part of the filed EM&CP), and the approved EM&CP.

#### **7. Impacts on Topography & Soils**

73. The Project ROW traverses three physiographic regions of New York State: the Tug Hill Plateau, the Hudson-Mohawk Lowlands, and the Allegheny Plateau. The Application identified potential limitations to development along the Project ROW, including a few isolated areas of steep slopes associated with stream and/or river valleys within the Tug Hill Plateau, Allegheny Plateau, the Utica Reservoir, and Frankfort and Ilion Gorges. These limitations and other topographical considerations will influence structure placement and foundation design but will not have a long-term effect on the integrity of the proposed structures.

74. Due to the use of a previously disturbed ROW, construction and operation of the Project are not expected to result in significant effects to topographic and soil conditions and, thus, will not significantly alter stormwater runoff patterns or volumes. Minor changes to topography may occur because of grading necessary to prepare work areas and access roads. These access roads and work areas will be identified in the EM&CP.

75. Post construction restoration of work areas, access roads and substations will include decompacting areas of compacted soil, as necessary, grading the transmission line corridor and substation fringe area back to original grade, where practicable, or otherwise providing appropriate, stabilized conditions, and sowing appropriate seed mixes. Other measures to minimize soil disturbance and topographic impacts will be identified in the EM&CP.

76. The Application identified 21 active mines and gravel pits within three miles of the Project ROW. The Project will not adversely impact these operations because the Project utilizes an existing utility ROW.

77. The Project will be designed, constructed, operated and maintained to be compatible with geological conditions. Geotechnical investigations will be conducted prior to construction to support final Project design. Site specific erosion and sediment control measures will also be provided as part of the EM&CP.

## **8. Transportation Impacts**

78. The anticipated effects of Project construction and operation on airports, railroads, marine traffic, roadways, and pedestrian ways are described below. The Project will have no discernible permanent impacts on these transportation systems.

### *a. Airports*

79. There are two public airports within the maximum horizontal surface distance of 20,000 feet of the Project: the Schenectady County Airport and the Frankfort-Highland Airport. There are also 16 private airports within 20,000 feet of the Project.

80. During the Project's final design and construction, the Applicant will perform an evaluation pursuant to the Federal Aviation Administration's ("FAA") criteria enumerated in 14 CFR § 77.13 and if required, will submit notice to the FAA to determine if the proposed transmission structures and construction activities will impact air navigation or airport operations.

If the FAA requires, the final design and construction of the new structures will incorporate appropriate mitigation measures (e.g., lighting and/or marking). Any information applicable to construction will be included in the EM&CP.

*b. Railroad Crossings*

81. The Project crosses three railroad corridors owned and operated by CSX Transportation, Inc., Norfolk Southern Railway Company, and SMS Rail Lines of New York, LLC. The Project is not expected to impact the operation of these railroads. However, the Applicant will review the final designs and coordinate construction activities with the railroad companies. Any information applicable to construction will be included in the EM&CP.

*c. Road crossings*

82. The Project crosses the New York State Thruway (designated as Interstate 90 in the Project area) in two locations, other state roads in 25 locations, county roads in 53 locations, and town or private roads in 58 locations.

83. The Project crosses the New York State Thruway in the towns of Rotterdam (the “Rotterdam Crossing”) and Schuyler (the “Schuyler Crossing”). For both crossings, the Applicant will apply for Occupancy and Work Permits, as applicable, from the New York State Thruway Authority. All work associated with the crossings of the Thruway will be compliant with the Utility Occupancy Supplement, the New York State Thruway Authority Occupancy and Work Permit Accommodation Guidelines, Thruway Authority Rules and Regulations, any applicable waivers or exemptions, and all conditions included in the permits to be issued.

84. On May 28, 2020, the Applicant requested that the New York State Thruway Authority grant a waiver for the Rotterdam Crossing, to the extent applicable, from the policy set forth in its Utility Occupancy Supplement TAP-401U that “[u]tilities crossing the Thruway need to be placed underground, except in limited circumstances where the Authority, in its discretion,

determines that placement of utilities underground is not feasible” (the “Utility Crossing Policy”). Based upon discussions with the New York State Thruway Authority, a waiver from the Utility Crossing Policy is not required for the Schuyler Crossing, as the Project only entails replacing the wires, or reconductoring at the Schuyler crossing, and the existing footprint of that crossing will remain unchanged.

85. With respect to the Rotterdam Crossing, the Applicant requested a waiver from the Utility Crossing Policy, to the extent applicable, based on the following grounds:

- (1) there are numerous constructability and system reliability issues unique to the Project’s construction in an existing transmission corridor, including a required in-service date of December 2023, limited outage windows as determined by the NYISO, and strict construction sequencing requirements, for which an underground crossing would create an undue hardship and be infeasible;
- (2) to avoid the impediments identified in (1) above, any underground crossing would need to be constructed outside of the existing transmission corridor, which would violate the provisions of the PPTN Order requiring that the Project be built within existing transmission right-of-way and prohibiting the acquisition of any property outside of such existing right-of-way, except for *de minimis* acquisitions that cannot be avoided due to unique circumstances;
- (3) an underground crossing is conservatively estimated to cost at least \$13 million, over eight times more than the estimated cost of the overhead crossing, and such a significant cost should not be borne by the State’s ratepayers, given that (i) there is a pre-existing overhead crossing at this location, which the Project is merely replacing, and (ii) there is a

pre-existing easement agreement establishing the right to cross the Thruway in an overhead configuration at this location; and

(4) the Project will result in no net increase in the number of overhead crossings of the Thruway, because it will simply replace two existing overhead circuits with two new overhead circuits. Thus, the Project will have no adverse impact on public safety, particularly given that multiple safety features will be incorporated into the design of the Project, which will improve the safety of Thruway for the traveling public over the existing conditions.

86. The Applicant will also submit a Highway Work Permit Application for Utility Work to install utilities within or adjacent to State highway rights-of-way based upon final design of the Project. A Maintenance and Protection of Traffic (“MPT”) Plan will be prepared in accordance with the Proposed Certificate Conditions in **Appendix D** of this Joint Proposal. The Signatory Parties do not anticipate any discernible impact to traffic as a result of Project operation. Mitigation of local traffic impacts will be governed, to the extent applicable, by the Road Use and Crossing Agreements which were entered into between LS Power Grid New York and the local municipalities.

*d. Canals*

87. The Project ROW crosses the Erie Canal, part of the New York State Canal System, approximately 5.5 miles southeast of the Edic substation. The Applicant will install the new 345 kV lines on existing structures at the crossing of the Erie Canal, and will apply to the New York State Canal Corporation for any work permits necessary for such reconductoring activities. Construction activities will also be subject to, but not necessarily limited to, the Special Provisions for Work in or Over Navigable Waterways Operated by the New York State Canal Corporation.

*e. Pedestrian Traffic*

88. The Project ROW is generally located in rural areas characterized by large plots of agricultural and forested land not commonly visited or accessed by pedestrians. In most of these areas, local, county, and state roads provide an alternative and preferable route for pedestrian traffic as compared to the existing transmission corridor.

89. The Project ROW corridor will cross several recreational trails and public parks as identified in Exhibit 2 of the Application (Evidentiary Record Exhibit 20, **Appendix A**). The Applicant will employ appropriate construction best practices when constructing these overhead crossings, including temporary barricades and fences, to avoid or minimize any impact on pedestrian use of these recreational areas. Proposed signage and other mitigation measures to protect pedestrian traffic during construction will be included in the EM&CP.

## **9. Communications Impacts**

90. The Applicant's review of Federal Communication Commission databases identified several registered communications antennas and/or towers within two kilometers of the Project centerline. As more fully described in Exhibit E-5 of the Application (Evidentiary Record Exhibit 14, **Appendix A** hereto), the Project is not expected to result in any significant interference with radio, television, telephone signal, cellular phone reception, railway signaling and communications, or microwave transmissions. In the event that interference with communications is reported along the Project ROW, the Applicant will take appropriate action to address such interference.

91. The Applicant will comply with applicable provisions of the National Electrical Safety Code related to appropriate spacing between the proposed transmission lines and communication facilities and has designed the transmission lines to minimize corona effects. In addition, the Applicant will follow the Call Before You Dig protocol and will contact potential

third-party underground communication cable operators to confirm the locations of any underground communication facilities that would be within or crossed by the Project ROW.

**10. Noise Impacts**

92. The Applicant’s audible noise analysis, submitted with the Application, examined potential noise impacts resulting from the construction and operation of the Project.

93. The construction of the Project will require the use of heavy equipment that will be periodically audible along and immediately outside the Project ROW and its associated access roads, structure sites, staging areas and laydown yards. Noise resulting from the operation of heavy equipment or other construction activities will be of a temporary nature.

94. Construction noise will be mitigated by the attenuating effect of distance, the presence of existing vegetation, the intermittent and short-lived character of the noise, and the use of functional mufflers on all construction equipment. These measures will be addressed in the EM&CP.

95. Noise generated during Project operation will include sound sources associated with both transmission line and substation operation.

96. Transmission line sound sources will consist primarily of corona noise, Aeolian noise, and noise associated with maintenance and vegetation management activities. Operation of the transmission lines is not expected to cause any significant impact to the ambient noise environment. Ambient noise levels may rise during times of poor weather but are expected to remain compliant with applicable noise regulations.

97. The proposed upgrades to existing substations are not expected to cause appreciable changes to the ambient noise environment. The new Princetown substation does not include any noise generating equipment expected to be audible beyond the utility property boundary; thus, operations will not impact the ambient noise environment.

98. The new Rotterdam substation is expected to produce operational noise as a result of the Project but has been sited to minimize noise impacts by locating the equipment adjacent to the existing Rotterdam substation and distant from any noise sensitive areas. In the final configuration, the new Rotterdam substation will include one 345-230 kV three phase transformer and six 345-115 kV single phase transformers, resulting in a maximum operational noise increase of 4 dBA relative to the existing nighttime L90 background noise value at the monitoring location of maximum impact. Such an increase is not considered to create an adverse noise impact based on applicable NYSDEC guidance. Maximum audible noise levels generated by the interim configuration will be lower than those of the final configuration due to two key factors: i) the interim configuration has only two transformers in service compared with the final configuration's three in service transformers and ii) the 345/230 kV transformers generate lower noise levels than the 345/115 kV transformers associated with the final configuration.

#### **11. Electric & Magnetic Fields**

99. The Applicant performed a study through the use of calculated computer models, which assessed the expected electric and magnetic field levels using winter normal conductor ratings and clearances as required by the Commission.

100. Calculated electric and magnetic field levels at the ROW edge generally decrease as a result of the Project. Based on the calculated electric field levels, the Project will not cause an exceedance of the electric field standard of a maximum of 1.6 kV/m at the edge of the ROW, one meter above ground level, with the line at rated voltage and 7 kV/m, 11 kV/m, and 11.8 kV/m measured at 1 meter above ground over public roads, private roads, and other terrain, respectively, as established by the Commission in Opinion No. 78-13, issued June 19, 1978. Additionally, based on the calculated magnetic field levels, the Project will not cause an exceedance of the 200 milligauss (mG) standard for magnetic fields established by the Commission in its Statement of

Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, issued September 11, 1990.

**D. Availability and Impact of Alternatives Routes**

101. The Evidentiary Record agreed upon by the Signatory Parties describes the availability and impact of alternatives to the Project and are briefly summarized below.

102. In the PPTN Order, the Commission described the needed transmission system improvements as comprising two segments: Segment A, involving new transmission lines from Edic or Marcy to New Scotland, and Princetown to Rotterdam, on existing ROW, as well as related substation work; and Segment B, involving new transmission lines from Knickerbocker to Churchtown, and Churchtown to Pleasant Valley, on existing ROW and related substation work. The NYISO Board of Directors selected the Project, upon the competing transmission proposals, as the sole tier #1 alternative for the Segment A portion of the PPTN. The PPTN Order is described in more detail in Exhibit 3 and Exhibit E-4 of the Application (Evidentiary Record Exhibits 13 and 20, **Appendix A**).

**1. Alternative Routing Proposals**

103. The Signatory Parties acknowledge that in the PPTN Order, the Commission stipulated that no transmission solution be selected that requires the acquisition of new permanent transmission rights-of-way, except for *de minimis* acquisitions that cannot be avoided due to unique circumstances. Accordingly, the Applicant did not consider any alternative routing proposals that would have required more than a *de minimis* acquisition of new transmission line ROW from any source other than New York’s utilities. Within existing transmission ROW, the Applicant evaluated two locations where the ROW occupied by the existing 230 kV facilities to be replaced by the Project is split (hereinafter, referred to as the “Ilion ROW Split” and

the “Charleston ROW Split”), and one other location where two alternate paths are available in a short segment of the ROW (hereinafter, referred to as the “Marshville Corridor”),

*a. Ilion ROW Split Alternatives*

104. In the vicinity of the Village of Ilion and Towns of Frankfort and German Flatts in Herkimer County, the existing ROW splits into a northern segment and a southern segment, each currently containing one of the two 230 kV circuits to be rebuilt as part of the Project. The overall length of the Ilion ROW Split is approximately 4.6 miles.

105. The Applicant evaluated three potential alternatives in connection with the Ilion ROW Split.

106. The first alternative for the Ilion ROW Split involves placing both new circuits in the northern segment and the second alternative involves placing both new circuits in the southern segment. Both of these alternatives require acquisition of significant new ROW, as it is not practicable to fit a double circuit 345 kV line within the existing ROW in either area. Both alternatives are inconsistent with the PPTN Order’s requirement of only *de minimis* new ROW acquisition. Also, the first alternative would require displacing several residents along that segment, and the second alternative would require significant tree clearing and would result in adverse system operations impacts with significantly higher costs. The viability of alternative two was further assessed through information requests and technical meetings. Thereafter, no party pursued additional assessment of alternative two. Accordingly, the Applicant does not propose either the first or second alternative for implementation.

107. The third alternative for the Ilion ROW Split involves placing one new circuit in each of the northern and southern segments of the split. This third alternative is preferred by Applicant because it would not require the acquisition of any new ROW, consistent with the Commission’s PPTN Order, and it would also not require any new tree clearing within the existing

ROW. In addition, this alternative avoids near term and long-term impacts on landowners. For these reasons, the Applicant prefers the third alternative for the Ilion ROW Split.

*b. Charleston ROW Split Alternatives*

108. In the vicinity of the Towns of Charleston and Glen in Montgomery County, the existing ROW splits into a northern segment and a southern segment, each currently containing one of the two 230 kV circuits to be rebuilt as part of the Project. The overall length of the Charleston ROW Split is approximately 3.97 miles.

109. The Applicant evaluated three potential alternatives in connection with the Charleston ROW Split: (1) placing both new circuits in the northern segment, which would require acquisition of significant new ROW; (2) placing both new circuits in the southern segment, which would require acquisition of significant new ROW; and (3) placing one new circuit in each of the northern and southern segments of the split.

110. The Applicant prefers the third alternative because it does not require the acquisition of any new ROW, consistent with the PPTN Order, and would result in the use of shorter structures with a delta conductor configuration rather than a vertical conductor configuration.

*c. Marshville Corridor Alternatives*

111. In the vicinity of the Marshville substation in the Town of Canajoharie in Montgomery County, the existing 230 kV facilities are installed on separate single circuit structures that diverge from each other for approximately 0.6 miles, but remain within the Marshville Corridor, a single broad utility-owned corridor.

112. The Applicant evaluated two potential alternatives in connection with the Marshville Corridor: (1) replacing the existing two sets of single circuit 230 kV facilities with one set of double circuit 345 kV facilities, to be located in the southern portion of the Marshville

Corridor; and (2) removing the existing two sets of single circuit 230 kV facilities and replacing them with separate sets of single circuit 345 kV facilities in both the northern and southern portions the Marshville Corridor.

113. The Applicant prefers the first alternative because it avoids the need to construct and maintain three additional transmission structures that would be required for two single circuit lines in separate ROW through that area, and the resulting increased costs for materials and construction labor and higher future maintenance costs. Although the first alternative would require more tree clearing (1.49 acres) than the second alternative (0.11 acres) to accommodate the required electrical clearances, all such clearing would be within the existing ROW. Also, the second alternative is not preferred because it would result in increased impacts to agricultural operations in the area.

## **2. Alternative Substation Locations**

114. The Applicant identified and evaluated eight alternative locations for the new Princetown substation: four sites within the existing transmission corridor near the intersection of the two Edic/Marcy to New Scotland 345 kV (#14 and #18) transmission lines and the two Porter to Rotterdam 230 kV transmission lines (#30 and #31) (the “Junction”); and four sites on the closest adjoining parcels to the Junction, all of which are depicted in Exhibit 3 of the Application (Evidentiary Record Exhibit 20, **Appendix A**).

115. After considering all of the potential siting constraints for the eight identified siting locations for the Princetown substation, the Applicant concluded that either the alternative site located on the closest adjoining parcel to the southwest of the Junction (“Site 7”), or the alternative site located on the closest adjoining parcel to the northwest of the Junction (“Site 8”) would be suitable for siting the new Princetown substation due to their advantages with respect to known environmental constraints, site access, outages, line crossings, and transmission line entrances.

While the Applicant secured options to purchase the properties for both Site 7 and Site 8, the Applicant identified Site 8 as the preferred alternative location based on input from local residents and the Town of Princetown, in that Applicant's acquisition and use of the property would present a unique opportunity for the clean-up of the site. Site 8 also allows for an additional setback distance of approximately 400 feet between the proposed substation site and Reynolds Road, providing additional screening of the substation from the road.

116. The Applicant considered the western portion of the existing Rotterdam substation parcel as the only feasible location for the new Rotterdam substation, due to the existing nearby transmission line and substation infrastructure; topography; access, including deliverability of large new transformers; environmental resources, including surface waters; construction logistics; and outage plans. This location, within the existing utility-owned property, also minimizes the number of crossings of existing lines, and avoids the need to move existing lines to the greatest extent practicable.

### **3. Alternative Structure Designs**

117. While the Applicant evaluated multiple structure designs for the proposed transmission lines comprising the Project, the preferred design is a double circuit structure design for the Edic to Princetown segment (except for the ROW split areas) and the Princetown to New Scotland segment of the Project ROW, given the Commission's criteria in the PPTN Order to avoid acquiring any new ROW other than *de minimis* areas and the NYISO's goal of expandability for the ROW, such that there is sufficient space left in the corridor for an additional 345 kV circuit in the future. In addition to corridor space savings, double circuit structures also present advantages in terms of cost, less permanent surface disturbance and reduced agricultural impacts.

118. Single circuit structure design is the preferred design for the Princetown to Rotterdam segment due to local reliability considerations. Separating the two 345 kV lines onto

single circuit structures in this segment ensures a single high voltage power source into the Rotterdam substation in the event of the loss of one of the 345 kV lines, preventing a single contingency (i.e., double circuit structure failure) from causing low voltage issues at the substation. Additionally, the single circuit monopole structure design in this segment results in less surface disturbance and reduced agricultural impacts, as compared to the existing H-frame structures in the ROW. Single circuit design is also required in the preferred alternative locations for the Ilion ROW Split and Charleston ROW Split. Section 3.6.1 of Exhibit 3 of the Application (Evidentiary Record Exhibit 20, **Appendix A**) sets forth the advantages and disadvantages of the structure designs considered for the Project in more detail.

119. The Applicant also evaluated multiple structure types for the Project, including lattice structures, H-frame structures, monopoles, and guyed angle and dead-end structures, as well as both delta and vertical configuration options. Section 3.6.2 of Exhibit 3 of the Application (Evidentiary Record Exhibit 20, **Appendix A**) sets forth the advantages and disadvantages of the structure types and configurations considered for the Project in more detail.

120. Considering the advantages and disadvantages of the various structure types and configurations, monopole structures are the preferred structure alternative for the Project due to their faster installation time, smaller surface disturbance and agricultural impact, and most efficient use of the transmission corridor.

121. For the new single circuit structures in the Princetown to Rotterdam segment, and the single circuit split areas between Edic and Princetown, the delta configuration option is the preferred configuration alternative given the ROW width and that the delta configuration can result in reduced structure heights and visibility of the Project, as well as generally reduced electromagnetic field values at the edge of the ROW. For the double circuit structures between Edic and Princetown, a delta configuration is also the preferred alternative, given the available

space in the corridor and that Applicant was able to optimize ruling spans (i.e., reduce the number of structures) and minimize structure height with such configuration, as well as reduce electromagnetic field values at the edge of ROW. For the Princetown to New Scotland segment, where corridor width is limited, a vertical configuration is needed to accommodate the 345 kV double circuit structures and remain consistent with the PPTN Order’s requirement to avoid acquiring new ROW. Such configuration, however, does not create significant change in the overall visual character of the transmission corridor given the existing Marcy to New Scotland 765 kV capable #18 transmission line.

#### **4. Alternative Transmission Line Technologies**

122. The Signatory Parties acknowledge that in the PPTN Order, the Commission found that high voltage direct current (“HVDC”) alternatives were inherently incapable of addressing many of the essential needs that led to its finding of a PPTN. The Signatory Parties further acknowledge that in the PPTN competitive solicitation process, the NYISO evaluated a 1,000 MW HVDC transmission solution and found that such alternative did not incorporate all required Segment A or Segment B components and did not meet the minimum threshold of 900 MW across the UPNY-SENY interface. Accordingly, the NYISO found that the AC transmission proposals were preferable to HVDC alternatives.

123. While HVDC transmission line technology can offer cost advantages over AC transmission in certain applications, given the relatively short transmission line segment lengths associated with the Project (i.e., the longest proposed segment is less than 70 miles), the Applicant concluded that HVDC would not present a cost advantage for the Project. Such technology would also require additional ROW for converter stations, inconsistent with the Commission’s criteria in its PPTN Order. Accordingly, that the Applicant does not consider HVDC transmission line technology to be a viable alternative for the Project.

**5. Underground Alternative**

124. The Applicant also does not consider underground construction (including underground construction for crossings of the New York State Thruway) to be a viable alternative for the Project based on the many disadvantages it would present as compared to overhead construction. Underground construction would result in significantly higher impacts to streams, wetlands and agricultural resources. The cost of underground construction would also be significantly higher, generally ranging from 4 to 14 times more expensive than overhead lines of the same voltage and distance, and would require an increased construction duration. Acquisition of significant areas of new ROW would also be required for the reactive compensation stations that would need to be installed at regular intervals along the Project ROW. Other disadvantages of underground construction include potential harmonic resonance issues, impacts to traffic at road crossings, and difficulties with respect to inspections and repairs.

**6. Expansion of ROW, Alternative Methods to Fulfill Energy Requirements and No Action Alternative**

125. As stated above, the Commission determined in its PPTN Order that no transmission proposals responding to the PPTN could acquire new permanent transmission ROW, other than *de minimis* acquisitions that cannot be avoided due to unique circumstances. Therefore, the expansion of existing transmission corridor could not be considered for the Project, except for the corridor-adjacent alternative sites considered for the new Princetown substation.

