

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 20, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

Case 20-T-0103 - Application of Rochester Gas and Electric Corporation for Amendment of the Certificate of Environmental Compatibility and Public Need Issued in Case 03-T-1385 for Construction of the Rochester Transmission Project Enhancement in Monroe County.

ORDER GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED SUBJECT TO CONDITIONS

(Issued and Effective July 21, 2023)

BY THE COMMISSION:

INTRODUCTION

On February 12, 2020, Rochester Gas and Electric Corporation (RG&E or the Applicant) filed an application (Application) to amend its Certificate of Environmental Compatibility and Public Need issued by the Commission pursuant to Article VII of the Public Service Law (PSL) on December 16, 2004, in Case 03-T-1385 (Certificate). The Certificate authorizes RG&E to construct, operate, and maintain the Rochester Transmission Project (RTP or Project) consisting of a 115 kilovolt (kV) line and associated equipment and facilities.

The Application seeks to amend the Certificate to construct, operate, and maintain a new 115 kV line approximately 6.7 miles in length and expand two substations.

On June 7, 2022, RG&E filed a supplement to the Application that included an attachment with proposed Ordering Clauses and Certificate Conditions (proposed Certificate Conditions) that would apply to the existing Certificate. On December 12, 2022, the Applicant filed a second supplement to its Application (Application Supplement) which included a revised set of proposed Certificate Conditions. In this Order, the Commission finds the proposed Certificate Conditions in the Application Supplement are generally reasonable, subject to the changes made to proposed Certificate Conditions 52 and 71 as described in more detail below and reflected in the Attachment A to this Order.

Accordingly, through this Order, the Commission approves, in part, RG&E's Application to Amend its Article VII Certificate of Environmental Compatibility and Public Need pursuant to PSL §123(2).

BACKGROUND

The Application proposes to: (i) construct a new 115 kV line; (ii) upgrade and expand two substations; (iii) reconstruct three existing transmission lines; and (iv) reconstruct three distribution lines (the Project). The Project will be constructed entirely within Monroe County (the County), beginning in the Town of Gates and ending in the City of Rochester.

RG&E asserts that the Project is necessary in order to provide reliable service to its customers in Western New York. The new transmission line will connect the two substations to

address issues of low voltages and thermal overloads and strengthen the bulk power supply.

By letter dated April 9, 2020, the Secretary to the Commission (the Secretary) informed RG&E of deficiencies in the Application. RG&E responded with supplemental and revised application materials on May 8, 2020, and June 22, 2020. By letter dated August 19, 2020, the Secretary informed RG&E that the Application was in compliance with the Commission's regulations. Two virtual public informational forums and two Public Statement Hearings were held on September 15, 2020.

On February 24, 2021, Administrative Law Judge (ALJ) Gregg C. Sayre issued a Ruling on Process finding that there was no party to the proceeding nor participant in the Public Statement Hearings that requested an evidentiary hearing or identified any issue that required an evidentiary hearing. Accordingly, ALJ Sayre directed the Staff of the Department of Public Service (DPS Staff) to process the Application in its advisory capacity without any further proceedings.

On June 7, 2022, the Applicant filed a supplement to its Application which includes: (i) proposed Ordering Clauses and Certificate Conditions for the Commission to consider adopting, (ii) three letters from the United States Department of Interior, Fish and Wildlife Service demonstrating that no federally listed threatened and endangered species were identified in the Project area, and (iii) three letters from the New York State Department of Environmental Conservation (DEC), Division of Fish and Wildlife, New York Natural Heritage Program that no rare or state-listed animals or plants, or significant natural communities, were identified in the Project area. RG&E submitted a second supplemental filing on December 12, 2022, that included an attachment with revised Ordering Clauses and Certificate Conditions for the Commission to consider adopting.

The Secretary issued a Notice Inviting Comments (Secretary's Notice) on January 26, 2023, which outlined DPS Staff's recommendation to modify proposed Certificate Conditions 52 and 71 of the Application Supplement. The Secretary's Notice invited the public to comment on RG&E's proposed Certificate Conditions provided in the Application Supplement and DPS Staff's recommendations thereto. RG&E filed comments responding to the Secretary's Notice on February 16, 2023, which are addressed below.

On May 25, 2023, Chief ALJ Dakin D. Lecakes issued a Ruling on Process directing RG&E to file a brief explaining whether the filing of the Application Supplement, or DPS Staff's suggested modifications to the two proposed Certificate Conditions, required an additional hearing under PSL §123. The Applicant filed a brief on June 2, 2023, asserting that no additional hearing was needed because the scope of the proposed Project had not changed since the original filing of the Application in February of 2020. No other party filed a brief in response to the Ruling on Process. On July 3, 2023, Chief ALJ Lecakes issued a Ruling Admitting Evidence and on Process determining that no additional process or evidentiary hearing is needed under PSL §123. The Ruling also directed DPS Staff to continue to process the Application in its advisory capacity.

LEGAL AUTHORITY

PSL §122(4) provides that "[a]n application for an amendment of a certificate shall be in such a form and contain such information as the commission shall prescribe. Notice of such an application shall be given as set forth in subdivision two." In addition, under PSL §123(2), "[o]n an Application for an amendment of a certificate, the commission shall hold a hearing in the same manner as a hearing is held on an

application for a certificate if the change in the facility to be authorized would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application." As discussed further below, the Project will result in a material increase in environmental impacts. Therefore, two public statement hearings were held on September 15, 2020.

