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November 18, 2022

Ms. Molly Magnis
Records Access Officer
State of New York
Department of Public Service
Empire State Plaza
Agency Building 3
Albany, New York 12223-1350

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

**REQUEST FOR PROTECTION OF
CONFIDENTIAL INFORMATION**

ENCLOSURES CONTAIN CONFIDENTIAL INFORMATION

Dear Ms. Magnis:

On November 18, 2022, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or the “Applicant”) filed with the Secretary of the Public Service Commission an application pursuant to Article VII of the Public Service Law (the “Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) that would authorize it to construct, operate, and maintain the Lockport-Batavia Line 112 Rebuild Project (“Project”). The Applicant redacted certain confidential information from all copies of the Application filed and served on the persons identified on the service list, as well as from hard copies of the Application that it will deliver to Staff of the Department of Public Service.

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Ms. Molly Magnis
November 18, 2022
Page 2

Specifically, the Applicant redacted information required by Section 88.4 of the Commission's Rules¹ to be included in Exhibit E-4 of the Application and information required by Section 88.5 of the Commission's Rules² to be included in Exhibit E-5 of the Application because the information contains critical infrastructure information ("CII"). In particular, the redacted information includes:

- Critical contingency and power flow information included in Section E-4.2.3 of Exhibit E-4; and
- Power flow information included in Sections 1.1 and 1.2 of Appendix D of the Application, *Electric Field and Magnetic Field (EMF) Analysis for Lockport-Batavia Line 112 Rebuild Project*, dated June 14, 2021, prepared by Burns & McDonnell.

Pursuant to Part 6 of the Commission's Rules, and Sections 87(2) and 89(5) of the New York Public Officers Law ("POL")³, the Applicant hereby requests confidential treatment and protection of such CII (the "Confidential Information"). An unredacted version of the Confidential Information is attached hereto.

Pursuant to Section 6-1.3(b)(3) of the Commission's Rules⁴, the Applicant must state a reason why CII should be exempted from public disclosure as provided in POL § 87(2).⁵ Section 87(2)(f) of the POL provides, in relevant part, that agencies may deny access to records, or portions thereof, that, if "disclosed, could endanger the life or safety of any person."⁶ In addition, POL § 89(5)(a)(1-a) states:

[a] person or entity who submits or otherwise makes available any records to any agency, may, at any time, identify those records or portions thereof that may contain critical infrastructure information, and request that the agency that maintains such records except such information from disclosure under subdivision two of section eighty-seven of this article.⁷

The POL defines "critical infrastructure" as "systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy."⁸

¹ 16 NYCRR 88.4.

² 16 NYCRR 88.5.

³ N.Y. Pub. Off. Law § 87(2); N.Y. Pub. Off. Law § 89(5).

⁴ 16 NYCRR 6-1.3(b)(3).

⁵ N.Y. Pub. Off. Law § 87(2).

⁶ *Ibid.* at § 87(2)(f).

⁷ *Id.* at § 89(5)(a)(1-a).

⁸ *Id.* at § 86(5).

Ms. Molly Magnis
November 18, 2022
Page 3

The enclosed documents marked as CII (or as Critical Energy Infrastructure Information [“CEII”]) contain transmission line system information and system planning analyses. The Applicant asserts that these materials qualify as CII and the public interest requires that they be protected from public disclosure. The CII could be used by someone with malicious intent to target specific facilities, disrupt service, and, thereby, jeopardize the health, safety, welfare or security of the state, its residents and economy.

The Commission has consistently held that this type of information should be protected from disclosure as CII. *See* Case 06-T-0650, *Application of New York Regional Interconnect, Inc.*, Ruling Granting Protection for Critical Energy Infrastructure Information (July 31, 2008) (finding that disclosure “has the potential to lead to disruption of New York’s power system, which could endanger the life and safety of the public”); Case 08-T-0746, *Application of the Village of Arcade and Noble Allegany Windpark, LLC*, Ruling Granting Request for Confidential Status (July 30, 2008) (finding that portions of the System Reliability Impact Study should be exempted from disclosure as CII); Case 08-T-0034, *Application of Hudson Transmission Partners, LLC*, Ruling Granting Protection for Critical Energy Infrastructure Information (April 25, 2008) (protecting CII from public disclosure); Case 07-T-0140, *Application of Nobles Wethersfield Windpark, LLC*, Ruling Granting Protection from Disclosure for Critical Infrastructure Information (March 15, 2007) (finding that the information presented was CII and should be excepted from public disclosure); Case 10-T-0139, *Application of Champlain Hudson Power Express, Inc.*, Ruling Granting Protection and Approving Protective Order (June 12, 2012) (granting protective treatment and issuing a protective order on an expedited basis).

In one such ruling, Case 06-M-0878, *Trade Secret Determination* (July 10, 2008), the Commission found:

[I]nformation concerning specific structures, potential weakness in the system, maps and drawings of the existing electric system (including configurations of various components), overhead transmission standards, structure work lists, and ratings on certain circuits constitutes critical infrastructure information that should be excepted from public disclosure because such information, if disclosed, could endanger the life or safety of people. This is so because the information would allow particular parts of the electric system to be targeted by those planning harm to the State’s electric grid.

Accordingly, the enclosed information marked as CII in Section E-4.2.3 of Exhibit E-4 and Sections 1.1 and 1.2 of Appendix D of the Application falls within the Commission’s confidentiality rules as CII and must be protected from public disclosure.



Ms. Molly Magnis
November 18, 2022
Page 4

For the foregoing reasons, the Applicant respectfully requests that the Confidential Information be treated as confidential, maintained apart from other agency records, and otherwise protected pursuant to POL § 87(2) and § 89(5) and the Commission's Rules.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Angela N. Cascione'.

Angela N. Cascione
Cullen and Dykman LLP
Counsel for National Grid

Enclosures
cc: Secretary Phillips (w/o enclosures)