126. There are no alternative, non-transmission methods to fulfill the PPTN identified in the PPTN Order with comparable costs. In its PPTN Order, the Commission noted that DPS Staff had reviewed several non-transmission alternatives, including the construction of a new generation facility and the promotion of a targeted level of customer-driven energy efficiency and demand reduction benefits. DPS Staff found that none of those non-transmission alternatives

would be cost effective or a better alternative for ratepayers relative to new transmission. Similarly, as part of its analysis of the various alternatives presented to meet the Commission’s PPTN, the NYISO also evaluated the alternative of a distributed generation portfolio located in Orange, Ulster, Putnam and Greene Counties, but concluded that such solution did not meet the transfer capacity minimum thresholds of 350 MW across the Central East interface and 900 MW across the UPNY-SENY interfaces.

127. The “no action” alternative is not viable because it would not address the PPTN identified by the Commission in the PPTN Order and would leave a demonstrated need for AC transmission upgrades unaddressed, forego at least 350 MW of increased transfer capability across the Central East interface, and fail to take advantage of an opportunity to support renewable energy projects in upstate New York and spur on local economic development through infrastructure investment and new construction jobs.

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

128. The Signatory Parties agree that the Project conforms to the requirements and planning objectives of the NYISO and is consistent with New York’s long-range plans as required by PSL § 126.1(e)(2) to expand its Bulk Electric System as well as the public policy transmission needs identified in the Commission’s PPTN Order. Completion of the Project will improve the reliability of the transmission system, serve the interests of electric system economy and reliability, and provide transmission capability.

**F. System Impact Study**

129. Although Commission Rule 88.4(a)(4) requires a System Reliability Impact Study for all Article VII projects, the Commission’s December 13, 2019 Order on Waiver Requests determined that the appropriate NYISO study for the Project is a System Impact Study (“SIS”). The SIS for the Project, which was approved by the NYISO’s Operating Committee on June 21,

2018, concluded that the Project will not adversely impact the New York State Transmission System.

**G. State and Local Laws**

130. The Signatory Parties agree that the Project, as proposed in this Joint Proposal, fully complies with the substantive provisions of all applicable state laws, including without limitation the PSL, the Environmental Conservation Law and the Agriculture and Markets Law.

131. Due to the preemptive effect of PSL §130, procedural requirements to obtain any State or local approval, official review, consent, permit, certificate or other condition for the construction or operation of the Project do not apply except for permits or approvals issued or required by the NYSDEC pursuant to regulations implementing federally delegated environmental programs, those provided by otherwise applicable state law for the protection of employees engaged in construction and operation of the Project, and those approvals expressly authorized in the Certificate Conditions.

132. Exhibit 7 of the Application (Evidentiary Record Exhibit 21, **Appendix A**) identifies, for each local jurisdiction, every substantive local legal provision (ordinance, law, regulation, standard, and requirement) potentially applicable to the Project, as well as every such local legal provision that the Applicant requests that the Commission not apply because, as applied to the Project, such local legal provision is unreasonably restrictive in view of the existing technology, factors of costs or economics, or the needs of consumers.

133. Except for those provisions the Applicant specifically requested that the Commission refuse to apply in Exhibit 7, the Applicant will comply with, and the location of the Project as proposed conforms to, all substantive local legal provisions that are applicable to the Project.

134. The following are examples of local laws that the Applicant requests the Commission not apply, as well as the corresponding justifications for such requests:

i. requirements concerning noise, odor emissions, exterior lighting and vibration, on the grounds that while mitigation measures will be implemented to the extent practicable to minimize the temporary impacts from construction activities and equipment, these impacts are technologically impossible or impracticable to limit to levels specified in the ordinances;

ii. prohibitions on sign placement near utility poles, on the grounds that the placement of warning and safety signs is warranted under, and will be in compliance with, the industry signage and safety requirements and that these signs are appropriate to most effectively warn the general public of dangers associated with energized electrical equipment;

iii. minimum lot width, frontage, size, setbacks, lot depth, fencing or screening requirements, road crossing requirements, permitted use or use permit or approval standards or requirements, and limits on the location of structures or the preservation of scenic vistas, because these requirements (a) have no necessary nexus or relevance when considered in light of the Applicant's contiguous linear ROW lots; (b) are unreasonably restrictive in view of existing technology because the proposed structure locations and heights are a function of the appropriate span length between transmission structures as well as clearance, reliability and safety requirements, and the size and configuration of the ROW is based on required clearance and reliability criteria rather than minimum lot size and setback requirements;

iv. maximum structure height requirements, because compliance is technologically impossible and unsafe given that heights are a function of the appropriate

span length between transmission structures as well as clearance, reliability and safety requirements;

v. shielding and/or screening requirements and prohibitions on cutting existing vegetation or the construction or reconstruction of erosion control structures, on the grounds that these requirements cannot be reconciled with the Commission approved EM&CP for the Project, reliability standards, and the Applicant's Long-Range Right-of-Way Management Plan; restrictions on permitted uses that do not include electric utilities or that limit the location of electric utility property, on the ground that such requirements would directly conflict with the location of the Project as approved in the Certificate;

vi. restrictions on the use of large trucks, commercial vehicles that carry heavy loads, tractors, semi-trailers, ATVs and/or other off-highway vehicles, because the Applicant may require such vehicles to construct or access its lines and they are unreasonably restrictive in view of factors of cost and economics;

vii. provisions restricting the activities that may prevent or deter the practices of farming to the extent that these restrictions negatively affect the construction activities on the basis that these provisions are unreasonably restrictive in view of existing technology and factors of cost and economics;

viii. provisions governing the location of poles and establishing time limits for removal of wires, poles and fixtures not in use or for delivery of new poles, on the ground that such requirements conflict with the staging requirements approved in the Certificate and the EM&CP; and

ix. provisions requiring that the municipality be granted the right to use the Applicant's poles, on the ground that such multiple uses are not appropriate for the towers comprising the Project.

135. The Applicant also requests that the Commission refuse to apply the following local law requirements to the extent that they conflict with the National Electric Safety Code, SPDES General Permit for Stormwater Discharge from Construction Activity, the Stormwater Pollution and Prevention Plan, the Article VII Certificate or EM&CP approved for the Project:

- i. requirements concerning flooding and erosion control, drainage and the disposal of solid and liquid waste and recyclables, and control of insects and rodents;
- ii. provisions governing construction materials and methods in areas of special flood hazard and the discharge of polluted waters into any natural outlet;
- iii. provisions establishing safety requirements or requiring local approval of work sites;
- iv. provisions limiting off-street parking, overnight parking or seasonal parking on town roads or highways;
- v. provisions regarding the placement of fill material or construction on steep slopes;
- vi. provisions regulating the loading of vehicles;
- vii. limitations on hours of construction operations; construction standards for structures and improvements;
- viii. regulations or prohibitions on the location of facilities in or near residential, open space or other specified areas;
- ix. provisions prohibiting temporary storage containers, construction trailers, and bulk waste containers;
- x. provisions regulating the disposal of chemicals, grease or oils;
- xi. provisions governing zoning and land use control;

- xii. provisions establishing standards for traffic and vehicle access on private roads;
- xiii. provisions establishing clearing, maintenance, grading and landscaping requirements, vegetation retention requirements;
- xiv. provisions regarding brush, grass, rubbish and weed control; and
- xv. restrictions on the type of concrete or other construction materials to be used.

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

**H. Public Interest, Convenience and Necessity**

137. The Applicant conducted public outreach regarding the Application, including letters to and meetings with local officials in areas affected by the Project, letters to property owners abutting the Project ROW and meetings with groups interested in the Project. In June 2019, public open house meetings were held in five locations along the Project ROW, including Oneida County, Herkimer County, Montgomery County, Schenectady County and Albany County.

138. A Public Notice was published in the Utica Observer-Dispatch, Times-Telegram, Courier-Standard Enterprise, Daily Gazette and the Times Union for two consecutive weeks prior to filing the Application. In addition, copies of the Application were provided to the following libraries for public inspection: Holland Patent Free Library, Frankfort Free Library, Weller Library, Little Falls Public Library, Canajoharie Library & Art Gallery, Fort Plain Library, Bethlehem Public Library, Altamont Free Library, Utica Public Library, Ilion Free Public Library, Jordanville Public Library, Fort Hunter Free Library, Frothingham Free Library, Rotterdam

Branch Library, Guilderland Public Library and Voorheesville Public Library. On August 15, 2019, property owners along the Project ROW were sent notification letters regarding the Project's Application filing.

139. A Public Notice was published in the Utica Observer-Dispatch, Times-Telegram, Courier-Standard Enterprise, Daily Gazette and the Times Union regarding the informational forums and public statement hearings for the Project. On February 14, 2020, property owners on and adjacent to the Project ROW were sent notification letters regarding the public information sessions and public statement hearings.

140. In March 2020, the Commission held public statement hearings in five locations along the Project ROW, including Oneida County, Herkimer County, Montgomery County, Schenectady County and Albany County, during which comments were received from the public. Informational forums were held prior to each public statement hearing, during which the Applicant presented information regarding the Project and answered questions from the public.

## **V. PROPOSED COMMISSION FINDINGS**

141. The Signatory Parties agree that the record in this proceeding supports all of the Commission findings required by PSL § 126 and as set out in **Appendix C** to this Joint Proposal.

## **VI. PROPOSED CERTIFICATE CONDITIONS**

142. The Signatory Parties agree that the Proposed Certificate Conditions set forth in **Appendix D** to this Joint Proposal are acceptable and appropriate for inclusion in a Certificate of Environmental Compatibility and Public Need authorizing construction and operation of the Project as described therein and in this Joint Proposal.

**VII. ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN GUIDELINES**

143. The Signatory Parties agree that the specifications for development of the EM&CP set forth in **Appendix E** of this Joint Proposal, and the supplemental specifications with respect to wetland and waterbodies set forth in **Appendix F** of this Joint Proposal, are acceptable and appropriate for application to the Project as described herein.

**VIII. WATER QUALITY CERTIFICATION**

144. The Signatory Parties agree that the record in this proceeding supports the water quality certification substantially in the form of Proposed 401 Water Quality Certification set forth in **Appendix H** to this Joint Proposal.

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



\_\_\_\_\_  
**LS Power Grid New York, LLC, LS Power Grid New York Corporation I**

**By:** Casey Carroll, Assistant Vice President

**Date:** June 5, 2020

\_\_\_\_\_  
The New York Power Authority

By:

Date:

\_\_\_\_\_  
Staff of the New York State Department of Public Service  
designated to represent the public interest in this  
proceeding

By:

Date:

\_\_\_\_\_  
New York State Department of Environmental  
Conservation

By: Mark Sanza

Date:

\_\_\_\_\_  
New York State Department of Agriculture & Markets

By:

Date:

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

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LS Power Grid New York, LLC, LS Power Grid New York Corporation I

By:

Date:



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The New York Power Authority

By: Mark K. Malone

Director, Project Development and Licensing

Date: 6-04-2020

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Staff of the New York State Department of Public Service designated to represent the public interest in this proceeding

By:

Date:

---

New York State Department of Environmental Conservation

By: Mark Sanza

Date:

---

New York State Department of Agriculture & Markets

By:

Date:

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

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LS Power Grid New York, LLC, LS Power Grid New York Corporation I

By:  
Date:

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The New York Power Authority

By:  
Date:



**Staff of the New York State Department of Public Service designated to represent the public interest in this proceeding**

**By: Heather P. Behnke, Noreena Chaudari**  
**Date: June 5, 2020**

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New York State Department of Environmental Conservation

By: Mark Sanza  
Date:

---

New York State Department of Agriculture & Markets

By:  
Date:

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

\_\_\_\_\_  
LS Power Grid New York, LLC, LS Power Grid New York Corporation I

By:

Date:

\_\_\_\_\_  
The New York Power Authority

By:

Date:

\_\_\_\_\_  
Staff of the New York State Department of Public Service designated to represent the public interest in this proceeding

By:

Date:



\_\_\_\_\_  
New York State Department of Environmental Conservation

By: Mark Sanza

Date: *May 29, 2020*

\_\_\_\_\_  
New York State Department of Agriculture & Markets

By:

Date:

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

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LS Power Grid New York, LLC, LS Power Grid New York Corporation I

By:  
Date:

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The New York Power Authority

By:  
Date:

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Staff of the New York State Department of Public Service designated to represent the public interest in this proceeding

By:  
Date:

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New York State Department of Environmental Conservation

By: Mark Sanza  
Date:



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New York State Department of Agriculture & Markets

By: Tara B. Wells, Senior Attorney  
Date: June 5, 2020

**APPENDIX A  
LIST OF TESTIMONY, AFFIDAVITS  
AND EXHIBITS TO BE INCLUDED IN THE  
RECORD OF THE PROCEEDING**

Testimony:

Direct Testimony of David Wilson, Ana Stachowiak, Craig Wolfgang, Casey Carroll, Jacob Diermann, Richard Delahunty, Andrew Scott, Steven G. Walker, PE, PMP, Lucy Marton, Eric Hayes, Eric S. Nelson, Patricia Pellerin, Benjamin R.T. Cotts, Ph.D. sponsoring Evidentiary Record Exhibits 1 through 9 (Exhibits 1 through 9 of the Application), Evidentiary Record Exhibits 10 through 15 (Exhibits E-1 through E-6 of the Application) and Evidentiary Record Exhibits 19 and 20 (Revised Figures 2-1, 2-2, 2-3 of Exhibit 2, Revised Figure E-2-3 of Exhibit E-2, and Revised Exhibits 2, 3, 4, 7 and E-2 of the Application).

Affidavits:

David Wilson, Ana Stachowiak, Craig Wolfgang, Casey Carroll, Jacob Diermann, Richard Delahunty, Andrew Scott, Steven G. Walker, PE, PMP, Lucy Marton, Eric Hayes, Eric S. Nelson, Patricia Pellerin, Benjamin R.T. Cotts, Ph.D.

Exhibits:

- Exhibit 1: The Application and General Information (Exhibit 1 of the Application, along with the rest of the Application (including all Appendices thereto) (originally filed on DMM on August 20, 2019)
- Exhibit 2: Location of Facilities (Exhibit 2 of the Application)<sup>1</sup>
- Exhibit 3: Alternatives (Exhibit 3 of the Application)
- Exhibit 4: Environmental Impacts (Exhibit 4 of the Application)
- Exhibit 5: Design Drawings (Exhibit 5 of the Application)
- Exhibit 6: Economic Effects of Proposed Facility (Exhibit 6 of the Application)
- Exhibit 7: Local Ordinances (Exhibit 7 of the Application)
- Exhibit 8: Other Pending Filings (Exhibit 8 of the Application)
- Exhibit 9: Cost of Proposed Facilities (Exhibit 9 of the Application)
- Exhibit 10: Description of Proposed Transmission Facilities (Exhibit E-1 of the Application)
- Exhibit 11: Other Facilities (Exhibit E-2 of the Application)
- Exhibit 12: Underground Construction (Exhibit E-3 of the Application)
- Exhibit 13: Engineering Justification (Exhibit E-4 of the Application)
- Exhibit 14: Effect on Communications (Exhibit E-5 of the Application)
- Exhibit 15: Effect on Transportation (Exhibit E-6 of the Application)

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<sup>1</sup> Includes confidential information, which was filed with the Department's Records Access Officer on August 20, 2019.

- Exhibit 16: Responses to Information Requests DEC-01 through DEC-03<sup>2</sup>
- Exhibit 17: Responses to Information Requests DPS-01 through DPS-20<sup>3</sup>
- Exhibit 18: Responses to Information Requests CVEC-1 through CVEC-3
- Exhibit 19: Revised Figure 2-2 of Exhibit 2 filed on December 18, 2019 (*available on DMM*)
- Exhibit 20: Revised Supplemental Filing on March 2, 2020, including Revised Exhibits 2, 3, 4, 7 and E-2, Revised Figures 2-1 and 2-3 of Exhibit 2 and Revised Figure E-2-3 of Exhibit E-2 of the Application (*available on DMM*)<sup>4</sup>
- Exhibit 21 Revised Exhibit 7, filed on April 24, 2020 (*available on DMM*)
- Exhibit 22 Supplemental Filing Regarding the New Rotterdam Substation, filed on May 19, 2020, including Revised Exhibits 4 and E-2, and Revised Figures E-2-6, E-2-7a and 7b (*available on DMM*)<sup>5</sup>
- Exhibit 23 Responses to Information Requests TOR-1 through TOR-2
- Exhibit 24: Response to Information Request NG-1.

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<sup>2</sup> Redacted versions of certain of the DEC IR Responses will be provided with the Joint Proposal public filing on the Commission's DMM at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-T-0549&submit=Search>.

<sup>3</sup> Redacted versions of certain of the DPS IR Responses will be provided with the Joint Proposal public filing on the Commission's DMM at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-T-0549&submit=Search>.

<sup>4</sup> Includes confidential information, which was submitted with the ALJ on February 28, 2020.

<sup>5</sup> Includes confidential figures, which were submitted with the ALJ on May 19, 2020.

## **APPENDIX B DESCRIPTION AND LOCATION OF THE PROJECT**

The proposed Project involves removing existing transmission lines, installing new lines within approximately 93 miles of existing transmission corridor, constructing two new substations and upgrading other substations. Approximately 1,250 existing H-frame structures will be removed, and approximately 675 new structures, predominantly monopole, will be installed as part of the Project.

The Project's route will extend from the Edic substation in Marcy, New York through the Towns of Deerfield and Marcy in Oneida County; the Towns of Schuyler, Frankfort, German Flatts, Little Falls, Stark, Danube, and the Village of Ilion in Herkimer County; the Towns of Minden, Canajoharie, Root, Charleston, Glen, and Florida in Montgomery County; the Towns of Duanesburg, Princetown, and Rotterdam in Schenectady County; and the Towns of Guilderland and New Scotland in Albany County.

### **Major Project Components**

The major components of the Project include the following:

- 1) upgrades to the Marcy and Edic substations;
- 2) reconductoring, involving the replacement of two circuits of 230 kV transmission line with two circuits of 345 kV transmission line on existing structures, extending for approximately 13 miles from the Edic substation;
- 3) removal of two existing single circuit 230 kV transmission lines on H-frame structures, and replacement with a new 345 kV double circuit transmission line on steel monopoles, extending for approximately 55 miles (with the exception of up to two segments where the double circuit lines may split into single circuits);
- 4) construction of a new 345 kV substation in the Town of Princetown;
- 5) removal of two existing single circuit 230 kV transmission lines on H-frame structures, and replacement with two new single circuit 345 kV transmission lines on steel monopoles between the new Princetown substation and Rotterdam substation, extending for approximately 5 miles, one of which will connect to the new Princetown substation and the other will loop in the Edic portion of the existing Edic to New Scotland 345 kV line;
- 6) construction of a new 345/230/115 kV substation adjacent to the existing Rotterdam substation yard and upgrades at the existing Rotterdam substation;
- 7) construction of a new double circuit 345 kV transmission line on steel monopoles between the new Princetown substation and the New Scotland substation, extending for approximately 20 miles, rebuild of an existing single circuit 345 kV transmission line on new steel monopoles starting at the new Princetown substation and extending approximately 6 miles southward in that same corridor, and partial removal and/or removal from service of the existing Rotterdam to New Scotland 115 kV line in a portion of that same corridor; and
- 8) upgrades to the existing New Scotland substation.

### Substations

#### Princetown Substation:

The new Princetown substation will be a 345 kV gas-insulated switchyard in a breaker-and-a-half configuration with six positions located off Reynolds Road in the Town of Princetown, northwest of and adjacent to the junction of the existing 230 kV #30 and #31 Porter to Rotterdam lines and the existing 345 kV #14 and #18 Edic and Marcy to New Scotland Lines. The new Princetown substation will not contain any utility transformers. The substation area will be graded and covered in gravel. Access to the site will be provided via the existing driveway off Reynolds Road.

#### (New) Rotterdam Substation:

The new Rotterdam substation, in its final configuration, will consist of a 345 kV gas-insulated substation in a breaker-and-a-half configuration with five positions, a new three-phase 345/230 kV transformer, and two new 345/115 kV transformers within the existing Rotterdam substation property boundary. Areas containing substation equipment will be graded and covered in gravel. Access to the new substation areas will be provided via new gravel access paths constructed within previously cleared areas of the Rotterdam substation site.

To ensure uninterrupted operation of the 115 kV system prior to the completion of the interconnection improvements at the existing Rotterdam 115 kV substation by National Grid, an interim configuration will be implemented and operated at the new Rotterdam substation until such time as the 115 kV system improvements are complete and the Project's new Rotterdam substation can be switched over to the final configuration described above. The interim configuration includes two, three-phase 345/230 kV transformers in service and connected to the existing Rotterdam 230 kV substation and no 345/115 kV transformers in service.

After the necessary interconnection-related improvements are complete, the new Rotterdam substation will transition to the final configuration by completing the following: (i) re-terminating one of the 345/230 kV transformers from its interim configuration connection with the existing Rotterdam 230 kV substation to the Eastover to Rotterdam 230 kV #38 transmission line; (ii) removing the other 345/230 kV transformer from service and maintaining it onsite as a spare; and (iii) energizing the two 345/115 kV transformers to feed into the existing Rotterdam 115 kV substations.

#### (Existing) Rotterdam Substation:

National Grid's existing Rotterdam substation will be modified and upgraded to interconnect the new Rotterdam substation. The existing 230 kV yard and associated connections will be retired following the energization of the new Rotterdam substation. Three existing 230/115 kV transformers that currently generate continuous audible noise will be retired as part of the 230 kV yard retirement. The retired equipment will be removed or abandoned in place. Two of the existing transmission ties from the 230 kV yard to the 115 kV yard will be modified to terminate at the new Rotterdam substation. The third transmission tie will be retired. In addition, the existing Eastover to Rotterdam 230 kV #38 transmission line termination will be relocated from the existing 230 kV yard to the new Rotterdam substation. Circuit breakers, the protection and control systems, and associated equipment will be upgraded at the existing Rotterdam 115 kV yards to accommodate the Project. The existing substation footprint will not need to be altered as a result

of this Project. The existing Rotterdam substation modifications will not include any new transformers.

During operation of the interim configuration at the new Rotterdam substation, the existing Rotterdam 230 kV substation will have connections to the two 345/230 kV transformers at the new Rotterdam substation.

*Marcy Substation:*

NYPA's Marcy substation will be upgraded with in like-kind circuit breakers, strain bus, protection and control systems, and associated equipment. No new lines will terminate at Marcy substation as a result of the Project. The existing substation footprint will not need to be altered as a result of this project. The Marcy substation modifications will not include any new transformers.

*Edic Substation:*

National Grid's Edic substation will be reconfigured and upgraded to interconnect the two new Edic to Princetown 345 kV lines and to reconfigure the connection of the existing Edic – New Scotland 345 kV #14 line. Three existing lines will be relocated to different bays at the Edic substation to allow the two new Edic to Princetown 345 kV lines to terminate at the Edic substation most efficiently. An existing spare bay will be utilized and a new breaker-and-a-half bay will be constructed on the north side of the existing Edic substation. The new bay will require the substation fence line to be expanded by approximately 0.8 acres on land owned by National Grid, all of which has been previously disturbed. No new property is expected to be acquired to accommodate this expansion.

*Porter Substation:*

Due to the retirement of National Grid's Porter to Rotterdam 230 kV #30 and #31 lines, their terminus points at National Grid's Porter substation will also be retired. Strain bus, the protection and control systems, and associated equipment will be upgraded to accommodate the retirements. No new lines will terminate at Porter substation as a result of the Project. The existing substation footprint will not need to be altered as a result of this project.