PSL §126(1) provides that, in determining whether to grant or deny an application, the Commission shall find:

- (a) The basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility represents the minimum adverse environmental impact, including consideration of the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations including but not limited to, the effect on agricultural lands, wetlands, parklands and river corridors traversed;
- (d) that the facility 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 and the nature and economics of various alternatives, and the ownership and easement rights of the impacted property;
- (e) (1) what part, if any, of the line shall be located underground; (2) that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability;
- (f) [PSL §126(f) is not applicable to electric facilities];

- (g) that the location of the facility as proposed conforms to applicable state and local laws and regulations ..., all of which shall be binding upon the commission, except that the commission may refuse to apply any local ordinance, law, resolution or other action or any regulations ... or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality; and
- (h) that the facility will serve the public interest, convenience, and necessity.

The concept of "environmental compatibility and public need" requires that the Commission "protect environmental values, and take into account the total cost to society of such facilities" when making a decision on whether to grant an application.¹ In making this decision, the Commission cannot look at any single aspect of an application in a vacuum; rather the Commission must consider the totality of all of the relevant factors. Moreover, in rendering its decision the Commission may either grant an application as filed or upon such terms, conditions, limitations, or modifications the Commission determines is appropriate.²

DISCUSSION

RG&E proposes to construct a new 115 kV line (Line 949) connecting Station 418 and Station 48. Line 949 will extend approximately 6.7 miles beginning in the Town of Gates and ending in the City of Rochester. The Project will also

¹ See, Chapter 272 of the Laws of 1970, Section 1, Legislative Findings.

² PSL §126(1).

include: (i) the expansion of Stations 418 and 48; (ii) reconstruction of existing transmission Lines 910, 916, and 926; and (iii) reconstruction of existing distribution Lines 359, 705, and 730.

Line 949 will begin at Station 418 in the Town of Gates and continue southeast for approximately 1.1 miles within the existing right-of-way (ROW). The line will then run parallel to existing Line 910 for 0.1 miles within a new 75-foot-wide ROW and will run within a new 50-foot-wide ROW for 0.1 miles at existing Line 940. Line 949 will continue northeast for approximately 2.6 miles at the Interstate 490 overpass running parallel to existing Lines 730 and 705 and then run parallel to existing Lines 705, 916, and 926 for 0.5 miles. Line 949 will continue north/northeast with existing Line 926 for approximately 1.9 miles before finally following existing Line 916 approximately 0.4 miles to end at Station 48 in the City of Rochester.

Need for the Project

The Project is necessary to increase reliability and strengthen the 115 kV network in Western Rochester. Specifically, the Project will connect Stations 418 and 48 to address issues of low voltages and thermal overloads in the area.

Project Costs

RG&E provided an estimated capital cost estimate in Exhibit 9 of the Application based on ROW acquisition, surveys, materials, labor, engineering and inspection, administrative overhead, legal fees, interest during construction, and contingencies. The Commission finds the estimated cost of the Project is reasonable.

Environmental Impacts

The proposed Certificate Conditions included in the Application Supplement generally demonstrate that the Project will be designed, constructed, maintained, and operated to avoid and minimize the Project's environmental impacts to the maximum extent practicable. The anticipated Project impacts are anticipated to be temporary and limited to construction-related disturbances because the majority of the Project will be located on existing ROW. In limited areas where it is necessary to acquire greenfield ROW or widen the existing ROW, the Applicant will use appropriate measures to minimize impacts. The Project has been reviewed with respect to potential impacts to land use, visual, cultural, terrestrial and wildlife resources, wetlands and water resources, topography and soils, noise, transportation, communications, and electromagnetic fields. In its review, the Commission finds that certain changes to RG&E's proposed Certificate Conditions for wetlands and water resources and terrestrial and wildlife resources are warranted. These changes are discussed in further detail below.

Wetlands and Water Resources

RG&E conducted field delineations to determine the Project's potential impacts to wetlands and streams. The Applicant identified 3.36 acres of State regulated wetlands within the Project ROW. Additionally, 6.90 acres of 21 federal wetlands are crossed by the Project. RG&E anticipates that the Project's new ROW will result in the conversion of 0.96 acres of DEC forested wetland. The Project will avoid wetlands, streams, and other water resources to the extent practicable. Where structures are located in wetland areas, procedures will be used to minimize and mitigate impacts and the area will be restored to its pre-construction condition.

As set forth in the Secretary's Notice, proposed Certificate Condition 52 in the Application Supplement requires RG&E to develop, and file with the Commission, a Wetland Mitigation Plan to address the Project's impacts. The proposed condition submitted by the Applicant includes the following:

To address impacts related to the Project's establishment of additional ROW and installation of the Project transmission structures, RGE will develop a Wetland Mitigation Plan in accordance with the DEC Supplemental Specifications for Wetlands and Waterbodies attached as Attachment B to the Amended Certificate order and propose in the EM&CP such a Wetland Mitigation Plan at a minimum 2:1 ratio for the clearing of forested wetland. No later than six months after the start of construction, the Certificate Holder will file the Plan with the Commission and send a copy to DEC for DEC Staff to confirm ECL compliance. If RGE believes that DEC's confirmation of the Plan is unreasonably delayed, RGE may petition the Commission, with a copy to DEC, to seek a resolution of any such unreasonably delayed confirmation. DEC may respond to the petition, within five (5) business days, to address the reasonableness of any delay.