*New Scotland Substation:*

National Grid's New Scotland substation will be reconfigured and upgraded to interconnect the two new Princetown to New Scotland 345 kV lines, reconfigure the connection of the existing Edic – New Scotland 345 kV #14 line, and retire the existing Rotterdam to New Scotland 115 kV line. National Grid's existing New Scotland to Alps 345 kV #2 line entrance will be relocated further south to accommodate the new interconnection. Circuit breakers, switches, dead end structures, protection and control systems, and associated equipment will be installed or modified at the New Scotland substation for the Project. No expansion of the existing fence line is anticipated. The New Scotland substation modifications will not include any new transformers.

*Transmission Lines and Associated Structures*

*Removal of Existing Lines and Structures:*

Removal of existing structures will take place in four stages: removal of the conductors and shield wires, removal of the structures, removal of the foundations, and site restoration. The conductors will be removed utilizing cranes, bucket lifts, and other land-based vehicles and equipment.

- Approximately 72 miles of the two National Grid-owned 230 kV lines (#30 and #31 lines) between the Porter substation and the Rotterdam substation will be removed. The removals will include conductors, insulators, associated hardware, and H-frame structures.
- Approximately 6 miles of National Grid-owned 345 kV line (Edic to New Scotland #14 line) supported primarily by lattice towers from the proposed Princetown substation heading south will be removed.
- A National Grid-owned 115 kV line (Rotterdam-New Scotland #13 line) will be removed from service. A portion of this 115 kV line along with its supporting H-frame structures will be removed from a point just north of State Route 146 in the Town of Guilderland, continuing south for approximately 2.7 miles. Other portions of the line (from the location where it joins the Project corridor just south of I-88 in the Town of Princetown to the New Scotland substation area) may be dismantled.

Installation of New 345 kV Lines:

After the existing structures are removed, the new transmission line structures will be erected. The erection of the structures generally takes place in a two-step process. First, structure foundations are completed; then the structures are erected atop the foundations. After the structures are installed, stringing of the conductors, shield wire, and optical ground wire (OPGW) will proceed. All proposed new transmission structures will be tubular steel with a galvanized finish. The Project includes installation of the following new infrastructure:

- Two new 345 kV lines approximately 2,000 feet in length from the Edic substation to the existing transmission corridor adjacent to Porter substation.
- Approximately 13 miles of reconductoring the outer arms of the two sets of adjacent double circuit structures owned in part by NYPA starting in the Project corridor adjacent to the Porter substation and continuing toward the southeast. The reconductoring will include new insulator assemblies, new hardware, shield wire replaced with new OPGW, and new double bundle 345 kV conductors.
- Approximately 55 miles of two 345 kV transmission circuits within the Project corridor from just east of State Route 171 in the Town of Frankfort, continuing eastward to the proposed new Princetown substation.
- Approximately 5 miles of two 345 kV transmission circuits within the Project corridor between the proposed Princetown substation and the Rotterdam substation.
- Approximately 20 miles of two new 345 kV transmission circuits within the Project corridor between the new Princetown substation and the New Scotland substation.
- Approximately 6 miles of one 345 kV transmission circuit in place of the existing portion of the Edic to New Scotland #14 line that will be terminated at the Princetown substation as part of the Project.

**Case 19-T-0549****APPENDIX C****PROPOSED COMMISSION FINDINGS**

1. LS Power Grid New York, LLC, and LS Power Grid New York Corporation I (collectively, “LS Power Grid New York”) and the New York Power Authority (NYPA, and together with LS Power Grid New York, the “Applicant”) submit that based on the information provided in the Evidentiary Record Exhibits 2, 3, 5, 6, 10, 13, 19 and 20, sponsored by D. Wilson (LS Power), C. Wolfgang (Tetra Tech), C. Carroll (LS Power), J. Diermann (LS Power), A. Scott (LS Power), and Steven G. Walker, PE, PMP (POWER Engineers Consulting), the Project as described in Appendix B to the Joint Proposal is needed in order to meet New York State’s “Public Policy Transmission Need Process” established by the Public Service Commission in Case 12-T-0502.

2. Based on the information provided in the Evidentiary Record Exhibits 2, 3, 4, 5, 6, 10, 14, 15, 16, 17, 18, 19 and 20 sponsored by D. Wilson (LS Power), C. Wolfgang (Tetra Tech), C. Carroll (LS Power), J. Diermann (LS Power), R. Delahunty (Tetra Tech), A. Scott (LS Power), Benjamin R.T. Cotts, PH.D. (Exponent Engineering), Patricia Pellerin (Tetra Tech), and S.G. Walker (POWER Engineers Consulting), the Project will be designed, constructed and operated in a manner that avoids, minimizes or mitigates impacts on environmental resources along the Project’s Right-of-Way (“ROW”). The nature of the probable environmental impacts resulting from the Project includes:

- a) temporary disturbance and inconvenience, including noise and traffic, associated with construction activities;
- b) a limited amount of clearing due to the use of existing utility transmission ROW;
- c) temporary and limited impacts to active agricultural lands;
- d) temporary and minimal, incremental permanent impacts to visual resources that will be avoided or minimized to the extent practicable;
- e) temporary and permanent impacts to wetlands that will be appropriately avoided, minimized and mitigated for if necessary; and
- f) calculated electromagnetic fields at the edge of the ROW not causing an exceedance of the Commission’s policies regarding electromagnetic fields.

3. Based on the information provided in the Evidentiary Record Exhibits 2, 3, 4, 5, 6, 10, 14, 15, 16, 17, 18, 19 and 20, sponsored by D. Wilson (LS Power), C. Wolfgang (Tetra Tech), C. Carroll (LS Power), J. Diermann (LS Power), R. Delahunty (Tetra Tech), A. Scott (LS Power), and S.G. Walker (POWER Engineers Consulting), the Project represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives and other considerations. The Project will maximize the use of approximately 93 miles of existing utility-owned transmission line corridor, and such use of existing ROW will avoid or minimize the disturbance of natural habitat to the extent feasible, and minimizes potential disturbance to existing land uses, visual, cultural, terrestrial and wildlife

resources, wetlands and water resources, topography and soils, noise, transportation, communications, and electric and magnetic fields.

4. Based on the information provided in the Evidentiary Record Exhibits 4 and 20, supported by the testimony of D. Wilson (LS Power), C. Wolfgang (Tetra Tech), and R. Delahunty (Tetra Tech), the Project represents the minimum adverse impact on active farming operations that produce crops, livestock and livestock products, as defined in Section 301 of the Agriculture and Markets Law, considering the state of available technology.

5. Based on the information provided in the Evidentiary Record Exhibits 3, 17, 18 and 20, sponsored by D. Wilson (LS Power), J. Diermann (LS Power), C. Carroll (LS Power), no portion of the Project should be constructed underground due to the substantially higher cost, adverse impacts on system operations, safety concerns, and far greater environmental impacts of underground construction in the Project ROW.

6. Based on the information provided in the Evidentiary Record Exhibits 6 and 13, sponsored by D. Wilson (LS Power), C. Carroll (LS Power), J. Diermann (LS Power), the Project conforms to the requirements and planning objectives of the NYISO and is consistent with State's long-range plans for the enhancement of the transmission facilities and will serve the interests of electric system economy and reliability.

7. Based on the information provided in the Evidentiary Record Exhibits 8 and 21, sponsored by L. Marton (LS Power) and C. Wolfgang (Tetra Tech), the location of the Project as proposed conforms to the substantive provisions of applicable state and local laws and regulations issued thereunder, except for those local laws and regulations that the Commission refuses to apply because it finds, based on the justifications set forth by the Applicant in Exhibit 7, that as applied to the Project, those provisions are unreasonably restrictive in view of existing technology, or factors of cost or economics, or the needs of consumers whether located inside or outside of a respective municipality.

8. Based on the entirety of the Evidentiary Record as listed in Appendix A to the Joint Proposal, the Project will serve the public interest, convenience and necessity.

**Case 19-T-0549****APPENDIX D****PROPOSED CERTIFICATE CONDITIONS  
AND MONITORING REQUIREMENTS****A. Conditions of the Order**

The Commission Orders:

1. Subject to the conditions set forth in this Order, LS Power Grid New York, LLC and LS Power Grid New York Corporation I (together, “LS Power Grid New York”) and the Power Authority of the State of New York, doing business as the New York Power Authority (“NYPA”) (LS Power and NYPA, together referred to as the “Certificate Holder”) are granted a Certificate of Environmental Compatibility and Public Need (the “Certificate”), pursuant to Article VII of the New York Public Service Law (“PSL”), authorizing the Certificate Holder to remove, construct, reconstruct, operate, and maintain certain existing and proposed electric transmission lines and substation/switchyard facilities located in the Towns of Deerfield and Marcy in Oneida County; the Towns of Schuyler, Frankfort, German Flatts, Little Falls, Stark, Danube, and the Village of Ilion in Herkimer County; the Towns of Minden, Canajoharie, Root, Charleston, Glen, and Florida in Montgomery County; the Towns of Duanesburg, Princetown, and Rotterdam in Schenectady County; and the Towns of Guilderland and New Scotland in Albany County (the “Marcy to New Scotland Upgrade Project” or the “Project”).
2. The Certificate Holder shall, within thirty (30) days after the issuance of the Certificate, file with the Secretary (the “Secretary”) to the Public Service Commission (the “Commission”) either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate for the Project. Failure of the Certificate Holder to comply with this condition shall invalidate the Certificate.
3. If the Certificate Holder decides not to commence construction of any portion of the Project, Certificate Holder shall so notify the Secretary in writing within thirty (30) days of making such decision and shall serve a copy of such notice upon all parties in the same manner and at the same time as it files with the Secretary.
4. If construction of the Project hereby certified is not commenced within 18 months after the issuance of the Certificate, the Certificate may be vacated by the Commission with notice to the Certificate Holder. Commencement of construction of any segment of the Project, as defined in the Environmental Management & Construction Plan (“EM&CP”), shall satisfy this requirement.
5. Except for the deadlines in Certificate Conditions 2 and 30(h), the Secretary may extend any deadlines established by this Order for good cause shown.

**B. Description and Location of Project**

6. Appendix B of the Joint Proposal, entitled “Description and Location of Project,” identifies the components of the Project. The proposed location of the Project as set forth in Appendix B is approved.

**C. Laws and Regulations**

7. The following conditions address the applicability of Federal, State, and local laws to the Project:
  - a. Each substantive Federal, State, and local law, regulation, code, and ordinance applicable to the Project shall apply, except to the extent that the Commission has expressly refused to apply any substantive local law or regulation as being unreasonably restrictive as discussed herein.
  - b. Except as expressly authorized in these Certificate Conditions, no State or municipal legal provision purporting to require any approval, consent, permit, certificate or other condition for the construction or operation of the Project authorized by the Certificate (collectively, “State or municipal approvals”) shall apply, except (i) those of the PSL and regulations and orders adopted thereunder, (ii) those provided by otherwise applicable State law for the protection of employees engaged in the construction and operation of the Project, (iii) those permits issued under Federally-delegated or Federally-approved environmental permitting programs; and (iv) those municipal approvals expressly authorized in these Certificate Conditions.
  - c. The Certificate Holder shall construct the Project in a manner that conforms to all applicable standards of the American National Standards Institute (“ANSI”) including, without limitation, the National Electrical Safety Code (“NESC”), Institute of Electrical and Electronics Engineers (“IEEE”), Standard IEEE C2-2017, 2017 Edition, and any stricter standards adopted by the Certificate Holder. Upon completion of the Project, the Certificate Holder shall send a letter to the Secretary certifying that the Project was constructed in full conformance with the NESC.
8. Following construction, the Certificate Holder shall be responsible for maintaining and managing Certificate Holder’s transmission assets within the Project right-of-way (“ROW”) in accordance with its Long-Range Right-of-Way Management Plan.
9. The following requirements apply with respect to road and highway crossings:
  - a. The Certificate Holder shall coordinate all work on the Project during construction at State and municipal road and highway crossings with the appropriate State and municipal officials and shall obtain the required authorizations for such work, subject to the Commission’s continuing jurisdiction as appropriate.

- b. The Certificate Holder shall coordinate with the appropriate municipal agencies and police departments for traffic management of roads under municipal jurisdiction.
  - c. A copy of each permit or approval received by the Certificate Holder from the issuing agencies, including all necessary United States Army Corps of Engineers (“USACE”) permits for construction in Waters of the U.S. affected by the Project pursuant to Section 404 of the Federal Clean Water Act and Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 et seq.), and the State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharge from Construction Activity (“SPDES General Permit”), shall be provided to the Secretary by the Certificate Holder promptly after receipt by the Certificate Holder of such permit or approval and before commencement of construction across any affected area.
10. If the Certificate Holder believes that any action taken, or determination made, by a State or municipal agency in connection with this Certificate is unreasonable or unreasonably delayed, it may petition the Commission, upon reasonable notice to that agency, to seek a resolution of any such unreasonable or unreasonably delayed determination. Such agency may respond to the petition, within five (5) business days, to address the reasonableness of any requirement or delay.

#### **D. Public Health and Safety**

11. The Certificate Holder shall design, engineer and construct the Project such that operation thereof shall not cause an exceedance of the electric field standard of a maximum of 1.6 kV/m at the edge of the ROW, one meter above ground level, with the line at rated voltage and 7 kV/m, 11 kV/m, and 11.8 kV/m measured at 1 meter above ground over public roads, private roads, and other terrain, respectively, as established by the Commission in Opinion No. 78-13, issued June 19, 1978. Additionally, the Project shall not cause an exceedance of the 200 milligauss (mG) standard for magnetic fields established by the Commission in its Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, issued September 11, 1990.
12. The Certificate Holder shall engineer and construct the Project so as to be fully compatible with the operation and maintenance of nearby electric, gas, telecommunication, water, sewer, and related facilities. Details of such other facilities and measures to protect the integrity, operation, and maintenance of those facilities shall be presented in the EM&CP. The Certificate Holder shall design and construct the Project so as to avoid adverse effects on the cathodic protection systems and physical conditions of existing structures and any fuel gas pipelines within the Project ROW and within 25 feet of the edge of the ROW. The Certificate Holder shall provide the details and design measures that will be implemented to protect nearby facilities and structures in the EM&CP.

The EM&CP shall provide a comprehensive gas safety plan which will discuss the issues listed below:

- a. crossing method;
  - b. crossing location;
  - c. emergency access procedures;
  - d. survey marking;
  - e. What, how and when construction activities will be limited; and,
  - f. safety training requirements.
13. The Certificate Holder shall keep local fire department and emergency management teams apprised of any on-site hazardous chemicals and waste. All such chemicals and waste shall be secured in a locked and controlled area.
  14. The Certificate Holder shall comply with the requirements for the protection of underground facilities set forth in 16 NYCRR Part 753, entitled “Protection of Underground Facilities.”
  15. The Certificate Holder shall take appropriate measures to minimize fugitive dust and airborne debris from Project construction activity. Exposed soils and roadways shall be wetted as needed during extended dry periods to minimize dust generation. To the extent practicable, water for dust control shall come from municipal water supplies/sources. If surface waters are used, equipment (such as intake hoses) used in collecting water for dust control shall be disinfected afterwards.
  16. To the extent required in connection with the delivery of oversized components for the Project, the Certificate Holder or its suppliers shall obtain any required permits from applicable agencies.
  17. The Certificate Holder shall acquire all danger tree rights within three years of EM&CP approval or within that time commence appropriate proceedings.

**E. Environmental Management and Construction Plan**

18. The terms of this Certificate and the environmental protection measures contained in the Application shall be incorporated into the EM&CP.
19. A final New York State Department of Environmental Conservation (“NYSDEC”) acknowledged Storm Water Pollution Prevention Plan (“SWPPP”) shall be prepared as part of the State Pollutant Discharge Elimination System General Permit for Construction Activities and in accordance with the current New York State Standards and Specifications for Erosion and Sediment Control (“NYSSDESC”). In addition to the general requirements set forth in the NYSSDESC, the SWPPP shall include the following protocols:
  - a. To minimize the risk of introducing invasive species, use of hay bales is strictly prohibited; and
  - b. All erosion control fabric or netting must be 100% biodegradable natural product (but not including photodegradable materials), excluding geotextiles

used for road construction and temporary erosion control devices such as silt fence and silt sock.

20. The following stormwater, erosion, and sedimentation conditions shall be applicable to the Project:
  - a. The Certificate Holder shall include the SWPPP and letter of acknowledgement from NYSDEC for the Project authorized under the SPDES General Permit in the EM&CP. The Certificate Holder shall develop the EM&CP for the Project in accordance with the SWPPP requirements in NYSDEC's then-effective SPDES General Permit.
  - b. The Certificate Holder shall install temporary erosion control devices (e.g., silt fence, straw bales and structural diversions) early in the construction process or by the end of the work day for newly disturbed areas, as indicated in the EM&CP.
  - c. Special conditions and erosion and sedimentation controls with respect to the Project shall be prescribed on the EM&CP Plan and Profile drawings.
21. Applicable provisions of the Certificate, the approved EM&CP, and orders approving the EM&CP shall be accommodated in any design, construction, operation, or maintenance associated with the Project.
22. If the Certificate Holder includes in the EM&CP any environmental protection or mitigation measure(s) not set forth in Appendix H of the Article VII application for the Project, entitled "EM&CP Best Management Practices for Transmission Line Projects" ("EM&CP BMPs"), the Certificate Holder shall also include with the EM&CP a listing of each such measure, where the Certificate Holder proposes to use such measure, and an explanation as to why the Certificate Holder selected that measure rather than a measure included in the EM&CP BMPs.
23. The Certificate Holder, in preparing the EM&CP, shall consult with:
  - a. National Grid, to the extent that any design details directly affect facilities to be owned by National Grid following construction of the Project, including any NG Shared ROW Segment (together, the "NG Retained Facilities"); and
  - b. each transportation department or agency normally having jurisdiction over any roads in the vicinity of the Project, which roads will be crossed by the certified transmission facilities or used for direct access to the Project ROW. If the access road takes direct access from, or lies within the limits of, such roads, the Certificate Holder shall notify each relevant transportation department or agency of the approximate date when work on the Project will begin.
24. Before the preparation of the EM&CP, the Certificate Holder shall contact the NYSDEC, NYS Natural Heritage Program and United States Fish and Wildlife Service to check for any updates or changes of known species of special concern, threatened or endangered ("T&E") species or habitat of Significant Natural Communities in the Project area and include the responses in the EM&CP.

25. The Certificate Holder shall provide, as a part of the EM&CP:
  - a. A final design plan that conforms with the Project design set forth in the Certificate, applicable Federal, State and local requirements, including, but not limited to, applicable regulations promulgated by NYSDEC, the New York State Office of Parks, Recreation & Historic Preservation (“OPRHP”), the New York State Department of Agriculture & Markets (“NYSDAM”), the Commission, the Bureau of Alcohol, Tobacco and Firearms, the Occupational Safety and Health Administration, the NYS Department of Labor, and local government chemical and waste-storage use and handling regulations; and
  - b. A discussion of the status of efforts by the Certificate Holder to obtain permits necessary for construction of the Project from Federal agencies (such as the USACE) and State agencies with federally-delegated authority.
  - c. The URL address for the Project website containing Project information.
26. The Certificate Holder may construct the Project in a manner that deviates from the certified centerline, design height, location, number of structures, and structure types specified in Appendix B for appropriate environmental or engineering reasons, except where a conflict with a provision of the Certificate would be created. When proposing any such deviation, the Certificate Holder shall include in the EM&CP an explanation for the proposed deviation and supporting documentation.
27. The Certificate Holder shall not begin site preparation or construction (except for surveying, soils testing, and such other related activities as are necessary for preparation of the final design plans), nor shall Certificate Holder commence any proceedings under the Eminent Domain Procedure Law (“EDPL”) to acquire permanent ROW, temporary ROW, or off-ROW access, until the Commission has approved the EM&CP. To calculate the three-year period for acquisition of property pursuant to the EDPL, the date of Commission approval of the EM&CP covering the affected parcel shall be regarded as the date on which this Article VII proceeding was completed.
28. The Certificate Holder shall file the proposed EM&CP with the Commission in the manner directed by the Secretary and, unless otherwise directed by the Secretary, shall serve it as follows: one electronic copy and two hard copies to the NYSDEC Bureau of Energy Project Management, Division of Environmental Permits, Albany, NY; one electronic copy and two hard copies to the Region 4 Supervisor of Natural Resources, NYSDEC Region 4 Headquarters; and one electronic copy and one hard copy to the Region 6 Supervisor of Natural Resources, NYSDEC Region 6 Headquarters; one electronic copy on the staff of the New York State Department of Agriculture and Markets (“NYSDAM”); one electronic copy on the Region 1 and 2 offices of the New York State Department of Transportation (“NYSDOT”); one electronic copy on any other New York State agency (and its relevant regional offices) that requests the document; and one electronic copy on National Grid and any active party on the service list who requests the document. Service upon State agencies shall be performed at or prior to the time of filing with the Secretary. The Certificate Holder shall also place one hard copy and one electronic copy for inspection by the public at the same public

- library or libraries where the Application has been made available. All electronic copies shall be searchable.
29. Contemporaneously with filing and serving the proposed EM&CP, the Certificate Holder shall disseminate, in the manner specified below, a written notice, in language reasonably understandable to the average person, that the proposed EM&CP has been filed (the “EM&CP Filing Notice”).
- a. Certificate Holder shall serve a copy of the EM&CP Filing Notice as follows:
    - (i) on all parties to this proceeding (except those upon whom the foregoing paragraph requires the Certificate Holder to serve one or more copies of the proposed EM&CP), and
    - (ii) on all landowners of property crossed by or abutting the Project ROW and to any residents of such property (including any farm operators) identified by such landowners (“Identified Residents”) to the extent such Identified Residents were not separately served a copy of the EM&CP Filing Notice.
  - b. The Certificate Holder shall include a copy of the EM&CP Filing Notice in the proposed EM&CP.
  - c. The Certificate Holder shall publish a copy of the EM&CP Filing Notice in a newspaper or newspapers of general circulation, including, where available, a free newspaper, in the vicinity of the Project.
30. The EM&CP Filing Notice required for the proposed EM&CP shall contain, at a minimum, the following:
- a. a statement that the proposed EM&CP has been filed;
  - b. a general description of the certified Project, the need for the Project, and the proposed EM&CP;
  - c. the EM&CP Filing Notice served on identified persons with a record interest in property to be acquired, as described in the proposed EM&CP, shall be accompanied by a description of the type of property rights required for the Project with respect to such property;
  - d. a listing of the locations and the website URL(s) where the proposed EM&CP is available for public inspection;
  - e. a statement that any person desiring additional information about a specific geographical location or specific subject or a copy of the EM&CP may request it from the Certificate Holder;
  - f. the name, address, toll-free telephone number, email address, and telephone number of an appropriate representative of the Certificate Holder;
  - g. the e-mail address and postal address of the Secretary; and
  - h. a statement that any person may be heard by the Commission on any matter or objection regarding the proposed EM&CP by filing written comments with the Secretary and the Certificate Holder within 30 days of the date the proposed

EM&CP was filed with the Commission, or within 30 days of the date of the newspaper publication of a copy of the EM&CP Filing Notice, whichever is later. Comments on subsequent material modifications to the EM&CP, made in response to the aforementioned written comments, shall be permitted within 15 days of service by electronic means of said modifications. The comment period shall not exceed a total of 45 days.