DPS Staff recommends the condition be modified to require the Certificate Holder to submit its Wetland Mitigation Plan to DEC for acceptance:

To address impacts related to the Project's establishment of additional ROW and installation of the Project transmission structures, the Certificate Holder will develop a Wetland Mitigation Plan in accordance with the DEC Supplemental Specifications for Wetlands and

Waterbodies attached as Attachment B to the Amended Certificate Order and propose in the EM&CP such a Wetland Mitigation Plan at a minimum 2:1 ratio for the clearing of forested wetland. The Certificate Holder will submit the Wetland Mitigation Plan no later than six months after the start of construction for DEC acceptance. If the Certificate Holder believes that DEC's acceptance of the Plan is unreasonably delayed or withheld, the Certificate Holder may petition the Commission, with a copy to DEC, to seek a resolution of any such unreasonable withholding or delayed acceptance. DEC may respond to the petition, within five (5) business days, to address the reasonableness or delay.

RG&E submitted comments responding to the Secretary's Notice and DPS Staff's proposed modifications. RG&E asserts that Article VII grants the Commission exclusive jurisdiction over the construction and operation of a major utility transmission facility and requiring DEC acceptance of the Wetland Mitigation Plan is inconsistent with PSL §130³ and PSL §126(1)⁴ because it gives a State agency veto power over a plan that only the Commission may approve. RG&E states that this will lead to future requirements for the approval of other State agencies with an interest in any environmental resource and

³ PSL §130 provides, "Notwithstanding any other provision of law, no state agency, municipality or any agency thereof may require any approval, consent, permit, certificate or other condition for the construction or operation of a major facility with respect to which an application for a certificate hereunder has been issued...."

⁴ PSL §126(1) provides, "The commission shall render a decision upon the record either granting or denying the application as filed or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the commission may deem appropriate."

would undermine the intent of Article VII to provide a single forum to decide all issues related to the construction and operation of major utility transmission facilities. Finally, the Applicant maintains that, although requiring DEC acceptance of a Wetland Mitigation Plan is consistent with previous Article VII certificates granted by the Commission,⁵ the requirement is prohibited by Article VII and prior applicants' failure to seek a rehearing on the matter should not impact the Commission's decision in this case.

The Commission finds DPS Staff's proposed modifications reasonable and consistent with the PSL and the requirements of previous Article VII certificates. In determining whether to grant or deny the Application, the Commission must determine that the Project will have the minimum adverse environmental impact on wetlands.⁶ DEC has significant interest and expertise in the protection of wetlands and waterbodies. The Commission relies on DEC's knowledge of programs it implements under the Environmental Conservation Law (ECL) when determining the environmental impacts of a proposed facility and, when necessary, the need for and method of mitigating those potential impacts. Further, requiring DEC acceptance of the Wetland Mitigation Plan does not undermine the Commission's jurisdiction under PSL §130. As stated in DPS

⁵ See, e.g., Case 20-T-0617, Order Adopting Terms of a Joint Proposal (issued November 17, 2022), Appendix D, pp. 32-33; Case 21-T-0340, Order Adopting Joint Proposal (issued August 11, 2022) Appendix D, pp. 28 and 31; Case 20-T-0549, Order Granting Certificate of Environmental Compatibility and Public Need (issued September 9, 2021), Appendix C, pp. 14 and 18; Case 19-T-0549, Order Adopting Joint Proposal (issued January 21, 2021), Appendix D, pp. 24 and 27; Case 18-T-0499, Order Granting Certificate of Environmental Compatibility and Public Need (issued June 16, 2020), Appendix D, p. 19.

⁶ PSL §126(1)(c).

Staff's proposed condition language, if the Certificate Holder believes that DEC is acting unreasonably in accepting or denying the Wetland Mitigation Plan, the Commission, not DEC, has the ultimate authority to determine the reasonableness of DEC's actions. Therefore, the Commission finds that DPS Staff's recommendations comply with the requirements of the PSL and adopts the proposed modifications to Certificate Condition 52.

The Project will also cross a total of six streams, including the Erie Canal and associated tributaries. However, the transmission line will be spanned overhead at these crossings to avoid permanent impacts to streams and waterbodies. Temporary installation of timber mat bridges will be utilized to reduce impacts to stream crossings during construction and there will be no permanent stream crossing structures.

Terrestrial and Wildlife Resources

The Project is primarily located within existing ROW in areas where existing land uses are industrial, commercial, or residential. In the less developed Project areas, existing vegetation includes upland successional hardwood forest and palustrine forested wetlands. The Project will have permanent impacts on approximately 1.12 acres of upland forested habitat due to clearing activities.

In its Application Supplement, RG&E submitted letters from the United States Fish and Wildlife Service stating that there are no threatened and endangered species or critical habitat located within the Project area. The Application Supplement also included letters from the DEC New York Natural Heritage Program indicating that there were no rare or State-listed animals or plants or significant natural communities in the Project area.