31. A certificate of service or affidavit of service, indicating upon whom all copies of the EM&CP Filing Notice were served, shall be filed by the Certificate Holder with the Secretary within three (3) business days after the time the proposed EM&CP is filed, and shall be a condition precedent to approval of the proposed EM&CP. When available, the Certificate Holder shall file with the Secretary proof of newspaper publication of a copy of the EM&CP Filing Notice.
32. After the EM&CP has been approved by the Commission:
  - a. If the Certificate Holder desires to make any changes to the approved EM&CP, the Certificate Holder shall report such proposed changes to Department of Public Service Staff (“DPS Staff”). DPS Staff will refer any proposed changes that will not result in substantial increase in adverse environmental impact or are not directly related to contested issues decided by the Administrative Law Judge or the Commission during the proceeding to the Director of Facility Certification & Compliance of the Environmental Certification and Compliance (“EC&C”) Section or their designee for approval. DPS Staff will refer all other proposed changes to the Commission for approval.
  - b. Upon being advised that DPS Staff will refer a proposed change to the Commission, the Certificate Holder shall provide notice of the proposed change to all parties to the proceeding, as well as property owners and Identified Residents, if any, whose property is affected by the proposed change. The notice shall: (1) describe the original conditions and the requested change; (2) state that documents supporting the request are available for inspection at specified locations; and (3) state that persons may comment by writing or calling (followed by written confirmation) to the Commission within twenty-one (21) days of the notification date. Any delay in receipt of written confirmation will not delay Commission action on the proposed change.
  - c. The Certificate Holder shall not execute any proposed change until the Certificate Holder has received oral or written approval, except in emergency situations threatening personal injury, property damage, or severe adverse environmental impact. Any oral approval from DPS Staff will be followed by written approval from the Director of Facility Certification & Compliance of the EC&C Section in the Office of Electric, Gas and Water, or the Commission.

#### **F. Notices and Public Complaints**

33. The following notice and complaint procedures shall apply:

- a. Until notice of Project completion is provided to the Secretary as provided in Certificate Condition 7(c), the Certificate Holder shall make available to the public a toll-free or local phone number of an agent or employee who will, for the duration of construction of the Project, be available to receive complaints, if any, from the public about the construction of the Project, and such agent or employee shall use reasonable efforts to respond with an acknowledgement of receipt of the complaint within one (1) business day. That number shall include a recorded outgoing message that will, when a call is not answered by a person, provide the caller with the name of the Certificate Holder's representative as well as: (i) the number to be called at any time in case of emergency; (ii) the phone number and email address of the Secretary; and (iii) the phone number of the DPS EC&C Section in the Office of Electric, Gas and Water.
  - b. The Certificate Holder's Project website shall provide a means for the public to communicate with the Certificate Holder about the Project (e.g., register complaints, ask questions, etc.), either through a direct link to a complaint form/email or by providing the contact information (phone and/or email address) of an agent of the Certificate Holder that can address the public's concerns. Certificate Holder shall also post construction notices and other publicly relevant information (e.g., night-time work, traffic information) to the Project website. The Project website shall allow users to subscribe (or unsubscribe) to an electronic mailing list for Project update notifications.
  - c. The Certificate Holder shall retain a record of complaints received, which shall be made available to DPS Staff, the NYSDEC, and the Towns listed in Certificate Condition 1, upon request. The Certificate Holder shall report to the DPS EC&C Staff every complaint that cannot be resolved within ten (10) business days after receipt of the complaint and describe the actions taken to address the complaint.
34. The following additional notice requirements apply:
- a. As to each Project segment, at least two (2) weeks before commencing Project construction activities, the Certificate Holder shall notify the public of the anticipated date that construction will commence, as follows:
    - i. provide notice to local Town and County elected officials, school districts and emergency personnel along the applicable Project segment;
    - ii. provide notice to local media for dissemination, including the local newspaper(s) of general circulation identified in the public involvement plan and at least one free newspaper publication, if available;
    - iii. provide notice for display in the Town Halls, at least one post office or library in or near each municipality along the applicable Project segment, where available, the Project website, document repositories, the Project construction site location (if there is office or trailer) as well as in public places (such as community centers and conspicuous community bulletin boards); and

- iv. provide notice to persons who own properties that are crossed by or abut the ROW, and Identified Residents, as that term is defined in Certificate Condition 29(a).
  - b. The Certificate Holder shall write the notice or notices under this paragraph in language reasonably understandable to the average person and shall ensure that the notice or notices contain:
    - i. a map of the Project;
    - ii. a brief description of the Project;
    - iii. the anticipated date for start of site preparation;
    - iv. the name, mailing address, local or toll-free telephone number, and email address of an employee or agent of the Certificate Holder who will, for the duration of construction of the Project, be available to receive complaints, if any, from the public about the construction of the Project;
    - v. a description of where to get more information about the Project, including the Project website address and the location of document repositories; and
    - vi. a statement that the Project is under the jurisdiction of the New York State Public Service Commission, which is responsible for enforcing compliance with environmental and construction conditions, and which may be contacted at an address, email, and telephone number to be provided in the notice.
  - c. Upon distribution, a copy of the form of the notice or notices under this paragraph shall be filed with the Secretary by the Certificate Holder for posting on the DPS Document Matter Management website.
  - d. The Certificate Holder shall notify persons who own properties that are crossed by or abut the ROW and Identified Residents as defined in Certificate Condition 29(a), above, of the planned transmission line construction activities and schedule affecting their properties at least fourteen (14) days, but no more than thirty (30) days, prior to the commencement of such construction. The Certificate Holder shall give notice by direct mail and may affix such notice to the doors of residences.
- 35. The Certificate Holder shall provide all contractors providing services for construction for the Project (“Contractors”) with complete copies of the Certificate, the approved EM&CP, the order(s) approving the EM&CP, updated construction drawings, any site-specific plans, NYSDEC’s then-current SPDES General Permit, any permit issued pursuant to Section 404 of the Federal Clean Water Act, Section 10 of the Rivers and Harbors Act, and the Section 401 Water Quality Certification. To the extent that the listed documents are available before contracts for construction services are executed, such copies shall be provided by the Certificate Holder to its Contractors prior to the execution of such contracts.
- 36. The Certificate Holder shall notify its Contractors that the Commission may seek to recover penalties for any violation of the Certificate and other orders issued in this

- proceeding, not only from the Certificate Holder, but also from its Contractors and that Contractors also may be liable for other fines, penalties, and environmental damage.
37. The Certificate Holder shall inform the Secretary in writing at least five (5) days before commencing construction for the Project.
  38. Within ten (10) days after each line of the Project is in service, the Certificate Holder shall notify the Secretary in writing of that fact.

**G. ROW Construction, Operation, Maintenance and Restoration**

39. The following requirements apply for pre-construction meetings:
  - a. At least two (2) weeks prior to the start of construction, the Certificate Holder shall hold a preconstruction meeting to which it shall invite DPS Staff, NYSDEC, NYSDAM, NYSDOT, New York State Thruway Authority (NYSTA) Chief Engineer, Town Supervisors, Town Highway Superintendents, County DOTs, and National Grid. An agenda and meeting location shall be agreed upon between DPS Staff and the Certificate Holder. Notification to the invitees of the meeting shall be given at least ten (10) days prior to the meeting date.
  - b. The Certificate Holder shall supply draft minutes from this meeting to all attendees and invitees, the attendees may offer corrections or comments, and thereafter Certificate Holder shall issue the finalized meeting minutes to all attendees and invitees.
  - c. If, for any reason, the Contractors cannot finish the construction of the Project, and one or more new construction contractors are needed, the Certificate Holder shall hold another preconstruction meeting with the same format as outlined above.
40. The Certificate Holder shall confine construction and subsequent maintenance for the Project to the certified ROW and approved additional work areas as detailed in the approved EM&CP.
41. At least two (2) weeks before Project construction begins in any area, the Certificate Holder shall cause both edges of the Project ROW to be delineated in such area, and any known danger trees, to be removed in such area will be marked for review and acceptance by DPS Staff within two weeks after notification. Also, the Certificate Holder shall stake and/or flag all on- or off-ROW access roads, other areas needed for such construction (such as structure work areas, laydown and storage areas), and identified archaeological resource areas. Certificate Holder shall notify DPS Staff when the above-described field stake-out is complete in such area. In active agricultural lands, staking should be performed to the extent necessary to maintain line-of sight. Pin flagging shall not be used in agricultural areas. Where staking is necessary in agricultural areas, staking should be installed tall enough to be seen in mature grass, thus preventing potential damage to agricultural equipment.

42. The Certificate Holder shall schedule construction activities on the Project ROW to occur between the hours of 7:00 a.m. through 7:00 p.m. Monday through Saturday. If, due to safety, planned outage restrictions, or continuous operation requirements, such construction activities are required to occur on a Sunday or after 7:00 p.m. (“Extended Work”), the Certificate Holder, after consultation with the affected municipality, shall seek approval from DPS Staff for Extended Work. To the maximum extent practicable, such approval shall be requested at least 24 hours in advance. Notification of such Extended Work hours will be provided to National Grid.
43. Construction shall not commence in any segment of the Project until the real property rights necessary to construct and operate at least 90% of the length of the portion of the Project on such segment are secured. All segments shall be identified in the EM&CP. The Certificate Holder shall provide a detailed construction schedule to DPS Staff prior to construction in any segment, together with evidence of such property rights.
44. In connection with ROW vegetation clearing, the Certificate Holder shall:
  - a. comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and Section 9-1303 of the New York State Environmental Conservation Law (“ECL”) and any quarantine orders issued thereunder;
  - b. note on the EM&CP drawings the clearing and disposal techniques;
  - c. not create a maximum wood chip depth greater than three (3) inches, except for chip roads or invasive species control, nor store or dispose chips in wetlands, within stream banks or floodways or agricultural lands;
  - d. utilize the wood resource generated by the clearing in accordance with sound environmental techniques;
  - e. leave stumps in place within 50 feet of streams unless construction of an access road or work pad necessitates removal. Trees shall not be felled into any stream or onto the immediate stream bank; and
  - f. limit clearing of natural vegetation to that material which poses a hazard or hindrance to the construction activity. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion.
45. The Certificate Holder shall, as part of purchasing new ROW and/or danger tree rights, negotiate in good faith with each landowner the purchase of rights to all logs over six (6) inches in diameter at the small end and eight (8) feet or longer (“Merchantable Logs”); the Certificate Holder’s removal of the Merchantable Logs resulting from clearing the Project ROW will be to an off-ROW location(s) and Certificate Holder will provide notice of the location(s) to be included in the EM&CP.
46. The Certificate Holder shall include in the EM&CP a plan for removal, reuse, recycling, and disposal of all existing equipment (e.g., transformers, wood poles, conductors, etc.). The Certificate Holder shall remove from the ROW to appropriate destinations and handle, in accordance with the EM&CP, existing transmission facility

- equipment that Certificate Holder or its Contractor removes or replaces as part of the Certificate Holder's work on the Project.
47. The Certificate Holder shall restore disturbed construction areas to original grades and conditions with permanent re-vegetation and erosion controls appropriate for those locations unless the EM&CP specifies otherwise. Disturbed pavement, curbs, and sidewalks shall be restored to their original preconstruction condition or improved.
  48. The Certificate Holder shall be responsible for checking all culverts and assuring that they are not crushed, blocked, or otherwise damaged during construction and restoration of the Project. If a culvert is crushed, blocked, or otherwise damaged during construction or restoration of the Project, the Certificate Holder shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage and aquatic connectivity. Culvert repairs or replacements shall follow specifications in the EM&CP.
  49. The Certificate Holder shall, upon completion of the Project:
    - a. conduct an assessment of the need for landscape restoration, including vegetation planting, earthwork or installed features to landscape the Project with respect to public road crossings, residential areas, and substations;
    - b. prepare plans for any visual mitigation found necessary, and, in connection therewith, removal, rearrangement and supplementation of existing landscape improvements or plantings should be considered, as appropriate;
    - c. consult with DPS Staff (and with National Grid if such plans involve any substation owned by National Grid) on content and execution of its assessment, resultant landscaping plan specifications and materials list; details shall include measures for third party or wildlife damage to any landscape and vegetation plantings; and
    - d. present draft assessments and plans to DPS Staff for review and file a final plan with the Secretary within one (1) year after the date each phase of the Project is placed in service; each plan will be limited to the area impacted by the relevant phase.
  50. The Certificate Holder shall notify the Secretary in writing no later than ten (10) days after the Project is placed in service.
  51. Unless described otherwise in the EM&CP, all trees over four (4) inches in diameter (measured four feet above ground) or shrubs over four feet in height damaged or destroyed by the Certificate Holder's activities during construction, regardless of where located, shall be replaced by the Certificate Holder with equivalent-type trees or shrubs, subject to the provisions of 6 NYCRR Part 575, *Prohibited and Regulated Invasive Species*, except where:
    - a. the approved EM&CP permits otherwise;

- b. equivalent-type replacement trees or shrubs would interfere with the proper clearing, construction, operation, or maintenance of the Project;
  - c. replacement would be contrary to sound ROW management practices or to its Long-Range Right-of-Way Management Plan; or
  - d. a property owner or other recorded easement or license holder with the right to control replacement declines replacement (other than the Certificate Holder on whose land the damaged or destroyed trees or shrubs were located declines replacement).
52. The Certificate Holder shall ensure that the EM&CP shall: (a) identify plans for tree protection; and (b) indicate on the drawings where tree protection measures will be applied (if any are known at the time of EM&CP preparation).
53. The Certificate Holder shall include plans in the EM&CP to prevent unauthorized access to and along the ROW, which plans shall include the following:
- a. posting signs at the edges of the Project ROW in those locations where the Project ROW intersects public roads;
  - b. performing outreach to educate and inform the public concerning the risks and impacts of unauthorized access;
  - c. working with local law enforcement officials in an effort to prevent future trespassing;
  - d. identifying construction and material details of gates and berms, if any; and
  - e. final determination of locations of gates and berms shall be made during a post-construction assessment of the Project, in consultation with the following: DPS Staff; NYSDAM, where such determination affects agricultural lands; and National Grid, where such determination involves NG Retained Facilities.
54. Prior to restoration within a given area of the Project, the Certificate Holder shall thoroughly clear the areas of the ROW and work areas where construction occurred of debris related to electric line construction or removal, such as nuts, bolts, spikes, wire, and pieces of steel. All construction debris (e.g., building materials, excess sediment, and work site refuse) generated by the Project shall be completely removed prior to completion of restoration of the entire Project, including the entire Project, including wetlands, adjacent areas, waterbodies, floodplains and floodways. Construction debris shall be properly disposed of at a permitted waste disposal facility authorized to receive such material.
55. Within ten (10) days of the completion of final restoration of the Project, the Certificate Holder shall notify the Secretary that all restoration has been completed in compliance with this Certificate and the EM&CP.

#### **H. Herbicide Use During Construction**

56. All application of herbicides on the Project shall be performed under the direct supervision of a NYS Certified Applicator who shall own or be employed by a New

- York State-registered business. The supervising certified applicator shall be familiar with and understand the provisions of this Certificate.
57. The Certificate Holder shall ensure that all herbicides used on the Project have valid registrations under applicable state and federal laws and regulations. If the Certificate Holder desire a change to the herbicides specified in the EM&CP for use during construction of the Project, including mix proportions, additives (with the exception of dyes), or method of application, the Certificate Holder shall submit the proposed change for approval pursuant to Certificate Condition 32.
  58. The Certificate Holder shall apply such herbicides only in conformity with all label instructions and all applicable state and federal laws and regulations. Certificate Holder shall apply herbicides in compliance with the Certificate and EM&CP. Certificate Holder shall ensure that its applicators reference maps which indicate treatment areas, and wetland and adjacent area boundaries, prior to treating. Certificate Holder shall ensure that applications required in seasonally flooded freshwater wetlands are undertaken during a dry season.
  59. During the application of herbicides on the Project, the Certificate Holder shall ensure that application of herbicides within wetlands and the 100-foot adjacent areas associated with State-regulated wetlands shall be performed only by backpack treatment or squirt bottle method.
  60. During the application of herbicides on the Project, whether during or in preparation of construction on agricultural lands (including pastures and farmsteads):
    - a. The Certificate Holder shall ensure that, in doing so, it does not allow equipment wash water or excess herbicide to enter wetlands, streams or waterbodies.
    - b. The Certificate Holder's Agricultural Inspector (as defined in Certificate Condition 100) shall be involved with the notification to the agricultural producer providing ample time to provide livestock segregation practices from the proposed herbicide affected areas. If the agricultural producer is unable to move livestock to unaffected secluded pasture(s), the Certificate Holder will be responsible for providing, installing and maintaining temporary fencing (as approved by the agriculture producer) for the duration of the applicable herbicide label's grazing restrictions for the applicable type of livestock. Likewise, the applicable herbicide label's crop restrictions should be clearly communicated with the agriculture producer for their knowledge of when to harvest the applicable crop.
    - c. If the Certificate Holder proposes to apply herbicides during or in preparation of construction on agricultural lands operated under or in pursuit of the National Organic Program according to 7 CFR Part 205, the Certificate Holder shall determine the location of such organic producers, and determine the Certificate Holder's rights to apply herbicides on such lands, and provide notification of the intended application providing ample time for the organic producer's

preparation required defined boundaries and buffer zones as describe in 7 CFR Part 205.

## **I. Oversight and Supervision**

61. The Certificate Holder shall employ inspectors as follows:
  - a. The Certificate Holder shall use an inspector or inspectors during construction for Project oversight. Inspector(s) may be used to act for multiple inspection roles as long as such inspector(s) are qualified; including the Environmental Inspector and the Agricultural Inspector, and the inspector for invasive species control measures.
  - b. There shall also be a construction supervisor employed full-time on the Project; along with at least one safety inspector who will inspect the work site from time to time; and at least one Quality Assurance Inspector who will inspect the work site from time to time. Inspectors shall also be responsible for or oversee periodic safety inspections of the work site, thereby fulfilling the role of safety inspector. In addition, the quality assurance inspector may also fulfill the inspection requirements under the Certificate.
62. The following provisions apply to the Project's inspectors:
  - a. During periods of relative inactivity on the Project, after consultation with and acceptance from DPS Staff, the Certificate Holder may temporarily decrease the number of hours worked by inspectors and the extent of their presence at the Project site commensurate with the decline in Project activity; likewise, during periods of relatively high activity on the Project, the number of inspectors and the extent of their presence at the Project site may temporarily increase commensurate with the increase in Project activity. The Certificate Holder shall ensure that the frequency of inspections by the Environmental Inspector shall comply with the requirements of the SPDES General Permit.
  - b. The Environmental Inspector shall have stop work authority over all aspects of the Project.
  - c. The Certificate Holder shall provide to DPS Staff, NYSDAM and NYSDEC the cell phone numbers of the Certificate Holder's Environmental Inspector and construction supervisor.
  - d. The Certificate Holder shall ensure that the Environmental Inspector, the Agricultural Inspector, and construction supervisor are equipped with sufficient access to documentation, transportation, and communication equipment to effectively monitor Certificate Holder's Contractor's compliance with the provisions of every Order issued in this proceeding with respect to Project and to those sections of the PSL, ECL, Section 401 Water Quality Certification, and the EM&CP.
63. The Certificate Holder shall ensure that the names and qualifications of its Environmental Inspector, Agricultural Inspector, and construction supervisor are

- submitted to DPS Staff at least two (2) weeks prior to the start of construction of the Project. The Certificate Holder shall ensure that the Environmental Inspector's qualifications satisfy those of a "Qualified Inspector" pursuant to the SPDES General Permit.
64. The Certificate Holder's employees, contractors and subcontractors assigned to the construction of the Project and inspection of such construction work shall be properly trained in their respective responsibilities. Employees or representatives of National Grid trained in Project construction and inspection may be present at the Project site to monitor and observe Certificate Holder's work on or that may directly impact NG Retained Facilities.
  65. The authority granted in the Certificate and any subsequent order(s) in this proceeding is subject to the following conditions necessary to ensure compliance with such order(s):
    - a. The Certificate Holder shall regard DPS Staff representatives (authorized pursuant to PSL §8) as the Commission's designated representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of the Certificate or any other order in this proceeding, such DPS Staff representatives may issue a stop work order for that location or activity.
    - b. A DPS Staff stop work order shall expire twenty-four (24) hours after issued unless confirmed by a single Commissioner. DPS Staff shall give the Certificate Holder notice by electronic mail of any application to a Commissioner to have a stop work order confirmed. If a stop work order is confirmed, the Certificate Holder may seek reconsideration from the confirming Commissioner or the whole Commission. If the emergency prompting the issuance of a stop work order is resolved to the satisfaction of the Commissioner or the Commission, the stop work order will be lifted. If the emergency has not been satisfactorily resolved, the stop work order will remain in effect.
    - c. Stop work authority will be exercised sparingly and with due regard to potential environmental impact, economic costs involved, possible impact on construction activities, and whether an applicable statute or regulation is violated. Before exercising such authority, DPS Staff representatives will consult (wherever practicable) with the Certificate Holder's representative(s) possessing comparable authority. Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field. In the event the dispute cannot be resolved, the matter will be brought immediately to the attention of the Certificate Holder's Project Manager(s) and the Director of the Department of Public Service Office of Electric Gas & Water. In the event that a DPS Staff representative issues a stop work order, neither the Certificate Holder nor the Contractor will be prevented from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances. The issuance of a stop work order or the implementation of measures as described below may be directed at the sole discretion of the DPS Staff representative during these discussions.

- d. If a DPS Staff representative discovers a specific activity that represents a significant environmental threat that is, or immediately may become, a violation of the Certificate or any other Order in this proceeding, the DPS Staff representative may -- in the absence of the Certificate Holder's supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action -- direct the field crews to stop the specific potentially harmful activity immediately. If the Certificate Holder's personnel are not on site, the DPS Staff representative will immediately thereafter inform the Certificate Holder's construction supervisor(s) and/or Environmental Inspector(s) of the action taken. The stop work order may be lifted by the DPS Staff Representative if the situation prompting its issuance is resolved.
  - e. If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the DPS Staff representative may, in the absence of the Certificate Holder's supervisory personnel, or in the presence of such personnel who, after consultation with the DPS Staff representative, refuse to take appropriate action, direct the Certificate Holder or the relevant Contractors to implement the corrective measures identified in the approved EM&CP. The field crews shall comply with the DPS Staff representative's directive immediately. The DPS Staff representative will immediately thereafter inform the Certificate Holder's construction supervisor(s) and/or Environmental Inspector(s) of the action taken.
  - f. The Certificate Holder will promptly notify DPS Staff and the NYSDEC of any activity that involves a violation of the Certificate.
66. The Certificate Holder shall provide DPS Staff, NYSDAM, and NYSDEC with monthly status reports summarizing construction and indicating construction activities and locations scheduled for the next month. Updates will be provided on a weekly basis as necessary to account for material changes to the construction plan. Certificate Holder will provide such monthly reports and weekly updates to National Grid if construction activities during the relevant time period occur where there are NG Retained Facilities.
67. The Certificate Holder shall organize and conduct site-compliance inspections for DPS Staff as needed during construction of the Project. Such inspections shall be conducted no less frequently than once per month. National Grid shall also be invited to attend. Inspections shall conclude upon the final sign-off of the SWPPP by the SWPPP Inspector.
- a. The monthly inspection shall include a review of the status of compliance with all conditions contained in the Certificate and any other Order issued in this proceeding, other legal requirements and commitments, as well as a field review of the Project site, if necessary. The inspection also may include:
    - i. Review of all complaints received, and their proposed or actual resolutions;

- ii. Review of any significant comments, concerns, or suggestions made by the public, local governments, or other agencies with an indication of how the Certificate Holder has responded to the public, local governments, or other agencies;
  - iii. Review of the status of the Project in relation to the overall schedule established prior to the commencement of construction; and
  - iv. Other items the Certificate Holder or DPS Staff consider appropriate.
- b. The Certificate Holder shall provide a written record of the results of the inspection, including resolution of issues and additional measures to be taken, to: (i) agencies involved in the inspection audit or requesting copies of the written record at the pre-construction meeting; and (ii) National Grid, if the report relates to NG Retained Facilities.
68. The Certificate Holder shall ensure that the required safety rules and regulations are communicated to site inspectors in a documented tailboard meeting prior to entry onto the site for work on the Project. Site inspectors are responsible for interpreting these rules for their non-English speaking and reading-impaired employees. A safety tailboard session is required for each job task.
69. At Certificate Holder's sole discretion, the Certificate Holder has the right to restrict access to the Project area and may require certain persons seeking such access to be appropriately trained in matters such as environmental protection and safety.
70. The Certificate Holder may require site inspectors to supply their own personal protective equipment for any tours of construction sites. This shall include a properly fitted, currently valid, hardhat, safety glasses with side shields, and steel or ceramic-toed boots at any time while on site, unless the visitor is in a vehicle or in a construction trailer.

## **J. Transportation, Roads and Highways**

71. The Certificate Holder shall delineate on the EM&CP drawings the locations of proposed temporary access roads, proposed permanent access roads, and existing access roads. The Certificate Holder shall ensure that proposed access road improvements and measures for environmental impact minimization and access control are included in the EM&CP.
72. The Certificate Holder shall minimize the impact of Project construction on traffic circulation. The Certificate Holder shall ensure that traffic control personnel and safety signage are employed to ensure safe and adequate traffic flow when roadways are affected by Project construction.
73. The Certificate Holder shall coordinate with DPS Staff, NYSDOT and NYSTA for all work to be performed in the State Highway or NYSTA ROW, as applicable and provide an anticipated schedule for construction, which shall be updated and provided at regular intervals as requested by NYSTA. All work within NYSDOT and NYSTA property shall be designed and performed according to 17 NYCRR Part 131, "Accommodation

- of Utilities Within State Highway ROW” and in accordance with requirements and applicable policies as they may be changed from time to time, including NYSTA’s TAP-401 entitled Occupancy and Work Permit Accommodation Guidelines and TAP 401-U entitled “Utility Occupancy Supplement”. Prior to submitting its construction plan for any State Highway ROW segment, the Certificate Holder shall provide to DPS Staff, NYSDOT and NYSTA a preliminary design marked to avoid conflict with potential future transportation projects that NYSDOT and NYSTA may seek to undertake in the future and shall offer to consult with NYSDOT and NYSTA concerning any comments they may offer and shall use reasonable efforts to accommodate any NYSDOT and NYSTA concerns.
74. The Certificate Holder shall avoid direct disturbance to properties by accessing the Project from existing roadways or off-ROW access roads as identified in the EM&CP. Work permits and insurance will be required for all contractors working on NYSTA property. With respect to NYSTA property, project plans, stamped by a Professional Engineer licensed in the State of New York, shall be reviewed and approved by NYSTA before work and occupancy permits will be issued for construction on NYSTA property. Parking for Project construction workers shall be in designated areas which do not interfere with normal traffic, cause a safety hazard, or interfere with existing land uses; these areas shall be designated in the EM&CP.
  75. The Certificate Holder shall comply with the NYSTA Fee Policy for Thruway Occupancy Permits, to the extent applicable.
  76. Unless otherwise agreed between the Certificate Holder and NYSTA, the Certificate Holder shall comply with NYSTA Design and Construction Requirements for Aerial Communication and Power Line Installations (TAP-421C) and Design and Construction Requirements for Underground Crossings of Mainline Pavement and Shoulders (TAP 421B), to the extent applicable.
  77. The Certificate Holder shall file with the NYSTA Right of Way, 200 Southern Blvd, Albany NY 12209 Attn: Chief Engineer, as built drawings provided in Horizontal Datum NAD 83 in the proper New York State Plane Coordinate System NYSPCS (Proper State Plane System) Vertical Datum NAVD 88. Data collection shall be by use of kinematic GPS. Identification of the specific NAD83 datum realization shall be noted, as well as a description of the specific method by which the data was collected. The As built drawings shall be furnished as Computer Aided Design files in one of the following formats: Autodesk's drawing (**DWG**), or Drawing eXchange (**DXF**) , or Intergraph/Microstation's **DGN**.
  78. The Certificate Holder shall consult periodically with municipal highway transportation agencies about traffic conditions near the site of work on the Project and shall notify each such transportation agency of the approximate date work will begin in its jurisdiction, using access points that take direct access from the highways in that jurisdiction for the Project.
  79. NYSDOT, or NYSTA, shall have authority to place inspectors on-site to monitor and observe the Certificate Holder’s activities on State highways or the New York State Thruway System, as applicable, and/or to request the presence of State or local police to ensure the safety of highway travelers, at such times and for such periods as

- NYSDOT and NYSTA deems appropriate. All costs thereof shall be borne by the Certificate Holder.
80. The Certificate Holder shall coordinate all State Highway crossings with NYSDOT and shall obtain the necessary permits for such work from NYSDOT. The Certificate Holder shall coordinate all Thruway crossings with NYSTA and shall obtain all necessary permits related to such crossings from NYSTA.
  81. The Certificate Holder shall ensure that:
    - a. All work within State highway ROWs shall be designed and performed according to the traffic and safety standards and other substantive requirements contained in 17 NYCRR Part 131, entitled *Accommodation of Utilities Within State Highway Right-of-Way* and applicable design standards required by law or governmental regulation; and
    - b. The EM&CP for street work, if any, provides details, including provisions for minimizing the duration and extent of open excavation, traffic disruptions, and work within adjoining public streets and ROW.
  82. The Certificate Holder shall ensure that parking for Project construction workers shall be in designated areas which do not interfere with normal traffic, cause a safety hazard, or interfere with existing land uses. These parking areas shall be designated in the EM&CP.
  83. The Certificate Holder shall avoid direct disturbance to properties by accessing the Project ROW from existing roadways or off-ROW access roads listed in the EM&CP. Except in emergency situations, the Certificate Holder shall not construct, nor allow any Contractor in its employ to construct, any new access road or improve or use any existing access road, unless such road is shown in the EM&CP. Should the Certificate Holder need additional access, it shall follow the procedures recited in Certificate Condition 32).
  84. For road crossings and locations where construction vehicles will access the Project from the roadways, the Certificate Holder shall implement a Maintenance and Protection of Traffic (“MPT”) plan that identifies procedures to be used to maintain traffic and to provide a safe construction zone for those activities within the roadway ROW. The MPT plans shall address temporary signage, lane closures, placement of temporary barriers, and traffic diversion. The Certificate Holder shall ensure that:
    - a. All signage utilized shall comply with the New York State Department of Transportation Manual of Uniform Traffic Control Devices. Placement of signs shall be determined in consultation with the jurisdictional agency. At a minimum, signs shall be placed at the following distances:
      - i. Signs announcing construction at 500 feet and 1,000 feet; and
      - ii. Signs depicting workers at 300 feet; and
      - iii. Where blasting is to take place within 50 feet of a road, a blast warning sign at 1,000 feet.

- b. Flagmen shall be present at all times when equipment is crossing any public road, when equipment is being loaded or unloaded from a vehicle parked on a public road, and where two-lane traffic has been reduced to one lane. All flagging operations shall comply with 17 NYCRR Part 131.
- c. As to work within the NYSTA ROW, the MPT plan shall include the requirements for Work Zone Traffic Control and all applicable standards contained in NYSTA's Traffic Safety Manual TAP-403, revised June 2019.

## **K. Cultural Resources**

- 85. The Certificate Holder shall ensure that no construction is undertaken in previously undisturbed areas where archaeological surveys have not been completed until such time as the appropriate authorities, including OPRHP and DPS Staff, have reviewed the results of any additional historic properties and archeological surveys that are required.
- 86. The Certificate Holder shall ensure that, should archaeological materials be encountered during construction, the Certificate Holder shall stabilize the area and cease all ground- disturbing activities in the immediate vicinity of the find and protect the find from further damage. Within twenty-four (24) hours of such discovery, the Certificate Holder shall notify and consult with DPS Staff and OPRHP Field Services Bureau to determine the best course of action. No construction activities shall be permitted in the vicinity of the find until such time as the significance of the resource has been evaluated and the need for and scope of impact mitigation has been determined. The Certificate Holder's procedure for unanticipated discoveries will be specified in the EM&CP.
- 87. The Certificate Holder shall ensure that, should human remains or evidence of human burials be encountered during the conduct of archeological data recovery fieldwork or during construction, all work in the vicinity of the find is halted immediately and the remains are protected from further disturbance. The Certificate Holder shall immediately notify law enforcement/coroner and OPRHP Field Services Bureau and notify DPS Staff within twenty-four (24) hours. The Certificate Holder shall ensure that treatment of human remains is done in accordance with the OPRHP's Human Remains Discovery Protocol and the NYPA's procedure for unanticipated discoveries as specified in the EM&CP, and that all archaeological or remains-related encounters and their handling is reported in the status reports summarizing construction activities and reviewed in the site-compliance audit inspections.
- 88. The Certificate Holder shall ensure that the creation of adverse impacts on historic structures in the Project vicinity is avoided by implementing Project location, design, and vegetation management measures, specified in the EM&CP.
- 89. The Certificate Holder shall have a continuing obligation during construction to respond promptly to complaints of negative archeological impacts and, if necessary, to mitigate any actual impacts through on-site design modifications and off-site mitigation techniques developed in consultation with the OPRHP Field Services Bureau.

**L. Terrestrial and Wildlife Resources**

90. In order to identify T&E animal or plant species potentially located in the Project area, the Certificate Holder shall refer to 6 NYCRR Parts 182 and 193. Prior to the commencement of construction, the Certificate Holder shall provide all personnel with information on any T&E animal or plant species potentially located in the Project area and indicate measures to minimize risks to the species during construction.
91. The Certificate Holder shall implement the following Grassland and Marsh Bird Protection Measures:
- a. Areas within defined occupied habitat for State listed threatened or endangered (T&E) grassland and marsh bird species within the Town of Canajoharie, the Town of Minden and Town of Root, and within or adjacent to the Black Creek Marsh Wildlife Management Area that are temporarily disturbed or modified as a result of construction activities will be restored to pre-existing conditions unless otherwise agreed upon in consultation with DEC and DPS. These temporarily disturbed or modified areas will include, but are not limited to temporary roads, material and equipment staging and storage areas, and utility rights of way.
  - b. To avoid direct impacts to T&E grassland and marsh bird species, the following work windows apply for all ground disturbance and construction-related activities, including restoration and equipment staging, storage, and transportation, within occupied habitat:
    - i. For Short-eared owl, work shall be conducted only between April 1 and October 31;
    - ii. For Upland sandpiper, Pied-billed grebe, King rail, Least bittern, and Sedge wren, work shall be conducted only between August 16 and April 14.
  - c. If construction activities must occur outside of the applicable windows listed in Condition 91(b) in identified occupied habitat, such activities shall occur as follows:
    - i. If fields within identified occupied breeding habitat areas are planted with row crops (i.e., corn, beans, or vegetables) at least twice during the previous 6 years including the farming season of the year prior to the commencement of construction, these fields are not subject to timing restrictions or other restrictions listed in Condition 91(c)(ii) when construction occurs.
    - ii. In identified occupied habitat outside of row crop areas described in Condition 91(c)(i), the Certificate Holder shall implement the monitoring procedures, non-disturbance buffers, and, if applicable, compensatory mitigation as detailed in the Grassland and Marsh Bird Net Conservation Benefit Plan which shall be developed in consultation with, and accepted by, NYSDEC and DPS and shall be made part of the EM&CP.

- iii. The Certificate Holder shall implement the agreed upon Grassland and Marsh Bird Net Conservation Benefit Plan (NCBP) that meets the requirements of Part 182, developed in consultation with and accepted by NYSDEC and DPS, which shall be made part of the EM&CP.
92. In order to ensure that the Project complies with the requirements of Article 11 of the ECL and 6 NYCRR Part 182 for northern long-eared bats (NLEB):
- a. No tree clearing activities shall occur at any time within one hundred fifty (150) feet of any NLEB roosts or one quarter (0.25) mile of any NLEB hibernacula. All tree clearing activities occurring greater than these distances but within one and a half (1.5) miles of a NLEB maternity roost site or five (5) miles of a NLEB hibernaculum site shall be conducted between November 1 and March 31.
  - b. If the conditions specified in Certificate Condition 92(a) cannot be met, the Certificate Holder shall consult with NYSDEC and, if applicable, USFWS, to determine what, if any, permits and/or additional authorizations are required.
  - c. The Certificate Holder shall leave uncut all snag and cavity trees as defined under Department of Environmental Conservation (DEC) Program Policy ONRDLF-2 Retention on State Forests, located within occupied NLEB habitat unless their removal is necessary for the protection of human life and property. When necessary, snag and cavity trees may be removed after being cleared by the Environmental Inspector, pursuant to Certificate Condition 92(a), who shall conduct a survey for bats exiting the tree. This survey shall begin one half hour (1/2) hour before sunset and continue until at least one (1) hour after sunset or until it is otherwise too dark to see emerging bats. Unoccupied snag and cavity trees in the approved clearing areas shall be removed within 24-hours of the exit-count survey.
  - d. If at any time during the life of the Project any NLEB maternity roost trees are discovered, NYSDEC will be notified within twenty-four (24) hours of discovery, and an area of at least five hundred (500) feet in radius around the roost tree(s) shall be marked and avoided until notice to continue construction, ground clearing, grading, maintenance or restoration activities, as applicable, at that site is granted by DPS after consultation with NYSDEC, except if necessary for the protection of human life and property.
93. If any T&E animal or plant species, or associated habitat (*see* Certificate Condition 90), other than those identified in Certificate Condition 91 and 92, are incidentally observed on or from the Project ROW, access roads, laydown yards, and any other areas where Project activities authorized in this Certificate are conducted, the Certificate Holder shall:
- a. Notify DPS Staff and NYSDEC within 24 hours; and
  - b. To protect the identified species or its potentially occupied habitat from immediate harm, secure the immediate area, to the extent Certificate Holder

has the necessary property rights, and ceases construction in that area until DPS Staff, after consultation with NYSDEC, authorizes recommencement of activities.

94. At least two weeks prior to the start of construction in any given area, the Certificate Holder shall have a qualified biologist re- identify the populations of protected native plants listed in 6 NYCRR § 193.3 previously found to occur in that area within the Project ROW and shall install construction fencing around the areas to restrict access during construction.
95. The Certificate Holder, for the protection of State-listed species of special concern, threatened, and endangered species, shall implement the following measures:
  - a. At least two weeks prior to construction activities, the Certificate Holder shall conduct a visual inspection in that area to determine if any active bald eagle nests or large stick nest structures, as described in the EM&CP, are present.
  - b. During construction and maintenance activities, if any bald eagle nest is discovered within 0.25-miles of the work area, the Certificate Holder shall notify NYSDEC and DPS Staff within twenty-four (24) hours of discovery and the nest shall not be approached except in emergency situations where necessary to protect human life or property. The 0.25-mile environmentally sensitive area shall be marked, where the Certificate Holder has property rights to allow such marking, and, except in such emergency situations, this area shall be avoided until DPS Staff, after consultation with NYSDEC, authorizes activities in the buffer area. In the presence of a visual barrier (i.e., tree line, topography) that obstructs the view from the nest and shields it from work activities, the setback requirement may be reduced to 660 feet.
  - c. Notify NYSDEC and DPS Staff within twenty-four (24) hours of the discovery of an active nest or roost of any Federal or State-listed threatened or endangered bird species, or if any T&E species are observed exhibiting breeding or roosting behavior, within an active construction, ground clearing, grading, or maintenance activity area. The Certificate Holder shall record the location of the nest or roost and then shall post and avoid an area of five hundred (500) feet, or the maximum accessible distance, whichever is greater, in radius from the nest or roost until notice to continue construction at that site is granted by DPS Staff, after consultation with NYSDEC. Notwithstanding the above, applicable requirements for Short-eared Owl roosts in the vicinity of the Minden-Canajoharie border will be addressed in the Grassland and Marsh Bird NCBP, which shall be made part of the EM&CP.
  - d. Maintain a record of all observations of state threatened or endangered species during construction, operation, and maintenance of the Project, including any dead, injured and damaged T&E species, their eggs or nest (“T&E Observations”). All reports of T&E Observations shall include the following information: species; number of individuals; age and sex of individuals (if known); observation date(s) and time(s); GPS coordinates (as property rights allow) of each individual observed (if a GPS is not available,

the report should include the nearest pole number and cross road location); behavior(s) observed; identification and contact number of the observer(s); and the nature of and distance to any Project construction, maintenance, or restoration activity. This report shall be provided to DEC on a monthly basis during construction. During operation and maintenance of the Project, a report shall be provided to DEC no later than 30 days following any T&E Observation.

#### **M. Water Resources**

96. The Certificate Holder shall perform all construction, operation and maintenance in a manner that first avoids then minimizes adverse impacts to waterbodies, wetlands, and the one hundred (100) foot adjacent areas associated with all State-regulated wetlands. The Certificate Holder shall ensure the provisions to protect wetlands, waterbodies, and adjacent areas are followed as specified in the approved EM&CP:
- a. Wetland locations and adjacent areas located within the ROW or crossed by the ROW or any off-ROW access road constructed, improved, or maintained for the Project, shall be delineated in the field at least two weeks prior to construction in those areas and indicated on the approved EM&CP drawings.
  - b. If access roads or work pads in wetlands cannot be avoided, it shall be done with tracked equipment, on temporary construction mat, or on geotextile/gravel access roads. Alternatively, such work may be performed during dry or frozen conditions after approval from the Environmental Inspector and the construction supervisor in consultation with DPS Staff. Such locations shall be as set forth on the EM&CP drawings; however, if geotextile/gravel access roads are proposed, such proposal shall be justified in the EM&CP.
  - c. Unless otherwise specified in the approved EM&CP, all work in streams is prohibited from October 1 through May 31 in cold water fisheries, and from March 1 through July 31 in warm water fisheries. These fisheries are set forth in Appendix I of the Joint Proposal, and shall be made part of the EM&CP.
  - d. All work in streams shall be conducted in dry conditions in accordance with Appendix F of the Joint Proposal, unless otherwise specified in the approved EM&CP.
  - e. There shall be no substantial increase in visible contrast in water clarity or variation of flow volume due to construction activities between upstream reaches of work areas and downstream reaches of work areas.
  - f. Water resulting from dewatering operations, equipment washing, or other construction related activities shall not be directly discharged into any wetland or waterbody.
  - g. Concrete washout areas shall be located a minimum of 300 feet away from any wetland or waterbody. If the minimum setback cannot be achieved, the approved EM&CP shall provide justification and demonstrate that impacts to

wetlands and waterbodies from concrete washout areas shall be avoided or minimized to the maximum extent practicable.

- h. Fuel tanks or other chemical storage tanks shall be appropriately contained and located a minimum of 300 feet away from any wetland or waterbody. If the minimum setback cannot be achieved, the approved EM&CP shall provide justification and demonstrate that impacts to wetlands and waterbodies shall be avoided or minimized to the maximum extent practicable.
  - i. Equipment refueling, maintenance, and repair shall be conducted a minimum of 100 feet away from any wetland or waterbody, to the maximum extent practicable following the procedures specified in the EM&CP.
  - j. Restoration of disturbed streams shall be conducted in accordance with the specifications set forth in Appendix F of the Joint Proposal. A site-specific Stream Crossing Plan shall be developed, as applicable, in accordance, with the specifications set forth in Appendix F of the Joint Proposal.
  - k. Bridges or culverts installed in accordance with Appendix F of the Joint Proposal may not be dragged through the stream and must be suitably anchored to prevent downstream transport during a flood. Fill may not be placed within the stream channel below bankfull elevation and placement of abutments or fill is authorized only above and outside bankfull boundaries. Geotextile fabric must be placed below and extending onto the bank and suitable side rails built into the bridges to prevent sediment from entering the waterbody.
  - l. Vegetative restoration will be completed in accordance with Appendix F of the Joint Proposal. Notification shall be provided to NYSDEC and DPS once 80% cover with plants of appropriate indicator status has been achieved
97. The Certificate Holder shall work with NYSDEC to develop a Wetland Mitigation Plan following NYSDEC's wetland mitigation guidelines and the specifications contained in Appendices F and H of the Joint Proposal and will submit the Plan within six months of the start of construction for NYSDEC Staff acceptance, if determined to be necessary by NYSDEC.
98. Upon filing a permit application with the USACE, the Certificate Holder shall provide a copy to DPS Staff.