As explained in the Secretary's Notice, proposed Certificate Condition 71 in the Application Supplement requires

the Certificate Holder to submit a Net Conservation Benefit Plan (NCBP), if necessary, to DEC Staff to confirm the NCBP is in compliance with the ECL. The proposed condition submitted by the Applicant includes the following:

If Certificate Holder determines it to be necessary to take occupied habitat or individuals of a species then listed in Part 182 (or any other regulation(s) then applicable to T&E animal species), the Certificate Holder will consult with DEC and DPS to determine whether a Net Conservation Benefit Plan is necessary for compliance with such regulation(s). If after such consultation the Certificate Holder determines that such a Net Conservation Benefit Plan is necessary, it will develop the plan in consultation with DPS Staff and with DEC Staff. No later than six months after the start of construction, the Certificate Holder will file the Plan with the Commission and send a copy to DEC for DEC Staff to confirm ECL compliance. If RGE believes that DEC's confirmation of the Plan is unreasonably delayed, RGE may petition the Commission, with a copy to DEC, to seek a resolution of any such unreasonably delayed confirmation. DEC may respond to the petition, within five (5) business days, to address the reasonableness of any delay or withholding.

DPS Staff recommends, as set forth below, the Certificate Holder be required to submit its NCBP to DPS Staff and DEC for acceptance:

If the Certificate Holder determines it to be necessary to take occupied habitat or individuals of a species then listed in Part 182 (or any other regulation(s) then applicable to T&E animal species), the Certificate Holder

will consult with DEC and DPS to determine whether a Net Conservation Benefit Plan (NCBP) is necessary for compliance with such regulation(s). If, after such consultation, the Certificate Holder determines that such a NCBP is necessary, it will develop the NCBP in consultation with and accepted by DPS Staff and DEC. If the Certificate Holder believes that DEC's acceptance of the NCBP is unreasonably delayed or withheld, the Certificate Holder may petition the Commission, with a copy to DEC, to seek a resolution of any such unreasonable delay or withholding of acceptance. DEC may respond to the petition, within five (5) business days, to address the reasonableness or delay.

In its response to the Secretary's Notice, RG&E asserts that DPS Staff's proposed modifications are inconsistent with Article VII for the same reasons explained above in its response to the proposed modifications to the Wetland Mitigation Plan.

The Commission finds DPS Staff's proposed modifications reasonable and consistent with the PSL and the requirements of previous Article VII certificates.⁷ As stated above, in granting the Application the Commission must determine that the Project will be constructed to avoid or minimize any significant adverse environmental impacts⁸ and that the Project conforms with applicable State laws.⁹ This includes determining that the Project conforms with the State Endangered Species Act

⁷ See, e.g., Case 21-T-0340, supra, Appendix D, p. 29; Case 20-T-0549, supra, p. 16; Case 19-T-0549, supra, Appendix D, p. 24.

⁸ PSL §126(1)(c).

⁹ PSL §126(1)(g).

and its implementing regulations related to the incidental take of occupied habitat or a threatened and endangered species. As with the Wetland Mitigation Plan, by requiring the DEC's and DPS Staff's acceptance of the NCBP, the Commission is using the expertise of the other State agency to ensure the Project's impacts are minimized and there is adequate protection of the species and its habitat. The Commission is not abdicating its authority under the PSL and reserves the authority to approve the NCBP in the absence of the DEC's acceptance. Therefore, the Commission finds that DPS Staff's recommendations comply with the requirements of the PSL and adopts the proposed modifications to Certificate Condition 71.

Land Use

The Project is largely located in areas where the land is used for public service, industrial or commercial use, or is vacant. The majority of the Project ROW is within utility-owned or railroad-owned property, although a portion of the Project will require acquisition of a small greenfield area to expand the existing ROW. Overall, the Project is designed in a way that minimizes impacts to existing land use to the maximum extent practicable.

Visual Resources

RG&E conducted its visual impact assessment using the DEC's Program Policy, Assessing and Mitigating Visual Impacts. The Applicant identified four visual resources within three miles of the Project area: (i) historic resources, (ii) urban cultural parks, (iii) the National Park System, and (iv) State or federally designated trail.

The Project's visual impacts are minimized to the extent practicable because the majority of the facilities will be located within existing transmission and railroad ROW. The new transmission line will be largely co-located with existing

structures. New structures that will replace existing structures will have incremental height increases with minimal visual impacts to the surrounding area. The Project will also cross the Erie Canal at a location where there are multiple existing utility crossings.

Cultural, Archeological, and Historic Resources

RG&E conducted a site review using online databases to identify cultural, archeological, and historic resources within three miles of the Project area. By letters dated November 30, 2017, December 4, 2017, and October 22, 2018, the New York State Office of Parks, Recreation & Historic Preservation State Historic Preservation Office informed RG&E that the substation expansions and the proposed transmission facilities will have no impact on archeological and/or historic resources.

Topography and Soils

No permanent impacts to topography or soil are anticipated. However, the Project will result in limited excavations to install transmission structures and there will be temporary disturbances to soil during construction. As part of its Environmental Management and Construction Plan (EM&CP), the Applicant will develop a Storm Water Pollution Prevention Plan in accordance with New York State Standards and Specifications for Erosion and Sediment Control. The Applicant will define measures to identify and handle disposal of encountered contaminated materials in the EM&CP.

Noise

The Project is not anticipated to have permanent noise impacts. Substations 418 and 48 will maintain its existing transformers; therefore, the substation expansions will not result in an increase in noise. Because the transmission line voltages are lower than 300 kV, the lines are not anticipated to have audible noise. The Project will result in temporary noise

impacts from construction, which will be mitigated by limiting construction activities on the Project to the hours of 7:00 a.m. and 6:00 p.m. daily. If it is necessary to perform construction on Sundays, evenings, or holidays, RG&E must obtain approval from DPS Staff at least 48 hours in advance of the planned activity and notify the surrounding communities. The Applicant will also submit noise mitigation procedures in the EM&CP.

Invasive Species

RG&E conducted field surveys of the Project area and identified seven invasive plant species. As part of its EM&CP, RG&E will develop an Invasive Species Management Plan. The Applicant will also comply with the substantive provisions of 6 New York Codes, Rules and Regulations (NYCRR) Part 575.

Transportation

There are railroads, roads, and airports surrounding the Project area. Three existing lines associated with the Project run parallel to the active CSX Railroad and Rochester & Southern (R&S) Railroad. Proposed Line 949 will primarily be within existing ROW running parallel to the R&S and CSX Railroads. RG&E will work with the R&S and CSX Railroads to comply with the railroad safety protocols and ensure that the transmission lines are designed in compliance with the railroad's criteria. The Project route will cross certain roads owned by the State, Monroe County, the Town of Gates, and the City of Rochester. To ensure safe and continued traffic flow and to maintain access to local residences during construction, RG&E will submit a Maintenance and Protection of Traffic Plan with its EM&CP for all roadway crossings and will comply with all traffic safety requirements in 17 NYCRR Part 131. The Applicant will also consult with the relevant State or local department or agency having jurisdiction over any road crossed periodically to ensure construction impacts on local traffic is

minimized. Finally, the Project is not anticipated to have an adverse impact on airports in the surrounding area as the transmission lines will remain below obstruction standards.

Communications

The Applicant reviewed the Federal Communications Commission databases to determine any potential impacts to communication systems in the Project area. The Project is not anticipated to have adverse impacts on communication during construction or operation.

Electric and Magnetic Fields (EMF)

The Commission's Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities (issued September 11, 1990) (Interim Policy) states that Article VII transmission circuits must be designed, constructed, and operated such that magnetic fields at the edges of their rights of way (measured one meter above ground) will not exceed 200 milligauss (mG) when the circuit phase currents are equal to the winter-normal conductor rating. Regarding electric fields, the Interim Policy adopts Commission Opinion 78-13 (issued June 19, 1978), which established an electric field strength interim standard of 1.6 kV/m for Article VII electric transmission facilities at the edge of the right-of-way, one meter above ground level, with the line at rated voltage. RG&E submitted an Electromagnetic Field Report with its Application which indicates that the maximum calculated electric and magnetic fields are within the Commission's requirements as stated in the Interim Policy.

Impacts On Active Farming Operations

The Project ROW does not cross any active agricultural areas or designated Agricultural Districts in Monroe County. Therefore, it is not anticipated to have any effect on agricultural land or associated activities.

Project Alternatives

RG&E evaluated a number of alternatives, including four alternative line routes. The Applicant considered environmental and land use impacts in determining the proposed route was better than the four alternate routes. The majority of the proposed route remains within existing ROW and requires the most limited acquisition of greenfield area as compared to the alternative routes. The proposed route also does not go through any Agricultural Districts or active farmland.

The Applicant also considered alternative methods to meet the energy requirements supported by Project construction and operation. These alternatives included a "no-action" alternative, alternative transmission line technologies, and non-wires alternatives (NWA). None of these methods were viable alternatives. The no-action alternative and NWA would not adequately address issues of thermal overloads and low voltage in the Western Rochester area. Additionally, the Project's use of standard overhead double-circuit and single-circuit Alternating Current transmission lines is the preferred transmission line technology because it has the least environmental impacts and limits the need to acquire additional ROW.

State and Local Laws

RG&E identified all local laws and regulations applicable to the Project in Exhibit 7 of the Application. Local procedural requirements do not apply to the construction or operation of the Project under PSL §130. While RG&E will construct and operate the Project in compliance with most local substantive requirements, the Applicant requests that the Commission waive certain substantive requirements pursuant to the Commission's authority under Article VII and its implementing regulations because they are unreasonably

restrictive in view of existing technology, factors of costs or economics, or the needs of consumers.¹⁰

For the portion of the Project located in the City of Rochester, the Applicant requests that the Commission refuse to apply the following local ordinances: (i) restrictions on tree-cutting to the extent that some tree clearing may be required under the Applicant's Best Management Practices (BMPs) and Long-Range ROW Management Plan for safety and reliability reasons; (ii) landscaping and/or screening requirements to the extent that these requirements cannot be reconciled with the Applicant's BMPs and Long-Range ROW Management Plan; and (iii) requiring the Applicant to remove debris or excess material that is not a result of construction activity from the portion of the ROW owned by the City.¹¹

For the portion of the Project located in the Town of Gates, the Applicant requests that the Commission refuse to apply the following local ordinances: (i) minimum lot area, yard setback, lot to depth ratios, and height requirements on the grounds that the proposed location and height of the Project is designed to minimize impacts and ensure public safety and the proximity of Project to the lot line is not relevant to the location of the lot line; and (ii) buffer area requirements to the extent that some tree clearing may be required under the

¹⁰ See PSL §126(1)(g).