#### **N. Agricultural Resources**

99. The Certificate holder shall adhere to the NYSDAM "*Guidelines for Electric Transmission Right-of-Way Projects*" dated 4-27-11. Further clarification of the guidelines will be provided in the EM&CP as needed if not discussed in superseding conditions 100-113. Any guideline notification requirements to County Soil and Water Conservation Districts will be directed to NYSDAM staff in place of these organizations.
100. As required by Certificate Condition 61(a), the Certificate Holder shall retain a qualified inspector who also qualifies as an Agricultural and Soil Conservation Specialist/Inspector (the "Agricultural Inspector"). The Certificate Holder shall ensure

- that the names and qualifications of its Agricultural Inspector are submitted to NYSDAM at least two (2) weeks prior to the start of construction of the Project for approval.
101. The Agricultural Inspector shall provide project scheduling information to involved farm operators in effort to conserve the individual farm operator's labor, materials, as well as provide an opportunity for harvest of crops prior to project impacts (e.g. staking, access, soil disturbance, etc.)
  102. The Certificate Holder shall identify livestock use areas during development of the EM&CP. During the clearing phase, vegetation considered toxic to livestock shall be disposed of in a manner which prevents access by livestock. This condition is more exclusive than previously referenced NYSDAM guidance and should supersede said guidance.
  103. In agricultural areas, logs, stumps, brush, or chips shall not be piled or buried in active agricultural fields or pasture.
  104. The Certificate Holder shall ensure that, during preparation of the EM&CP, and in accordance with the EM&CP, a drainage line repair procedure shall be developed, in consultation with NYSDAM, for the repair of crushed/severed clay tile and plastic drain lines. Drawings showing the generic technique to be implemented for drain line repairs shall be provided by the Certificate Holder. All new plastic drain tubing shall meet or exceed the American Association of State Highway Transportation Officials (AASHTO) M252 specifications. The plan for the replacement of functional drainage systems severed during construction shall be prepared during the restoration phase (unless drainage is immediately affecting off ROW crop production), in consultation with NYSDAM.
  105. The Certificate Holder shall ensure that, where construction entrances are required from public roadways to the Project ROW in agricultural fields, either construction matting will be used or an underlayment of durable, geotextile fabric is placed over the exposed subsoil surface prior to the use of temporary gravel access fill material. In locations where underground utilities are located within 10 feet of the shoulder of the roadway, the Certificate Holder may elect, in order to minimize disturbance and protect the underground utilities, to place the geotextile fabric directly over the surface without stripping topsoil. In locations where underground utilities are located 10 feet or more from the shoulder of the roadway, but still within the limits of the construction entrance, the Certificate Holder may elect to mat over the underground utilities instead of placing geotextile fabric and gravel access fill material. Complete removal of the construction entrance upon completion of the Project and restoration of the affected site is required prior to topsoil replacement, except where retention of the construction entrance would be more conducive to the existing land use than removal.
  106. The Certificate Holder shall ensure that segments of farm roads that need improvement in order to be utilized for access are improved in consultation with the agricultural producer/ landowner and NYSDAM prior to use. Such improvements may include the installation of geotextile fabric and crushed stone. Improvements shall be coordinated through the Agricultural Inspector and the agricultural producer to allow continued agricultural use of farm roads by the agricultural producers. Restoration of farm roads

- post construction will meet or exceed the pre-existing condition minimally for continued agricultural use, if not needed for the operation and maintenance of the ROW.
107. The Certificate Holder shall ensure that farm drainage features, fences, and gates affected by construction are rebuilt to preconstruction conditions or better upon completion of construction, and the base of all new posts are secured to a reasonable depth below the surface to prevent frost heave. The Certificate Holder shall provide information concerning the construction of fences, gates, etc. (whether temporary or permanent).
  108. The Certificate Holder may utilize Low Ground Pressure (LGP) equipment (in place of timber mat or topsoil stripping) for one-time or limited access where prescribed by the EM&CP Plan and Profile Drawings. Equipment will be deemed suitable for LGP access when equipment and soil conditions will not result in a visible rut that alters soil compaction and soil profile. The LGP access will be authorized by the Agricultural Inspector immediately prior to the LGP access and will continue to observe the site-specific conditions throughout the duration of the LGP access in effort to minimize the risk of soil impacts according to changing weather conditions. If inadvertent rutting occurs, low ground pressure access shall cease, and restoration shall be performed immediately.
  109. The Certificate Holder shall provide access for the agricultural producer to maintain normal agricultural operations to the maximum extent practicable. Where agriculture access is required to cross construction access, alterations to construction access shall be made to offer safe crossing considering agriculture equipment clearances, turning radius, and other operation concerns. Where the Project bisects agricultural areas and limits agricultural equipment operation to perform normal agricultural operations outside of the Project ROW during construction, the Certificate Holder shall compensate the agricultural producer for the loss of the applicable commodity; otherwise, scheduled construction shall avoid such impacts.
  110. The Certificate Holder shall ensure that in agricultural areas of till over bedrock where blasting is required:
    - a. matting or controlled blasting is used to limit the dispersion of blast rock fragments;
    - b. all blasted rock not used as backfill is removed from croplands, haylands and pastures. If fill material is required, the proposed material shall be filled with an invasive free material similar to native soil to the same level as the adjacent area, plus six (6) to twelve (12) inches of additional soil to allow for settling.;
    - c. the till and topsoil is returned in natural sequence to restore the soil profile; and,
    - d. farm owners/operators are given timely notice prior to blasting on farm property.
  111. The Certificate Holder shall retain the services of an Agricultural Inspector on at least a part-time basis through a two-year monitoring and remediation period, including: on-site monitoring shall be conducted at least three times (spring, summer and fall) during

- each growing season and shall include a comparison of growth and yield for crops on and off of the Project ROW. During this phase, the Agricultural Inspector shall also maintain a list of invasive species observed on such portion of the Project ROW in agricultural areas, adjoining ROW areas, and other areas utilized by the current field operator. In agricultural areas where invasive species are documented along such portion of the Project ROW, the Certificate Holder, in consultation with the Agricultural Inspector, DPS Staff, and NYSDAM, shall determine whether such species were pre-existing or whether such species were introduced by its work on the Project in accordance with the Invasive Species Plan as discussed in Certificate Condition 129. If it is determined at the end of the Certificate Holder's work, the Project was directly responsible for the introduction of invasive species to the agricultural areas, the Certificate Holder shall consult with the agricultural producer, DPS Staff, NYSDEC and NYSDAM to determine the appropriate control measures to implement.
112. Following restoration of all disturbed areas, excess topsoil shall be distributed within the project approved disturbed agricultural areas of the site, provided this is practicable and can be accomplished without having any adverse impact on site drainage. All such activity shall be as directed by the Agricultural Inspector, based on guidance provided by the landowner.
  113. The Certificate Holder shall ensure that, after topsoil replacement, seedbed preparation (final tillage, fertilizing, liming) and seeding should be prepared using equipment appropriate for the agricultural conditions and following either the pre-existing crop, the agriculture producer's request, and/or NYSDAM recommendations as contained in the most current *Fertilizing, Lime and Seeding Recommendations for Restoration of Construction Projects on Farmlands in New York State* or landowner specifications

#### **O. Petroleum and Hazardous Substances**

114. The EM&CP shall include a plan for storage of all petroleum and hazardous substances which may be used during, or in connection with, the construction, operation, or maintenance of the Project.
115. The EM&CP shall include a Spill Prevention, Control, and Countermeasure ("SPCC") Plan for responding to and remediating the effects of any spill of petroleum and hazardous substances in accordance with applicable law and regulations. Such plan shall be developed in accordance with applicable State and Federal laws, regulations and guidance, and shall include proposed methods of handling spills of petroleum products and hazardous substances which may be stored or utilized during the construction, operation, or maintenance of the Project. The Certificate Holder shall notify DPS Staff and NYSDEC, in accordance with applicable State and/or federal regulations and guidance, if it learns of any fuel or chemical spill.
116. The Certificate Holder shall comply with New York Navigation Law § 175, 6 NYCRR § 613.8 (petroleum spills), and 6 NYCRR § 595.3(b) (hazardous substance spills).

**P. Contractors and Contractor Supplies/Materials**

117. At least two (2) weeks prior to the Certificate Holder's construction of a particular Project segment, as defined in the EM&CP, the Certificate Holder shall submit a report to the Secretary confirming that all required construction materials are available for the Project. For purposes of this paragraph, an item of construction material is available if: (i) it is located at a laydown yard; (ii) it is in a Certificate Holder's warehouse or other routine Certificate Holder inventory stocking location; or (iii) it is on order from a vendor with a scheduled delivery date prior to the time scheduled for its use in the Project.
118. The Contractor shall be responsible for all construction materials after they have been received by the Contractor. All equipment shall be located within approved laydown yard(s) or within the Project ROW, or other off-ROW areas provided, however, that if a local contractor is used for the work, the local contractor's facility may be considered as an acceptable laydown yard.
119. DPS Staff will provide the name of a contact person(s) ("DPS Staff Representative") and the contact information (mailing address, phone number, e-mail, etc.) of that individual for purposes of this Certificate Condition and Certificate Conditions 117 through 128. If a reportable accident occurs in connection with work on the Project, the Certificate Holder shall report such accident to the DPS Staff Representative as soon as possible, and shall provide a copy of the accident report, if any, to the DPS Staff Representative after it has been finalized.
120. The Certificate Holder shall provide the DPS Staff Representative with a monthly audit report reflecting material inventory and usage by the Certificate Holder during its work on the Project.
121. The Certificate Holder shall provide the DPS Staff Representative with a copy of any police report and any insurance claim filed in connection with any theft of Project-related materials, as well as a list of the stolen items. Subsequently, the Certificate Holder shall provide the DPS Staff Representative with an accounting of all replacement materials. The Certificate Holder's accounting of replacement materials shall include documentation of the insurance company's coverage and the contractor's costs for replacement.
122. The Certificate Holder shall, within six (6) months following completion of restoration of the Project ROW, provide to the DPS Staff Representative a full accounting of all costs incurred to date for the Project, including an explanation of variances, if any, between projected and actual costs. Such accounting may be filed on a confidential basis.
123. The Certificate Holder shall ensure that an engineer with the appropriate engineering background shall conduct field reviews on a monthly basis and prepare a written report of the firm's findings on whether the Project is being constructed in accordance with the design for the Project. The Certificate Holder shall provide a copy of each such report to the DPS Staff Representative and, to the extent such report concerns NG Retained Facilities, to National Grid within three (3) business days after the Certificate Holder receive the report. The Certificate Holder shall notify the DPS Staff

- Representative of when the field reviews will occur. National Grid will be notified of any field reviews concerning NG Retained Facilities.
124. If a Contractor installs materials, structures, or components that do not conform to those specified in the EM&CP, the Certificate Holder, within one (1) month after becoming aware of such incident, shall prepare and deliver to the DPS Staff Representative a summary report detailing the incident, the steps to be taken to rectify the non-conformance, the material and labor costs associated with addressing the issue, and the manner in which such costs will be accounted for separately from the Certificate Holder's other Project costs.
  125. The Certificate Holder shall develop a quality control plan ("Quality Control Plan") for the Project to be included in the EM&CP describing how it will ensure that the transmission line structures and components it purchases for the Project conform to the specification for structures and components described in the EM&CP. At a minimum, the Quality Control Plan shall include:
    - a. the name(s) and qualifications of the individual(s) who will conduct audits under the Quality Control Plan ("Quality Control Audits"); and
    - b. the frequency with which the Quality Control Audits will be performed.
  126. Within five (5) business days following completion of each Quality Control Audit, the Certificate Holder shall provide to Staff a report of such audit that includes: (i) a description of the results of the audit, particularly with respect to results that identify that one or more structures or components the Certificate Holder purchased for installation in the Project did not conform to the specification for structures or components described in the approved EM&CP; and, (ii) any notes pertinent to the subject matter of such audit which were made at audit meetings by the Certificate Holder's personnel and contractors who performed the audit.
  127. If any Quality Control Audit conducted by the Certificate Holder confirms that one or more structures or components the Certificate Holder purchased for installation in the Project did not conform to the specification for structures and components described in the approved EM&CP, the Certificate Holder shall: (i) provide written notification to the Secretary within 24 hours of the Certificate Holder's confirmation of such non-conformity; and (ii) describe the steps the Certificate Holder will take to correct the non-conformity, including whether any components must be dismantled and sent back to the manufacturer, as well as a detailed estimate of all costs and expected delays in construction resulting from such non-conformity.
  128. All costs incurred by the Certificate Holder as a result of its purchase of a structure or component for installation in the Project that did not conform to the specification for structures and components described in the approved EM&CP shall be accounted for separately from the Certificate Holder's overall Project costs.

**Q. Invasive Species**

129. The Certificate Holder shall implement the agreed upon Invasive Species Plan set forth in Appendix G of the Joint Proposal, which will be made part of the approved EM&CP.

**R. Water Quality Certification**

130. Concurrent with Commission approval of the EM&CP for the first segment of this Project, the Director of Facility Certification & Compliance of the EC&C Section in the Office of Electric, Gas and Water or their designee, pursuant to § 401 of the Federal Water Pollution Control Act (“Clean Water Act”), as amended, 33 U.S.C. § 1341, and PSL Article VII, will execute the certification, substantially in the form of Appendix H to the Joint Proposal, that the Project will comply with the applicable requirements of §§ 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and will not violate New York State water quality standards and requirements.

**Case 19-T-0549****APPENDIX E****SPECIFICATIONS FOR THE DEVELOPMENT OF ENVIRONMENTAL  
MANAGEMENT AND CONSTRUCTION PLAN**

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

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

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

**A. EM&CP Plan and Profile Drawings and Maps**

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

**1. Plan and Profile Details**

A Line<sup>1</sup> Profile (at an appropriate scale) and plan drawings (scale minimum 1 inch = 200 feet)<sup>2</sup> showing:

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

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

- a. The boundaries of any new, existing, and/or expanded right-of-way (ROW)<sup>3</sup> or road boundaries, and where cables are to be constructed overhead or underground; plus areas contiguous to the ROW or street within which the Certificate Holder will obtain additional rights.
- b. The location of each Project structure (showing its height, material, finish and color, and type), structural foundation type (e.g., concrete, direct bury), fence, gate, down-guy anchor, and any grounding/counterpoise required for the Project (typical grounding/counterpoise drawings will suffice recognizing that before field testing of installed structures the Certificate Holder may be unable to determine the specific location of all required grounding/counterpoise), conductors, insulators, mid-span splices, and static wires and other components attached to Project structures.
- c. Existing utility and non-utility structures on the ROW and indicate those to be removed or relocated (include circuit arrangements where new structures will accommodate existing circuits, indicate methods of removal of existing facilities, and show the new locations, types and configurations of relocated facilities).
- d. Any known underground utility or non-utility structure.
- e. The relationship of the Project to nearby fence lines; roads; railways; airfields; property lines; hedgerows; surface waters; wetlands; other waterbodies; significant habitats; associated facilities; flowing water springs; nearby buildings or structures; major antennas; oil or gas wells, and blowdown valves.

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

f. The location of any proposed new or expanded switching station, substation, or other terminal or associated utility or non-utility structure (attach plan<sup>4</sup> - plot, grading, drainage, and electrical - and elevation views with architectural details at appropriate scales). Indicate the type of outdoor lighting, including design features to avoid off-site illumination and minimize glare; the color and finish of all structures; the locations of temporary or permanent access roads, parking areas, construction contract limit lines, property lines, designated floodways and flood-hazard area limits, buildings, sheds, relocated structures, and any plans for water service and sewage and waste disposal.

g. The location and boundaries of any areas whether located on- or off- ROW proposed to be used for fabrication, designated equipment parking, staging, access, lay-down, and conductor pulling. Indicate any planned fencing, surface improvements, and screening of storage and staging areas.

h. The locations for ready-mix concrete chute washout and any other cleaning activities (e.g., control of invasive species).

## **2. Stormwater Pollution Prevention**

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

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<sup>4</sup> Preferably 1" = 50' scale with 2-foot contour lines.

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

### 3. Vegetation Clearing and Disposal Methods

Identify on the plan and profile drawings:

- a. the locations of sites requiring trimming or clearing of vegetation and the geographic limits of such trimming or clearing;
- b. the specific methods for the type and manner of cutting and disposition or disposal method for cut vegetation (e.g., chip; cut and pile; salvage merchantable timber, etc.);
- c. the methods for management of vegetation to be cut or removed at each site;
- d. any geographical area bounded by distinctly different cover types requiring different cut-vegetation management methods;
- e. any geographical area bounded at each end by areas requiring distinctly different cut-vegetation methods due to site conditions such as land use differences, population density, habitat or site protection, soil or terrain conditions, fire hazards, or other factors;
- f. different property-owners requesting specific vegetation treatment or disposal methods;
- g. areas requiring (off-ROW) danger tree removal; and,
- h. the location of any areas where specific vegetation protection measures will be employed and the details of those measures to avoid damage to specimen tree stands of desirable species, important screening trees, or hedgerows.

**4. Building and Structure Removal**

Indicate the locations of any buildings or structures to be acquired, demolished, moved, or removed.

**5. Waterbodies**

a. Indicate the name, water quality classification and location of all rivers and streams, (whether perennial and intermittent) and drainages crossed by, the proposed ROW or any off-ROW access road constructed, improved or maintained for the Project. On the plan and profile drawings, indicate:

1. stream crossing method and delineate any designated streamside “protective or buffer zone” in which construction activities will be restricted to the extent necessary to minimize impacts on rivers and streams;

2. the activities to be restricted in such zones; and,

3. identify any designated floodways or flood hazard areas to be traversed by the Project or access roads, or otherwise used for Project construction or the site of associated facilities.

b. Show the location of all potable water sources, including springs and wells on the ROW or within 100 feet of the ROW or access roads indicating on a site-by-site basis, precautionary measures to be taken to protect each water source.

**6. Wetlands**

a. All wetlands and state regulated 100-foot adjacent areas (“adjacent areas”) located within the ROW or crossed by the ROW or any off-ROW access road constructed, improved, or maintained for the Project shall be depicted on EM&CP drawings. The plan and profile drawings shall delineate the wetland “protective or buffer zone” in which

construction activities will be restricted to the extent necessary to minimize impacts on wetlands.

b. Indicate the location and type (i.e., identification code for regulated town, state, or federal wetlands) of any wetland (e.g., marsh, meadow, bog, or scrub-shrub or forested swamp) within or adjoining the ROW or any access road, as determined by site investigation and delineation.

c. Indicate type and location of precautionary measures (e.g., mats) to be taken to protect all wetlands, associated drainage patterns and wetland functions.

## 7. Land Uses

### a. Agricultural Areas

1. Indicate the locations of sites under cultivation or in active agricultural use including rotational pasture, pasture, hayland, and cropland.

2. Indicate the location of any unique agricultural lands including maple sugarbushes, organic muckland and permanent irrigation systems, as well as areas used to produce specialty crops such as vegetables, berries, apples, and grapes.

3. Indicate the location of vulnerable soils in agricultural areas that are more sensitive than other agricultural soils to construction disturbance due to slope, soil wetness, and shallow depth to bedrock.

4. Indicate the location of all land and water management features including subsurface drainage, surface drainage, diversion terraces, buried water lines, and water supplies.

5. Designate the site-specific techniques to be implemented to minimize or avoid construction-related impacts to agricultural resources.

b. Sensitive Land Uses and Resources

Indicate the location and identification of sensitive land uses and resources that may be affected by construction of the Project or by construction-related traffic (e.g., hospitals, emergency services, sanctuaries, schools, and residential areas).

c. Geologic, Historic, and Scenic or Park Resources

Indicate the locations of geologic, historic, and existing or planned scenic or park resources and specify measures to minimize impacts to these resources (e.g., fencing, signs).

d. Recreational

Indicate the locations where existing or planned recreational use areas, would affect or be affected by the Project location, construction or other ROW preparation.

**8. Access Roads, Lay-down Areas and Workpads**

Indicate the locations of temporary and permanent on- and off-ROW access roads, lay-down areas and workpads. Provide construction type, material, and dimensions. Indicate provisions for upgrading any existing access roads.

**9. Noise Sensitive Sites**

Show the locations of noise-sensitive areas along the proposed ROW.

**10. Ecologically and Environmentally Sensitive Areas**

Indicate the general locations of any known ecologically and environmentally sensitive sites (e.g., archaeological sites; fish and wildlife habitat; rare, threatened, and endangered species or habitats; forest and vegetation; open space; areas of important aesthetic or scenic quality; deer winter yards, etc.), within or nearby the proposed or existing ROW or along the general alignment

of any access roads to be constructed, improved or maintained for the Project. Specify the measures that will be taken to protect these resources (e.g., fencing, flagging, signs “Sensitive Environmental Areas, No Access”).

### **11. Invasive Species of Special Concern**

Identify the location(s) of invasive species of special concern and the prescribed method to control the spread and/or eradicate the identified species.

### **12. Herbicide**

On the plan and profile drawing notes, indicate areas where herbicides will not be used.

## **B. Description and statement of objectives, techniques, procedures and requirements**

The textual portion of the EM&CP for the Project shall include, but need not be limited to, all of the following information:

### **1. Project Location and Description**

Describe the location and limits of the site or ROW and explain the need for any additional rights. For each structure type, indicate the GSA—595A Federal standard color designation or manufacturer’s color specification to be used for painted structures. State any objections raised by Federal, State or local transportation (highways, waterways, or aviation) officials to the final location or manner of installation of, or access to, the certified Project. Provide a rationale for the inclusion of any mid-span splice locations proposed.

### **2. Stormwater Pollution Prevention**

- a. The information included in the acknowledged SWPPP.
- b. In areas of coastal erosion hazard, include plans to demonstrate compliance with the standards for coastal erosion hazard protection as required by 6 NYCRR Part 505 - Coastal Erosion Management.

**3. Vegetation Clearing and Disposal Methods**

- a. Describe the specific methods and rationale for the type and manner of cutting and disposition or disposal methods for cut vegetation.
- b. Detail specific measures employed to avoid damage to specimen tree stands of desirable vegetation, rare, threatened and endangered species, important screening trees, and hedgerows.
- c. Identify the factors such as the attributes of the site, outcome of landowner negotiations, and attributes of the logs, upon which Certificate Holder's removal of the merchantable logs resulting from clearing the ROW for the Project will be based.
- d. Describe methods of compliance with 6 NYCRR Part 192 – Forest Insect and Disease Control, applicable NYSDEC quarantine orders, and New York State Department of Agriculture and Markets (“NYSDAM”) regulations.

**4. Building and Structure Removal**

Indicate the locations of any buildings or structures to be acquired, demolished, moved, or removed. Provide the rationale for the acquisition and removal of buildings or structures.

**5. Waterbodies**

- a. Describe the measures to be taken to protect stream bank stability, stream habitat, and water quality including, but not limited to: crossing technique; crossing structure type; timing restrictions for in-stream work; stream bed and bank restoration measures; vegetation restoration measures; and other site-specific measures to minimize impacts, protect resources, and manage Project construction.
- b. Indicate the procedures that were followed to inventory such resources and provide copies of any resulting data sheets and summary reports.

c. Develop a table of waterbodies crossed by the Project and include: Town (location), Existing Structure Span (mileposts), Stream Name, Field/Map Identification Name, Perennial or Intermittent, New York Stream Classification, Water Index Number, Crossing Method and Length, Fishery Type, GPS coordinates.

## 6. Wetlands

a. For each State-regulated wetland, indicate the following: town (location); existing Structure Span (milepost); wetland field designation; NYSDEC classification code; wetland type; proposed structure located within wetland; total area of temporary disturbance/impact; dead end structures in NYSDEC wetlands; tangent structures in NYSDEC wetlands; total area of permanent disturbance in NYSDEC wetlands (sq. ft.); area crossed by Project (sq. ft.); conversion of State-regulated forested wetlands (sq. ft.).

b. Describe all activities that will occur within State-regulated wetlands or adjacent areas (e.g., construction, filling, grading, vegetation clearing, and excavation) and assure that the activity is consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f). Describe how impacts to wetlands, adjacent areas, associated drainage patterns, and wetland functions will be avoided, and how impacts will be minimized.

c. Describe the precautions or measures to be taken to protect all other wetlands (e.g., town, federal wetlands) associated drainage patterns, and wetland functions.

## 7. Land Uses

### a. Agricultural Areas

i. Describe programs, policies, and procedures to mitigate agricultural impacts such as soil compaction. Explain how construction plans either avoid or minimize crop production losses and impacts to vulnerable soils.

ii. Indicate specific techniques and references to appropriate agricultural protection measures recommended by NYSDAM.

b. Sensitive Land Uses

Describe the sensitive land uses (e.g., hospitals, emergency services, sanctuaries, schools, residential areas) that may be affected by construction of the Project or by construction-related traffic and specify measures to minimize the impacts on these land uses.

c. Geologic, Historic and Scenic or Park Resources

Describe the geologic, historic, and scenic or park resources that may be affected by construction of the Project or by construction-related traffic and specify measures to minimize impacts on these resources. Indicate the procedures that were followed to identify such resources and specify the measures that will be taken to protect or preserve these resources. Reports prepared to identify and analyze such sites shall be made available to Department of Public Service (“DPS”) Staff upon request.

d. Recreation Areas

Explain how proposed or existing recreation areas will be avoided or accommodated during construction, operation, and maintenance of the Project.

**8. Access Roads, Lay-down Areas and Workpads**

a. Discuss the necessity for access to the ROW, including the areas where temporary or permanent access is required; and the nature of access improvements based on natural features, equipment constraints, and vehicles to be used for construction and maintenance, and the duration of access needs through restoration and the maintenance of the Project.

b. Discuss the types of access which will be used and the rationale for employing that type of access including consideration of:

- i. temporary installations (e.g., corduroy, mat, fill, earthen road, geotextile underlayment, gravel surface, etc.);
  - ii. permanent installations (e.g., cut and fill earthen road, geotextile under-layment, gravel surface, paved surface, etc.);
  - iii. use of roads, driveways, farm lanes, rail beds, etc.; and,
  - iv. other access, e.g. helicopter or barge placement. For each temporary and permanent access type, provide a figure or diagram showing a typical installation (include top view, cross section, and side view with appropriate distances and dimension). Where existing access ways will be used, indicate provisions for upgrading to meet appropriate standards.
- c. Indicate the associated drainage and erosion control features to be used for access road construction and maintenance. Provide diagrams and specifications (include plan and side views with appropriate typical dimensions) for each erosion control feature to be used, such as:
- i. staked straw bale or check dam (for ditches or stabilization of topsoil);
  - ii. broad-based dip or berm (for water diversion across the access road);
  - iii. roadside ditch with turnout and sediment trap;
  - iv. French drain;
  - v. diversion ditch (water bar);
  - vi. culvert (including headwalls, aprons, etc.);
  - vii. sediment retention basin (for diverting out-fall of culvert or side ditch); and,
  - viii. silt fencing.

- d. Indicate the type(s) of stream crossing method to be used in conjunction with temporary and permanent access road construction. Provide diagrams and specifications (include plan and side view with appropriate dimensions) for each crossing device and rationale for their use. Stream crossing devices may include but not be limited to:
- i. timber mat;
  - ii. culverts including headwalls;
  - iii. bridges (either temporary or permanent); and,
  - iv. fords.
- e. All diagrams and specifications should include material type and size to be placed in streams and on stream approaches.
- f. If access and workpad areas cannot be limited to upland areas, provide justification for any access and workpad areas which are proposed to be located in a wetland or stream or waterbody.

#### **9. Noise Sensitive Sites**

Specify procedures to be followed to minimize noise impacts related to ROW clearing, and construction and operation of the Project. Indicate the types of major equipment to be used in construction or Project operation; sound levels at which that equipment operates; days of the week and hours of the day during which that equipment will normally be operated; any exceptions to these schedules; and any measures to be taken to reduce audible noise levels caused by either construction equipment or Project operation.

#### **10. Ecological and Environmentally Sensitive Sites**

Indicate the procedures that were followed to identify ecological and environmental resources (e.g., archaeological sites; fish and wildlife habitat; rare, threatened, and endangered species or

habitats; forest and vegetation; open space; areas of important aesthetic or scenic quality; deer winter yards) and specify the measures that will be taken to protect or preserve these resources. Reports prepared to identify and analyze such sites shall be identified, and made available upon request.

### **11. Invasive Species of Special Concern**

- a. Provide an invasive species prevention and management plan for invasive species of special concern, prepared in consultation with DPS Staff, NYSDEC, and NYSDAM, based on the pre-construction invasive species survey of invasive species within the ROW.
- b. The plan will include measures that will be implemented to minimize the introduction of invasive species of special concern and the spread of existing invasive species of special concern during construction (e.g., soil disturbance, vegetation clearing, transportation of materials and equipment, and landscaping/revegetation).

### **12. Herbicides**

- a. Specify the locations where herbicides are to be applied. Provide a general discussion of the site conditions (e.g., land use, target and non-target vegetation species composition, height, and density) and the choice of herbicide, formulation, application method, and timing.
- b. Describe the procedures that will be followed during application to protect non-target vegetation, streams, wetlands, potable waters and other water bodies, and residential areas and recreational users on or near the ROW.

### **13. Fugitive Dust Control**

Specify appropriate measures that will be used to minimize fugitive dust and airborne debris from construction activity.

**14. Petroleum and Chemical Handling Procedures**

- a. Include a plan for the storage, handling, transportation, and disposal of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances which may be used during, or in connection with, the construction, operation, or maintenance of the Project. Address how to avoid spills and improper storage or application in the vicinity of any wetland, river, creek, stream, lake, reservoir, spring, well, or other ecologically sensitive site, or existing recreational area along the ROW and access roads.
- b. Include a plan for responding to and remediating the effects of any spill of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances in accordance with applicable State and Federal laws, regulations, and guidance, and include proposed methods of handling spills of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances which may be stored or utilized during the construction and site restoration, operation, and maintenance of the Project.

**15. Environmental Supervision**

- a. Describe protocols for supervising demolition, vegetation clearing, use of herbicides, construction, and site restoration activities to ensure minimization of environmental impact and compliance with the environmental protection provisions specified by the Certificate.
- b. Specify the titles and qualifications of personnel proposed to be responsible for ensuring minimization of environmental impact throughout the demolition, clearing, construction, and restoration phases, and for enforcing compliance with environmental

protection provisions of the Certificate and the EM&CP. Indicate the amount of time each supervisor is expected to devote to the project.

- c. Specify responsibilities for personnel monitoring all construction activities, such as clearing, sensitive resource protection, site compliance, EM&CP change notices, etc.
- d. Explain how all environmental protection provisions will be incorporated into contractual specifications, and communicated to those employees or contractors engaged in demolition, clearing, construction, and restoration.
- e. Describe the procedures to “stop work” in the event of a Certificate violation.
- f. Identify the company’s designated contact including 24/7 emergency phone number, for assuring overall compliance with Certificate conditions.

#### **16. Clean-up and Restoration**

Describe the Certificate Holder’s program for ROW clean-up and restoration, including:

- a. the removal of any temporary roads; restoration of lay-down or staging areas; the finish grading of any scarified or rutted areas; the removal of waste (e.g. excess concrete), scrap metals, surplus or extraneous materials or equipment used;
- b. plans, standards and a schedule for the restoration of vegetative cover; including, but not limited to, specifications to address:
  - i. design standards for ground cover:
    - 1. species mixes and application rates by site;
    - 2. site preparation requirements (soil amendments, stone removal, subsoil treatment, or drainage measures);
    - 3. acceptable final cover % by cover type;
  - ii. planting installation specifications and follow-up responsibilities;

- iii. a schedule or projected dates of any seeding and/or planting; and,
- iv. plans to prevent unauthorized access to and along the ROW.

### **17. Visual Impact Mitigation**

Provide details of screening or landscape plans prescribed at road crossings and for adjacent property owners. Discuss existing or proposed landscape planting, earthwork, or installed features to screen or landscape substations and other Project components.

### **18. ROW Encroachment Plan**

Provide detailed plans for identifying and resolving potential encroachments to the existing and proposed ROW.

### **19. Wetland Mitigation Plan**

Provide a proposal to address wetlands mitigation, for all permanent impacts to State-regulated wetlands and Federally- regulated wetlands, if prescribed by the Army Corps of Engineers, including, but not limited to, the permanent conversion of forested wetland to scrub-shrub wetland. If such proposal is to prepare a detailed mitigation plan for State regulated wetlands, it shall separately address impacts to each of the wetlands benefits described in ECL § 24-0105(7). Plans shall provide for wetland mitigation in the same watershed to the maximum extent possible.

**APPENDIX F****NYSDEC SUPPLEMENTAL SPECIFICATIONS FOR WETLANDS AND WATERBODIES**

The specifications set forth below apply to wetland areas and their respective 100-foot adjacent areas regulated under The Freshwater Wetlands Act<sup>1</sup> (“NYSDEC Wetlands”) and to streams or waterbodies regulated under 6 NYCRR Part 608 (“NYSDEC Streams”) (collectively, “Jurisdictional Areas”). The Specifications set forth below are in addition to, or refinements of, the elements required in the Specifications for the Development of Environmental Management and Construction Plan (“EM&CP Specifications”) contained in Appendix E of the Joint Proposal.

**Wetland and Waterbody Construction Specifications**

1. Show the extent of clearing and ground disturbance in each Jurisdictional Area on the plan and profile drawings in the EM&CP.
2. The wetland and waterbodies summary tables required under section (B)(5)(c) of the EM&CP Specifications must include the following information, as applicable, for each Jurisdictional Area located within the Project right-of-way (ROW) and along associated access roads: proposed structure/disturbance type; NYSDEC ID, NYSDEC classification code (e.g., C(T) stream standards, and Class I, II, III, and IV state-regulated wetlands); wetland cover type; wetland functions and values; total area of temporary disturbance (sq. ft.); total area of permanent impact (sq. ft.); conversion of forested and scrub-shrub wetlands (sq. ft.); and stream flow designation (perennial, intermittent, or ephemeral).
3. Provide a narrative description of construction activities within Jurisdictional Areas that shows compliance with the following requirements:

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<sup>1</sup> Title 23 of Article 71 of the Environmental Conservation Law: Article 24, Freshwater Wetlands.

a. Where new permanent access roads are to be constructed through NYSDEC Wetlands, a layer of geotextile fabric or equivalent underlayment must be used;

b. In the event that construction results in a breach to NYSDEC Wetland hydrology, the opening must be immediately sealed and, unless an emergency situation exists where it is necessary to protect life or property or to preserve the reliability of the grid, no further activity may take place until DPS and NYSDEC staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been accepted by DPS and NYSDEC;

c. Measures to minimize soil compaction in Jurisdictional Areas, including the use of temporary matting, low weight to surface area equipment or constructing when soils are frozen;

d. Measures and details demonstrating how work areas will be isolated from flowing or standing water in Jurisdictional Areas, including the use of water handling methods such as sandbags, cofferdam, piping or pumping. The details shall include a discussion of:

(i) the management of waters accumulated in the isolated work area to ensure settling and filtering of solids and sediments before water is returned to a Jurisdictional Area;

(ii) restoration measures for isolated work areas in NYSDEC Streams including the complete removal of the temporary measures, reestablishment of pre-construction contours, and stabilization and seeding immediately following the completion of work;

(iii) the manner by which low flow conditions will be maintained and water depths and velocities similar to undisturbed upstream and downstream reaches will be preserved so that the movement of native aquatic organisms is sustained;

e. Measures to minimize impacts to fish and wildlife during construction affecting Jurisdictional Areas, including actions to prevent entrapment of fish and wildlife in the work area and, if entrapment occurs, actions to timely and safely move the animals to appropriate undisturbed locations outside the work area; and

f. Procedures to remove all excess fill materials to upland areas at least 50 feet from NYSDEC Streams and outside of the state-regulated 100-foot adjacent area.

### **Restoration Specifications for Temporary Impacts to Jurisdictional Areas**

Include the following measures and details:

1. Restoration of pre-construction site conditions and stabilization of disturbed Jurisdictional Areas within 48 hours, or as soon as practicable, after completion of construction;
2. Restoration of disturbed NYSDEC Streams as follows:
  - a. Stabilization of stream banks above ordinary high-water elevation with natural fiber matting, seeded with an appropriate native riparian seed mix (and/or crop seed mixes consistent with existing, continued agricultural use where a buffer of native riparian vegetation is also maintained) and mulched with straw within two (2) days of final grading;
  - b. Streams must be equal in width, depth, gradient, length, and character as the pre-existing conditions and tie in smoothly to the profile of the stream channel upstream and downstream of the project area. The planform of any stream must not be changed; and

- c. Woody stream bank vegetation must be replaced with ROW-compatible native plantings as site conditions and facility design allow;
3. Revegetation of disturbed NYSDEC Wetlands with native plants. Appropriate native wetland species seed mixes must be described (e.g., Ernst Seeds (or an acceptable equivalent) Wetland Mix, OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW; ROW-compatible native plantings; and/or crop seed mixes consistent with existing, continued agricultural use);
4. Monitoring of restoration in Jurisdictional Areas until an 80% cover of native plant species with the appropriate wetland indicator status has been reestablished over all portions of the restored area;
5. If, after two years, monitoring demonstrates that the criteria for restoration (80% native species cover) is not met, then the Certificate Holder must submit a Wetland Planting Remedial Plan (WPRP). The WPRP must include an evaluation of the likely reasons for the results, including an analysis of poor survival; a description of corrective actions to ensure a successful restoration; and a schedule for conducting the remedial work. Once accepted by DPS and NYSDEC, the WPRP must be implemented according to an approved schedule.

#### **Wetland Mitigation Plan for Permanent Impacts to State-regulated Wetlands**

The Wetland Mitigation Plan applicable to NYSDEC Wetland impacts, intended to compensate for unavoidable loss of wetland functions and values, must include the following:

1. The creation of compensatory wetlands at appropriate ratios;
2. A construction timeline for the mitigation activities;
3. Construction details for meeting all requirements contained in the Wetland Mitigation Plan;

4. Agreed-upon performance standards for determining wetland mitigation success;
5. Provisions for post-construction annual monitoring and reporting for a period of five years after completion of the wetland mitigation;
6. After each agreed-upon monitoring period, the Certificate Holder must take corrective action for any areas that do not meet the above-referenced performance standards to increase the likelihood of meeting the performance standards after five years; and
7. If, after five years, monitoring demonstrates that the wetland mitigation is still not meeting the established performance standards, the Certificate Holder must submit a Wetland Mitigation Remedial Plan (WMRP). The remedial plan must include an evaluation of the likely reasons for not achieving performance standards, a description of corrective actions to ensure a successful mitigation, and a schedule for conducting the remedial work. Once accepted by DPS and NYSDEC, the WMRP must be implemented according to an approved schedule.

### **Stream Crossings Specifications**

1. For each new permanent crossing of a “protected stream” (C(T) or higher) and/or “navigable waters of the state” as those terms are defined at 6 NYCRR Part 608, the following must be provided:
  - a. Detailed plan, profile, and cross-sectional view plans;
  - b. Drainage area and flow calculations to ensure that the design will safely pass the 1% annual (100-year return) chance storm event; and
  - c. Location, quantity, and type of fill.
2. Bridges shall be utilized for each new permanent stream crossing and shall span the stream bed and banks. If a bridge is not practicable, an alternatives analysis must be provided, including written justification in the EM&CP for why a bridge is not practicable. If a bridge is

deemed not practicable then the following options, in order, shall be considered and evaluated: an open bottom arch culvert; three-sided box culvert and round/elliptical culvert.

NOTE: For stream channels with slopes greater than 3% an open bottom culvert must be used. All culverts shall be designed to:

- a. Contain native streambed substrate or equivalent
- b. Be a minimum width of 1.25 times the width of the stream bed. The stream bed is measured bank to bank at the ordinary high-water level or edges of terrestrial, rooted vegetation;
- c. Include a slope that remains consistent with the slope of the upstream and downstream channel; and
- d. Facilitate downstream and upstream passage of aquatic organisms.

**APPENDIX G**  
**INVASIVE SPECIES MANAGEMENT PLAN (ISMP)**

## **Invasive Species Management Plan**



## **Marcy to New Scotland Upgrade Project**

**April 2020**

Presented By:



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## 1.0 INTRODUCTION

LS Power Grid New York, LLC and LS Power Grid New York Corporation I (together, “LS Power Grid New York”) and the Power Authority of the State of New York, doing business as the New York Power Authority (NYPA) (LS Power Grid New York and NYPA, collectively, the “Applicant”) are seeking a Certificate of Environmental Compatibility and Public Need for the Marcy to New Scotland Upgrade Project (the “Project”). The Project, which is anticipated to be constructed predominantly within approximately 93 miles of existing utility-owned transmission line corridor, includes the following components:

- (1) upgrades to the Marcy and Edic substations;
- (2) reconductoring, involving the replacement of two circuits of 230 kilovolt (kV) transmission line with two circuits of 345 kV transmission line on existing structures, extending for approximately 13 miles from the Edic substation;
- (3) removal of two existing single circuit 230 kV transmission lines on H-frame structures, and replacement with a new 345 kV double circuit transmission line on steel monopoles, extending for approximately 55 miles (with the exception of up to two segments where the double circuit lines may split into single circuits);
- (4) construction of a new 345 kV substation in the Town of Princetown;
- (5) removal of two existing single circuit 230 kV transmission lines on H-frame structures, and replacement with two new single circuit 345 kV transmission lines on steel monopoles between the new Princetown substation and Rotterdam substation, extending for approximately 5 miles, one of which will connect to the new Princetown substation and the other will loop in the Edic portion of the existing Edic to New Scotland 345 kV line;
- (6) construction of a new 345/230/115 kV substation adjacent to the existing Rotterdam substation yard and upgrades at the existing Rotterdam substation;
- (7) construction of a new double circuit 345 kV transmission line on steel monopoles between the new Princetown substation and the New Scotland substation, extending for approximately 20 miles, rebuild of an existing single circuit 345 kV transmission line on new steel monopoles starting at the new Princetown substation and extending approximately 6 miles southward in that same corridor, and partial removal and/or removal from service of the existing Rotterdam to New Scotland 115 kV line in a portion of that same corridor; and
- (8) upgrades to the existing New Scotland substation.

Approximately 1,250 existing H-frame structures will be removed, and approximately 675 new structures, predominantly monopole, will be installed as part of the Project.

The Project’s route will extend from the Edic substation in Marcy, New York through the Towns of Deerfield and Marcy in Oneida County; the Towns of Schuyler, Frankfort, German Flatts, Little Falls, Stark, Danube, and the Village of Ilion in Herkimer County; the Towns of Minden,

Canajoharie, Root, Charleston, Glen, and Florida in Montgomery County; the Towns of Duanesburg, Princetown, and Rotterdam in Schenectady County; and the Towns of Guilderland and New Scotland in Albany County.

The vast majority of the right-of-way (ROW) for the Project is located within existing, previously cleared electric transmission ROW that has been maintained by National Grid for the past several decades. The ROW is maintained generally in early successional vegetation (e.g., shrub/scrub, grassland/herbaceous, emergent herbaceous wetlands) in addition to areas of barren land, cultivated crops, developed land, and pasture.

## 2.0 PURPOSE AND GOAL

The purpose of this Invasive Species Management Plan (ISMP) is to describe the procedures that will be used to help prevent the introduction of new and spread of existing invasive plant species within the limits of disturbance (LOD) due to construction of the Project.

Although the Project would not be expected to create any significant changes to the invasive species characteristics of the ROW since it will be constructed within an existing ROW that has been managed by the incumbent utility for several decades, potential construction impacts may include, but are not limited to, the spread or introduction of invasive plant species into previously unaffected communities. The spread of invasive plant species can occur through the movement of heavy equipment and/or fill materials during the clearing, demolition, installation and restoration phases of the Project.

This ISMP will serve to facilitate the identification of invasive plant species by construction personnel and help prevent the spread of these species. This ISMP is based in part on the current Environmental Energy Alliance of New York (EEANY) Best Management Practices for Preventing the Transportation of Invasive Species (EEANY BMP) developed by New York State utilities in consultation with the New York State Department of Environmental Conservation (NYSDEC) and the Applicant's Long-Range Right-of-Way Management Plan as set forth in the Project's Certificate Conditions (Vegetation Management Program).

## 3.0 SURVEY PROTOCOL

The Applicant will conduct a survey prior to construction ("Baseline Survey") in accordance with Section 3.1, below, to determine the presence and relative abundance of prohibited and regulated invasive plant species set forth in 6 NYCRR Part 575 ("Part 575 Listed Species") that are present in all areas within the Project LOD, including upland areas and NYSDEC jurisdictional areas (i.e., NYSDEC regulated wetlands and associated 100-foot adjacent areas and the bed and banks of NYSDEC protected streams). The results of this survey will be presented in an Invasive Species Survey Report, which will be submitted to the New York State Department of Public Service (NYS DPS), NYSDEC, and New York State Department of Agriculture & Markets (NYS DAM) for review.

The Applicant will then consult with NYSDEC, NYSDPS, and NYSDAM to develop a list of Species of Special Concern based upon the invasive plant species identified as present on the ROW during the Baseline Survey and also to develop a list of Species of High Concern. For purposes of this ISMP, “Species of High Concern” shall be those species not identified as present within the LOD during the Baseline Survey but are targeted for post-construction monitoring and adaptive management as set forth in Sections 5.1 and 5.2 below. The Applicant, NYSDEC, NYSDPS, and NYSDAM will review the management of invasive plant species described in the Vegetation Management Program during the development of the lists of Species of Special Concern and Species of High Concern. The lists of Species of Special Concern and Species of High Concern will presumptively exclude species listed as “desirable” or “undesirable” under the Applicant’s Vegetation Management Program.

The locations of any identified infestations of Species of Special Concern will be reflected on the EM&CP. The plan and profile drawings shall indicate locations of prescribed methods to control the spread of Species of Special Concern as part of the Project’s Environmental Management and Construction Plan (EM&CP). The EM&CP will also identify the prescribed methods to control the spread of Part 575 Listed Species as set forth in Section 4.0 below.

### **3.1 INVASIVE PLANT SURVEY METHODOLOGY**

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Tetra Tech will perform the Baseline Survey within the Project LOD for Part 575 Listed Species. Visual observations of existing infestations of such species located outside of, and adjacent to, the proposed LOD will also be documented and any apparent causes for the infestations (e.g., snowmobile or all-terrain-vehicle [ATV] trails) notated. Qualified biologists familiar with the flora of New York State will methodically meander throughout the identified survey areas, focusing on areas likely to contain invasive plant species, such as those areas that have been subject to previous disturbance.

When Part 575 Listed Species are observed, biologists will gather data on the population, including but not limited to the following:

- ◆ Species
- ◆ Location
- ◆ Size of infestation
- ◆ Stem Density/Percent aerial cover (visual estimates)
- ◆ General Health
- ◆ Habitat Type
- ◆ General comments (e.g., notes on reproductive status of plants, origin/cause of infestation if apparent)

For occurrences within the LOD, a single waypoint, labeled with a unique identification, will be recorded using a handheld Global Positioning System (GPS) (capable of sub-meter accuracy) for infestations that populate up to a 20-foot radius. Multiple waypoints, sequentially numbered, will be recorded to define the perimeter of an infestation greater than a 20-foot radius. Approximate locations of invasive species populations outside of the proposed LOD will be recorded in standard note format and on field maps, but will not be surveyed with GPS. A waypoint will be collected each day from a known location as part of the data quality procedure. Depending on the abundance of invasive species observed along the proposed right-of-way, each infestation will be photo-documented. If species abundance is high, it may be preferable to limit photographs to representative samples to illustrate differences in density, growth habit and phases, and habitat variances. A photograph, and occasionally a specimen voucher, will be collected for unidentifiable species or in other atypical or problem situations. Once the data points have been downloaded, post-processed, and corrected for the highest possible accuracy, the GPS data will be converted into a GIS data layer and plotted onto Project plan maps to be submitted to NYSDEC, NYSDPS, and NYSDAM as part of the Invasive Species Survey Report. GIS data will be submitted subject to request for confidential treatment pursuant to applicable Public Service Commission regulations and the Public Officers Law.

## 4.0 BEST MANAGEMENT PRACTICES

Construction worker education on measures to prevent the spread of invasive species will be of critical importance. The Project's Environmental Inspector (EI) will provide invasive species training(s) and ongoing monitoring of construction activities throughout Project construction and restoration.