¹¹ RG&E also requests that the Commission waive the City zoning law which subjects public utilities to additional regulations as special permit uses in an Urban Renewal District (URD) for the portion of the newly proposed Line 949 that would traverse the Mt. Reade-Emerson URD. Upon review of the City's zoning map, this portion of the line is no longer zoned as a URD and a waiver of the local law is not required. If the portion of the proposed Line 949 is within a URD, the Commission waives the public utility use restriction.

Applicant's BMP and Long-Range ROW Management Plan for safety and reliability reasons.

The Commission finds the legal provisions identified above are unreasonably restrictive in view of existing technology, factors of cost or economics, and the needs of consumers. No local jurisdiction has filed any objection to the Applicant's requests that the Commission not apply the local laws set forth in Exhibit 7. Therefore, the Commission finds the waiver requests in Exhibit 7 to the Application reasonable and waives the local laws and regulations.

CONCLUSION, FINDINGS AND DETERMINATIONS

Based on the foregoing the Commission finds that, as discussed herein, the Project is needed, will generally have short-term adverse environmental impact, represents the minimum adverse impact to the environment including impact to agricultural land, farm operations, and associated property rights, should not be installed underground, conforms to a long-range electric system plan, conforms to applicable substantive legal requirements (except to the extent described above), and will serve the public interest, convenience, and necessity. Accordingly, the Commission grants to RG&E the Amendment, in part, for the construction and operation of a new 115kV line, expansion of Stations 418 and 48, and reconstruction of the associated existing transmission lines.

The Commission orders:

1. Rochester Gas and Electric Corporation's Application to Amend its Article VII Certificate of Environmental Compatibility and Public Need is approved, in part, pursuant to Public Service Law §123(2).

2. With the exception of Certificate Conditions 52 and 71 as discussed above, Rochester Gas and Electric Corporation's Proposed Ordering Clauses and Certificate Conditions included as Attachment A to the application submitted on June 7, 2022, and revised on December 12, 2022, are adopted, in part, subject to the discussion in the body of this Order.

3. Certificate Conditions 52 and 71, included as Attachment A to this Order, are hereby approved and incorporated into this Order.

4. The Certificate Holder shall not commence construction until it has received a "Notice to Proceed with Construction" letter sent by the Director of the Office of Energy System Planning and Performance, or their designee.

5. The motion of Rochester Gas and Electric Corporation for Commission waiver of certain local laws as identified in the application is granted.

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

Attachment A
Certificate Conditions

Conditions of the Order

1. If construction of the project ("Project") certified by the Amended Certificate issued April 20, 2023 (the "Amended Certificate") is not commenced within twenty-four (24) months after the Certificate Holder files a verified statement that it accepts and will comply with the Amended Certificate, this Amended Certificate may be vacated. For purposes of this Amended Certificate order, the commencement of "construction" is defined as the beginning of unlimited site clearing, site preparation and grading activity, and construction of the Project and does not include staging, activities related to testing, or surveying (such as geotechnical drilling and meteorological testing), together with such testing, surveying, drilling and similar pre-construction activities, including limited tree clearing to perform such pre-construction activities, to determine the adequacy of the site for construction and the preparation of filings pursuant to these conditions.

LAWS AND REGULATIONS

2. a) Each substantive federal, state and local law, regulation, code and ordinance applicable to the Project shall apply, except any substantive local law or regulation which the Public Service Commission ("Commission") has refused to apply as being unreasonably restrictive as discussed herein.

b) No state or local legal provision purporting to require any approval, consent, permit, certificate or other condition for the construction or operation of the Project shall apply, except (i) those of the Public Service Law 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 a federally delegated environmental permitting program; and (iv) those referenced in Ordering Clause 3 below.

3. Subject to the Commission's ongoing jurisdiction, the Certificate Holder will be permitted to seek, as required, the following local regulatory permits and approvals that would be applicable to the construction work or operation of the Project in the absence of PSL §130:

- a) Street excavation permits
- b) Street closure permits
- c) Permits for structural welding
- d) Permits under the New York State Fire Code
- e) Permits for the use and supply of water
- f) Permits for the discharge of wastewater or stormwater to a sewer system.

4. A copy of each permit or approval received from the local agencies shall be provided to Department of Public Service ("DPS") staff by the Certificate Holder before commencement of construction in the affected area.

5. If the Certificate Holder believes that any action taken, or determination made, by a local agency in furtherance of such local agency's review of the permits and approvals referenced in Ordering Clause 3 above, is unreasonable or unreasonably delayed, the Certificate Holder may petition the Commission, upon reasonable notice to the local agency, to seek a resolution of any such unreasonable or unreasonably delayed requirement. The local agency may respond to the petition, within three business days, to address the reasonableness of any requirement or delay.

6. The Certificate Holder's request that the Commission refuse to apply specified provisions of the local codes in the town of Gates and the City of Rochester in Monroe County, as set forth in Exhibit 7 to the Application, is hereby granted.