During construction, BMPs will be employed to prevent the spread of all prohibited invasive species identified in 6 NYCRR Part 575, including those considered Species of Special Concern and Species of High Concern. Applicant will use the following measures to avoid the introduction and spread of invasive species:

- (1) Contractor/employee training;
- (2) Construction materials inspection;
- (3) Avoidance;
- (4) Minimization of ground disturbance;
- (5) Clearing and disposal practices;
- (6) Equipment cleaning;
- (7) Site restoration practices; and
- (8) Handling of wood waste

Each of these measures is described below.

- (1) Contractor/Employee Training: The EI will train and educate all applicable construction



personnel on the protocol and site-specific measures in this ISMP for preventing the introduction and spread of invasive species throughout the Project LOD. All construction personnel will be instructed by the EI on what invasive species are, principles of identifying infestations, and the invasive species BMPs to be used. In addition to making a copy of the EM&CP available to all construction personnel at the Project site, invasive species requirements will be addressed in the pre-construction environmental training program, and all applicable construction personnel will be informed of invasive species requirements at morning meetings when reviewing daily construction plans.

- (2) **Inspection of Construction Materials:** Construction material such as construction mats, seed mixes, straw bales, topsoil, sand, gravel, and crushed stone brought onto the Project LOD from an outside source, or another Project area, will be either certified weed-free (e.g., seed mixes, straw bales) or visibly free of invasive plant material (e.g., topsoil, sand, gravel and crushed stone). The contractor will avoid moving invasive plant infested materials to locations that are free of invasive species.
- (3) **Avoidance:** For any areas immediately adjacent to the LOD where the invasive species have been identified, crews will be instructed to avoid these areas (as part of the morning tailboard), where applicable.
- (4) **Minimize Ground Disturbance:** Construction activities have been designed to minimize ground disturbance through the use of existing access roads, construction matting, and low- impact vehicles, and by limiting the size of designated work areas, avoiding areas that require grading, and minimizing vegetation removal.
- (5) **Clearing and Disposal Practices:** If invasive species must be cut or uprooted during construction, the material will either remain within the same infested area, provided that no filling of any wetlands or NYSDEC regulated adjacent area occurs, or be disposed of off-site. If being disposed off-site, the plant and soil material will be transported in a secure manner. Any off-site disposal will occur at either a landfill-incinerator or an approved disposal site as included in the approved EM&CP.
- (6) **Equipment Cleaning:** Construction equipment will arrive on the site clean of invasive species. This includes inspecting and cleaning vehicles and equipment (including temporary construction mats) of any visible soils, vegetation, or other debris before entering the Project. Once on-site, equipment will be cleaned before moving from an infested area. Equipment will be cleaned using a brush, broom, shovel or other similar hand tools (used without water), or high-pressure air (when feasible). Cleaning of equipment used within areas infested with invasive species shown on the EM&CP plan and profile drawings should be conducted within the infested area. Equipment will not be cleaned in or near NYSDEC protected streams or wetlands.
- (7) **Site Restoration:** Areas where soils are disturbed or spread onsite during construction will be promptly stabilized and restored in accordance with the EM&CP.
- (8) **Handling of Wood Waste:** The following practices will be followed: a) felled trees shall not be transported outside of the property on which they were cut. The trees will be either mulched and used for stabilization on the property or left on-site per agreement between Applicant and the landowner; b) trees can be transported off the property if

they are inspected by a trained forester and confirmed to be free of signs of invasive insect species; and c) root material and mulch may be transported off-site without inspection.

## 5.0 ADAPTIVE MANAGEMENT PROCESS

This section specifies the monitoring to be employed (Section 5.1) and the adaptive management procedures that will be implemented (Section 5.2) to ensure that post-construction measures to address Species of Special Concern and Species of High Concern are responsive to conditions observed in the field.

### 5.1 MONITORING

Monitoring the potential spread of invasive plant species for this Project for all areas other than agricultural areas will occur in two phases: 1) monitoring the implementation of the ISMP during construction, and 2) monitoring the spread of such invasive species following Project restoration activities. Monitoring for the potential spread of invasive plant species within agricultural areas will take place in accordance with Paragraph 111 of the Project's Certificate Conditions.

The phases for monitoring outside of agricultural areas are as described below:

- (1) Construction Monitoring: During construction, workers will be educated about the BMPs for preventing the spread of invasive Species of Special Concern and Species of High Concern, as described above, and the EI will monitor construction activities to ensure that all required practices are being implemented during construction activities.
- (2) Post-Construction Monitoring:
  - (a) Post-construction monitoring for each Project segment will be conducted within the LOD (to the extent that the Applicant holds the requisite access rights or is able to gain property owner permission for access) after the second full growing season following submittal of the Notice of Termination for Storm Water Discharges Authorized under the SPDES General Permit for Construction Activity for each Project segment ("Post-Construction Monitoring Survey").
  - (b) During the Post-Construction Monitoring Survey, Applicant will monitor to identify changes in known stands of Species of Special Concern within the applicable LOD that were identified during the Baseline Survey (i.e., increase in coverage or density of each occurrence or species present) and new occurrences of Species of High Concern. A monitor will visit the site during the growing season and visually inspect the areas for known invasive Species of Special Concern identified during the Baseline Survey(s). The monitor will note differences between the densities and locations mapped in the updated Baseline Survey. The monitor will also document the densities and locations of new occurrences of Species of High Concern. Results will be documented

in a memo or report that will list the locations where Species of Special Concern or Species of High Concern presence or density has changed. Updated maps and GIS files will be provided to NYSDPS, NYDAM, and NYSDEC with the reports. GIS data will be submitted subject to request for confidential treatment pursuant to applicable Public Service Commission regulations and the Public Officers Law.

- (c) Within 90 days of completing the monitoring required under Subsection (2)(a) above, Applicant will submit to the NYSDEC, NYSDAM, and NYSDPS a post-construction monitoring report detailing the findings of the Post-Construction Monitoring Survey. The survey report will include: 1) qualifications of surveyors; 2) presence of other vectors that may have contributed to, or could contribute to, the spread of the Species of Special Concern or new occurrences of Species of High Concern, independent of construction related activities; and 3) any significant increase in overall acreage (size)<sup>1</sup> of each stand as compared to the Baseline Survey.

## 5.2 ADAPTIVE MANAGEMENT PLAN

The Applicant shall submit a proposed Adaptive Management Plan (AMP)<sup>2</sup> that will be approved by NYSDPS, in consultation with NYSDEC and NYSDAM, if the Post-Construction Monitoring Survey locates any of the Species of Special Concern or Species of High Concern described in Section 3.0 and these locations meet the following conditions:

- a) The Species of Special Concern or Species of High Concern are found within the LOD (“Infested Areas”);
- b) The Infested Areas were not found in, or there was a significant increase in overall acreage from, the Baseline Survey (see, Section 3.0 above); and
- c) It is determined by NYSDPS that this infestation was directly and solely caused by Applicant’s Project Construction Activities.<sup>3</sup>

The AMP will be specific to location(s) that meet all three conditions above. The Applicant, NYSDPS, and NYSDEC will determine and describe in the AMP the control measures (“no net increase”) to be enacted against Species of Special Concern and the eradication measures, to the extent practicable, for occurrences of Species of High Concern. All Applicant’s obligations and commitments for an Infested Area will terminate upon either determination that an AMP will not be required, or if an AMP is required, two years from the AMP’s inception.

<sup>1</sup> The size of each stand will be measured as follows: a) up to 10 sq. feet, up to 0.5 acre, up to 1 acre and more than 1 acre. An increase from one category to the next will be considered a significant increase.

<sup>2</sup> An AMP is a modification or series of modifications in construction and invasive plant management practices that adapts to changing circumstances and improves vegetation management practices, leading to greater prevention or enhanced minimization of invasive plant species infestation.

<sup>3</sup> Construction Activities means the Project site preparation, facilities installation, and site restoration.\

**APPENDIX H****PROPOSED 401 WATER QUALITY CERTIFICATION****NEW YORK PUBLIC SERVICE COMMISSION  
WATER QUALITY CERTIFICATION**

**Pursuant to:** §401 of the Federal Water Pollution Control Act, 33 U.S.C. §1341, and Article VII of the New York Public Service Law

**Certification Issued to:** **LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority**

**Project Description and Location**

LS Power Grid New York, LLC, and LS Power Grid New York Corporation I (collectively, “LS Power Grid New York”) and the New York Power Authority (NYPA, and together with LS Power Grid New York, the “Applicant”), submitted an application with the New York State Public Service Commission (“Commission”), in accordance with Article VII of the Public Service Law (“PSL”), for a Certificate of Environmental Compatibility and Public Need (the “Application”) to construct, operate and maintain the Marcy to New Scotland Upgrade Project extending from the Town of Marcy in Oneida County, New York to the Town of New Scotland in Albany County, New York (the “Project”). The Project will maximize the use of existing utility-owned transmission line corridor within the existing right-of-way (“ROW”). The Project is described in detail in the administrative record of Case 19-T-0549. This record includes a detailed description of the Project’s location and the surface water bodies traversed by the Project ROW.

Construction, operation and maintenance of the Project will be in accordance with the Certificate of Environmental Compatibility and Public Need (“Certificate”), the Environmental Management and Construction Plan (“EM&CP”), and a Commission-approved Long-Range Transmission Right-of-Way Vegetation Management Plan and Program.

**Certification**

The New York State Public Service Commission hereby certifies, pursuant to §401 of the Water Pollution Control Act (33 U.S.C. §1341) and Article VII of the New York Public Service Law that the Project, as conditioned herein, complies with applicable requirements of §§ 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, as amended, and applicable New York State water quality standards, limitations, criteria and other requirements set forth in 6 NYCRR §608.9(a) and Parts 701 through 704, provided that all of the conditions listed herein are met. This certification (“Certification”) is issued in conjunction with the Article VII Certificate sought by Applicant in, and based on the record of, Case 19-T-0549.

**Conditions**

1. No in-water work shall commence until all pre-construction conditions relating to such work contained in the Certificate and any Order approving the EM&CP have been met to the satisfaction of the Department of Public Service.
2. Construction and operation of the Project shall at all times be in conformance with (a) the Application and Joint Proposal in Case 19-T-0549, to the degree not superseded by the Certificate, (b) all conditions of approval contained in the Certificate, (c) the EM&CP, and (d) all conditions incorporated in any order approving the EM&CP in Case 19-T-0549, to the extent such documents referenced in (c) and (d) above pertain to Applicant’s compliance with New York State Water Quality Standards necessary and appropriate for issuance of, and compliance with, this Certification.
3. Applicant shall provide a copy of this Certification to the U.S. Army Corps of Engineers, along with a copy of the Application, Joint Proposal, Article VII Certificate, EM&CP, and order(s) approving the EM&CP in Case 19-T-0549 so that the U.S. Army Corps of Engineers will have a complete record of the conditions that apply hereto.
4. Applicant shall provide to all construction contractors performing work on the Project complete copies of this Certification, the Article VII Certificate, the approved EM&CP, and order(s) approving the EM&CP.

Certified by:

\_\_\_\_\_  
\_\_\_\_\_, Director  
Office of Energy Efficiency and the Environment  
New York State Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223

**APPENDIX I**

**IDENTIFIED COLD WATER AND WARM WATER FISHERIES**

## APPENDIX I

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
<b>Herkimer County</b>					
A-SSC-1	Budlong Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SFR-4	Unnamed Tributary to Mohawk River	NYSDEC/NHD	C	Intermittent	Warm water
A-SFR-5	Unnamed Tributary to Mohawk River	NYSDEC/NHD	C	Intermittent	Warm water
A-SFR-6	Unnamed Tributary to Moyer Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
A-SFR-7	Unnamed Tributary to Ferguson Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
A-SFR-11	Unnamed Tributary to Ferguson Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SFR-13	Unnamed Tributary to Ferguson Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
A-SFR-14	Ferguson Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SFR-15	Ferguson Creek And Unnamed Tributary	NYSDEC/NHD	C	Perennial	Warm water
A-SFR-17	Unnamed Tributary to Ferguson Creek	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
A-SFR-18	Unnamed Tributary to Ferguson Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SFR-20	Ferguson Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
A-SFR-21-DD	Unnamed Tributary to Mohawk River	NYSDEC	C	Perennial	Warm water
A-SFR-22-DD	Unnamed Tributary to Mohawk River	NYSDEC/NHD	C	Perennial	Warm water

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
B-SFR-1	Unnamed Tributary to Moyer Creek	NYSDEC/NHD	A(T)	Perennial	Cold water
B-SFR-2	Unnamed Tributary to Moyer Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-3	Unnamed Tributary to Moyer Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-4	Unnamed Tributary to Moyer Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
B-SFR-5	Moyer Creek	NYSDEC/NHD	B(T)	Perennial	Cold water
B-SFR-17-DD	Ferguson Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
B-SFR-19-DD	Mohawk River	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-20-DD	Barge Canal	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-100	Unnamed Tributary to Moyer Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-107	Unnamed Tributary	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-109	Unnamed Tributary	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-111	Unnamed Tributary	NYSDEC/NHD	C	Perennial	Warm water
B-SFR-112	Unnamed Tributary	NYSDEC/NHD	C	Perennial	Warm water
A-SGF-1	Unnamed Tributary to Flat Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
A-SGF-2	Unnamed Tributary to Flat Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
A-SGF-3	Flat Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
A-SGF-4	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
A-SGF-10	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
A-SGF-12	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Perennial	Warm water

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
A-SGF-14	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SGF-19	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Intermittent	Warm water
A-SGF-21	Steele Creek	NYSDEC/NHD	C(TS)	Perennial	Cold water
A-SGF-22	Unnamed Tributary to Mohawk River	NYSDEC/NHD	C	Perennial	Warm water
B-SGF-1	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SGF-5	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SGF-6	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SGF-7	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
B-SGF-8	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
B-SGF-10	Day Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
B-SGF-21-DD	Unnamed Tributary to Steele Creek	NYSDEC/NHD	A(T)	Perennial	Cold water
B-SGF-23	Unnamed Tributary to Steele Creek	NYSDEC/NHD	C(TS)	Perennial	Cold water
B-SGF-24	Unnamed Tributary to Steele Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SGF-100	Unnamed Tributary	NYSDEC	C	Perennial	Warm water
B-SGF-105	Unnamed Tributary to Steele Creek	NYSDEC/NHD	C(TS)	Perennial	Cold water
B-SGF-106	Steele Creek	NYSDEC/NHD	C(TS)	Perennial	Cold water
A-SLF-1	Unnamed Tributary to Nowadaga Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SLF-4B	Unnamed Tributary	NYSDEC/NHD	C(T)	Perennial	Cold water

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
A-SLF-5	Unnamed Tributary to Fulmer Creek	NYSDEC	C	Perennial	Warm water
A-SLF-6	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SLF-8	Unnamed Tributary to Fulmer Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SST-1	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SST-2	Unnamed Tributary to Otsquago Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
B-SST-1	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SST-3	Unnamed Tributary to Ohisa Creek	NYSDEC	-	Perennial	Presumed cold water due to main branch classification
B-SST-4	Unnamed Tributary to Ohisa Creek	NYSDEC	C	Perennial	Warm water
B-SST-5	Unnamed Tributary to Ohisa Creek	NYSDEC	C	Perennial	Warm water
B-SST-6	Unnamed Tributary to Ohisa Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SST-7	Ohisa Creek	NYSDEC/NHD	C(T)	Intermittent	Cold water
B-SST-8	Unnamed Tributary to Ohisa Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SST-9	Unnamed Tributary to Ohisa Creek	Unmapped Stream	-	Perennial	Presumed cold water due to main branch classification
B-SST-10	Unnamed Tributary to Nowadaga Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
B-SST-12	Unnamed Tributary to Nowadaga Creek	NYSDEC/NHD	C(T)	Perennial	Cold water

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
<b>Montgomery County</b>					
A-ST1-MI	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Perennial	Warm water
A-ST2-MI	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Intermittent	Warm water
A-SMI-3	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SMI-7	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SMI-1/2	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SMI-4	Otsquago Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
B-SMI-5	Unnamed Tributary to Otsquago Creek	NYSDEC/NHD	C	Intermittent	Warm water
B-SCA-1	Canajoharie Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SCA-2	Unnamed Tributary to Canajoharie Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SCA-3	Unnamed Tributary to Canajoharie Creek	NYSDEC/NHD	C	Intermittent	Warm water
A-ST1-RO	Unnamed Tributary to Yatesville Creek	NYSDEC/NHD	C	Intermittent	Warm water
A-ST2-RO	Yatesville Creek	NYSDEC/NHD	C	Perennial	Warm water
A-ST5-RO	Unnamed Tributary to Lasher Creek	NYSDEC/NHD	C	Perennial	Warm water
A-ST6-RO	Unnamed Tributary to Flat Creek	NYSDEC/NHD	C	Perennial	Warm water
A-ST7-RO	Flat Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SCH-110	Unnamed Tributary to Schoharie Creek	NYSDEC/NHD	C	Perennial	Warm water

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
SCH-1	Unnamed Tributary to Schoharie Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SCH-6	Unnamed Tributary to Auries Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SCH-7	Unnamed Tributary to Auries Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SCH-2	Unnamed Tributary to Schoharie Creek	NYSDEC/NHD	C	Intermittent	Warm water
B-SCH-100	Unnamed Tributary	NYSDEC/NHD	C	Perennial	Warm water
B-SCH-101	Unnamed Tributary to Auries Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SCH-108	Unnamed Tributary to Schoharie Creek	NYSDEC/NHD	C	Intermittent	Warm water
B-SGL-2/3	Unnamed Tributary	NYSDEC/NHD	C	Perennial	Warm water
B-SGL-4	Unnamed Tributary to Auries Creek	NYSDEC/NHD	C	Intermittent	Warm water
B-SGL-6	Unnamed Tributary to Auries Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SGL-7	Unnamed Tributary to Auries Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SGL-8	Unnamed Tributary to Auries Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SGL-101	Unnamed Tributary to Irish Creek	NYSDEC/NHD	C	Perennial	Warm water
SFL-1	South Chuctanunda Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
SFL-6	Unnamed Tributary to Schoharie Creek	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
SFL-7	Unnamed Tributary to Schoharie Creek	Unmapped Stream	-	Perennial	Presumed warm water due to main

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
					branch classification
SFL-8	Unnamed Tributary to Schoharie Creek	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
SFL-9	Unnamed Tributary of Schoharie Creek	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
SFL-10	Schoharie Creek	NYSDEC/NHD	C	Perennial	Warm water
<b>Oneida County</b>					
A-SDE-1	Unnamed Tributary to Mohawk	NYSDEC/NHD	C	Perennial	Warm water
A-SDE-2	Unnamed Tributary to Mohawk	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
A-SDE-4	Unnamed Tributary to Reall Creek	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
A-SDE-5	Unnamed Tributary to Reall Creek	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
A-SDE-6	Reall Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SDE-10	Unnamed Tributary to Erie Canal	NYSDEC/NHD	C	Intermittent	Warm water
B-SDE-16	Unnamed Tributary to Erie Canal	NYSDEC/NHD	C	Perennial	Warm water
B-SMA-1	Unnamed Tributary to Gridley Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SMA-2	Unnamed Tributary to Gridley Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SMA-3	Unnamed Tributary to Gridley Creek	NYSDEC/NHD	C	Perennial	Warm water

<b>Fisheries Designations of Surface Waterbodies within the Survey Area Edic to Princetown and Rotterdam Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow Regime</b>	<b>Fisheries Designation</b>
B-SMA-4	Unnamed Tributary to Gridley Creek	NYSDEC/NHD	C	Perennial	Warm water
B-SMA-8	Unnamed Tributary to Gridley Creek	Unmapped Stream	C	Perennial	Warm water
B-SMA-13	Unnamed Tributary to Gridley Creek	NYSDEC	C	Perennial	Warm water
<b>Schenectady County</b>					
A-SRT-1	Unnamed Tributary to Mohawk River	NYSDEC/NHD	A	Intermittent	Warm water
A-SRT-2	Unnamed Tributary to Mohawk River	NYSDEC/NHD	C	Intermittent	Warm water
A-SRT-5	Plotter Kill	NYSDEC/NHD	C	Perennial	Warm water
A-SRT-10	Unnamed Tributary	NYSDEC	C	Intermittent	Warm water

<b>Fisheries Designations of Surface Waterbodies within Survey Area Princetown to New Scotland Segment</b>					
Stream ID	Name	Type	Class	Flow	Fisheries Designation
<b>Albany County</b>					
C-SGU-1	Black Creek	NYSDEC/NHD	C	Perennial	Warm water
C-SGU-4	Unknown Tributary To Black Creek	NYSDEC/NHD	C	Perennial	Warm water
C-SGU-5	Bozen Kill	NYSDEC/NHD	C	Perennial	Warm water
C-SGU-6	Unknown Tributary To Bozen Kill	Unmapped Stream	-	Perennial	Presumed warm water due to main branch classification
C-SGU-8	Unknown Tributary To Bozen Kill	NYSDEC/NHD	C	Perennial	Warm water
C-SGU-9	Unknown Tributary To Bozen Kill	NYSDEC/NHD	C	Intermittent	Warm water
C-SGU-12	Unknown Tributary To Bozen Kill	NYSDEC/NHD	C	Perennial	Warm water
C-SGU-15	Main Branch Indian House Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SNS-3	Unnamed Tributary to Vloman Kill	NYSDEC/NHD	C	Perennial	Warm water
A-SNS-4	Unnamed Tributary to Vloman Kill	NYSDEC/NHD	C	Intermittent	Warm water
A-SNS-22	Unnamed Tributary to Vloman Kill	NYSDEC/NHD	C	Intermittent	Warm water
A-SNS-24	Unnamed Tributary to Vloman Kill	NYSDEC/NHD	C	Perennial	Warm water
A-SNS-26	Unnamed Tributary to Vly Creek	NYSDEC/NHD	C	Intermittent	Warm water
A-SNS-34	Unnamed Tributary to Vly Creek	NYSDEC/NHD	C	Perennial	Warm water
A-SNS-35	Vly Creek	NYSDEC/NHD	C(T)	Perennial	Cold water
<b>Schenectady County</b>					
A-SPR-1	Unnamed Tributary	NYSDEC/NHD	C	Intermittent	Warm water
C-SPR-5	Unnamed Tributary to Norman's Kill	NYSDEC/NHD	C	Perennial	Warm water
C-SPR-7	Norman's Kill	NYSDEC/NHD	A	Perennial	Warm water

<b>Fisheries Designations of Surface Waterbodies within Survey Area Princetown to New Scotland Segment</b>					
<b>Stream ID</b>	<b>Name</b>	<b>Type</b>	<b>Class</b>	<b>Flow</b>	<b>Fisheries Designation</b>
C-SPR-9	Unnamed Tributary to Norman's Kill	NYSDEC/NHD	C	Perennial	Warm water
C-SPR-11	Unnamed Tributary to Norman's Kill	NYSDEC/NHD	A	Ephemeral	Warm water
C-SPR-12	Norman's Kill	NYSDEC/NHD	A	Perennial	Warm water
C-SPR-13	Norman's Kill	NYSDEC/NHD	C	Ephemeral	Warm water
C-SPR-14	Norman's Kill	NYSDEC/NHD	C	Perennial	Warm water
C-SPR-18	Unnamed Tributary to Norman's Kill	NYSDEC/NHD	C	Perennial	Warm water
C-SPR-19	Bonny Brook	NYSDEC/NHD	C	Perennial	Warm water
C-SPR-25	Plotter Kill	NYSDEC/NHD	C	Perennial	Warm water