7. The Certificate Holder shall promptly notify the Commission in writing should it decide not to complete construction of all or any portions of this Project and shall serve a copy of such notice upon all parties.

PUBLIC HEALTH AND SAFETY

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

9. Construction work within 200 feet of occupied structures shall take place between 7:00 a.m. and 6:00 p.m. daily. Nighttime and Sunday construction requirements may be necessary to coordinate utility outages for the convenience of the residents and businesses. For certain construction phases and activities, additional work hours may be necessary. Nothing herein shall preclude the Certificate Holder from making the necessary arrangements for the extension of work hours with appropriate local agencies in compliance with local ordinances. Noise mitigation procedures shall follow those set forth in the approved EM&CP. Approval from DPS staff shall be sought (and notice to the community(ies) where the construction will occur, shall be given) at least 48 hours in advance if planned Sunday, evening or holiday construction becomes necessary. This condition is not intended to prohibit nighttime construction reasonably necessary to comply with restrictions on daytime construction on or along roadways or public access areas or

to require the cessation of construction activities, which require a continuous work effort once started.

10. The Certificate Holder shall keep local fire department and emergency management teams apprised of chemicals (for example, herbicides) and waste on site. A contact list of local fire department and emergency management teams shall be included in the Project's EM&CP.

11. The Certificate Holder shall take appropriate measures as outlined in the EM&CP to minimize fugitive dust and airborne debris from construction activity.

12. The Certificate Holder shall periodically consult with the local agencies having jurisdiction over roadways near the Project site about traffic conditions near the Project site, and shall make good faith efforts to minimize the impact of the construction of the Project on local traffic circulation. A "Maintenance and Protection of Traffic Plan" for each roadway crossing shall be included in the EM&CP to ensure the safe flow of traffic through construction areas.

13. To the extent required in connection with the delivery of oversized facility components, the Certificate Holder or its suppliers shall obtain any necessary permits from local or state agencies.

14. The Certificate Holder shall engineer and construct the Project to be fully compatible with the operation and maintenance of nearby electric, gas, telecommunication, water, sewer, and related facilities based on accepted industry standards and practices.

15. The Certificate Holder shall comply with the requirements for the protection of underground facilities set forth in 16 NYCRR Part 753.

ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN

16. Except where this Amended Certificate requires

otherwise, the environmental protection measures contained in the Application and the Water Quality Certification shall be incorporated into the EM&CP, which shall be prepared in accordance with the Specifications for the Development of Environmental Management and Construction Plan attached as Attachment D to the Amended Certificate order ("EM&CP Specifications"). These measures shall be applied during construction, operation and maintenance of the Project. Applicable provisions of the Amended Certificate, EM&CP, and order approving the EM&CP shall be accommodated in contracts associated with the Project.

17. The Certificate Holder shall provide, as part of the EM&CP, a final design plan for the Project that reflects conformance with the Amended Certificate, applicable federal, state and local requirements, and a discussion of the status of the Certificate Holder's efforts to obtain permits necessary for Project construction from local agencies, state agencies acting pursuant to federally delegated authority and the U.S. Army Corps of Engineers, as applicable.

18. During the preparation of the EM&CP, the Certificate Holder shall contact the Region 8 DEC Natural Resources Supervisor, NYS Natural Heritage Program, and United States Fish and Wildlife Service to check for any updates or changes of known threatened or endangered ("T&E") species or occupied habitat or Significant Natural Communities in the Project area, and include the responses in the EM&CP.

19. The Certificate Holder shall not commence preparation of the site for construction of any portion of the Project (except for surveying, boring and such other related activities as are necessary to prepare final design plans) before it has submitted to the Commission and the parties identified in Ordering Clause 21 below, and the Commission has approved, an EM&CP for the relevant portion

of the Project. The EM&CP for the Project may be segmented to permit the approval and the commencement of any circuit or substation improvements prior to EM&CP approval for the remaining circuits or substations.

20. The Certificate Holder shall obtain coverage under the then-current State Pollutant Discharge Elimination System General Permit for Construction Activities (currently, GP-0-20-001) and will prepare one or more final DEC-acknowledged Storm Water Pollution Prevention Plans ("SWPPP"), in accordance with the current NYS Standards and Specifications for Erosion and Sediment Control ("NYSSESC").

21. The Certificate Holder shall file one electronic copy of the EM&CP with the Secretary and serve one electronic copy on each of: the staff of the New York State Department of Environmental Conservation ("DEC") Central Office, Division of Environmental Permits (Bureau of Energy Project Management); the DEC Region 8 Bureau of Ecosystem Health; the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation ("OPRHP"); the staff of the New York State Department of Agriculture and Markets ("NYSAGM"); any other New York State agency (and its relevant regional office(s)) which requests the document; and each active party on the service list of Case 20-T-0103 who requests the document. The Certificate Holder also shall place a copy of the EM&CP for inspection by the public in at least one public library or other convenient location in each municipality in which Project construction will take place. Contemporaneously with the submission and service of the EM&CP, the Certificate Holder shall provide notice, in the manner specified below, that the EM&CP has been filed. Within seven (7) business days after it files the EM&CP, the Certificate Holder shall deliver hard copies of the EM&CP to staff of the DPS and DEC and any other New York State agency (and its relevant regional office(s)) which requests them, in the numbers and

at the locations requested by such recipients.

22. The Certificate Holder shall serve written notice(s) of the filing of the EM&CP on all active parties and all statutory parties to Case 20-T-0103, and shall attach a copy of the notice to each copy of the EM&CP. The Certificate Holder also shall attempt to serve similar written notice(s) on each person from whom rights-of-way are required, on each person owning the underlying land right to an easement upon which the Project will be constructed, on each person currently leasing a portion of any right-of-way to be used for the Project, and on each owner of a parcel of land that abuts the approved ROW. Further, the Certificate Holder shall publish the notice(s) in a newspaper of general circulation in the vicinity of the Project.

23. The written notice(s) and the newspaper notice(s) shall contain, at a minimum, the following: a statement that the EM&CP has been filed; a general description of the Project and the EM&CP; a listing of the locations where the EM&CP is available for public inspection; a statement that any person desiring additional information about a specific geographical location or specific subject may request it from the Certificate Holder; the name, address, and telephone numbers of the Certificate Holder's representative; the address of the Commission and a statement that any person may comment on the EM&CP by filing written comments with the Commission and the Certificate Holder within 30 days of the filing date of the EM&CP (or within 30 days of the date of the newspaper notice, whichever is later). A certificate of service indicating upon whom all EM&CP notices and documents were served and a copy of the written notice shall be submitted to the Commission at the time the EM&CP is filed and shall be a condition precedent to approval of the EM&CP.

24. The Certificate Holder shall report any proposed changes in the approved EM&CP, to DPS Staff and DEC

Staff. DPS Staff will refer to the Chief of the Environmental Certification and Compliance Section (or their designee), DPS Office of Electric, Gas and Water, reports of any proposed changes that do not cause substantial change in environmental impact or are not related to contested issues decided during the amendment proceeding. DPS staff will refer all other proposed changes in the EM&CP to the Commission for approval. Upon being advised that Staff will refer a proposed change to the Commission, the Certificate Holder shall notify all affected statutory and active parties to Case 20-T-0103 as well as all property owners or lessees whose property is affected by the proposed change. The notice shall describe the original conditions and the requested change and state that documents supporting the request are available for inspection at specified locations, and state that persons may comment by writing or calling (followed by written confirmation to) the Commission within 15 days of the notification date. Any delay in receipt of written confirmation will not delay Commission action on the proposed change. The Certificate Holder shall not execute any proposed change until it receives oral or written approval, except in emergency situations threatening personal injury, property damage or severe adverse environmental impact or as specified in the EM&CP. If oral approval of a minor change is granted, the Certificate Holder shall then be allowed to execute the proposed change but must also submit, within 10 days of the oral approval, a written request for written approval of such change.

25. Except where the Amended Certificate requires otherwise, the environmental protection measures contained in the Application shall be applied during preparation of the EM&CP and during construction, operation and maintenance of the Project.

26. Deviations within the certified ROW of the centerline, design height, location, number of structures,

and structure types - as described in the Application - shall be allowed for appropriate environmental or engineering reasons, except where a conflict with a provision of this Order would be created. An explanation for any such deviation shall be provided in the EM&CP to be filed and served in accordance with Ordering Clause 21 above. Monroe County shall also be given specific notification of deviations that occur on or immediately adjacent to County property (if any). For the purpose of this Amended Certificate, the certified corridor for the Project is defined as the existing 115kV electric transmission line rights-of-way owned in fee or held through easements by the Certificate Holder within which the Project will be located and, where present, adjacent transmission rights-of-way held by others and adjacent railroad rights-of-way.

27. The Certificate Holder shall not commence construction on any segment of the Project until it holds, and demonstrates to DPS Staff that it holds, all danger tree rights it will need when that segment is energized.

28. The Certificate Holder shall not commence construction on any segment of the Project until it has received a "Notice to Proceed with Construction" letter for that segment sent by the Chief of the Environmental Certification and Compliance Section (or their designee), DPS Office of Electric, Gas and Water.

NOTICES AND PUBLIC COMPLAINTS

29. During construction and until completion of the Project, the Certificate Holder shall make available to the public a toll-free 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. That number shall include a recorded outgoing message that will, when a call is not answered by a person, provide the caller with: (i)

the name of the Certificate Holder's representative; (ii) the number to be called at any time in case of emergency; (iii) the phone number and email address of the Secretary; and (iv) the phone number of the DPS Environmental Certification and Compliance Section. The Certificate Holder's website shall provide a means for the public to 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. Each Certificate Holder shall report to the DPS Environmental Certification and Compliance Section Compliance Staff every complaint it receives that cannot be resolved within ten (10) business days after receipt of the complaint.

30. No less than two weeks before commencing Project site preparation, the Certificate Holder shall give notice to local officials and emergency personnel. The Certificate Holder shall also provide such notice for dissemination to local media and display in public places (such as general stores, post offices, community centers and conspicuous community bulletin boards). The notice shall contain a map and a description of the Project in the local area, the anticipated date for start of construction and the name, address and local or toll-free telephone number of an employee or agent of the Certificate Holder. The notice shall also contain a statement that the Project is under the jurisdiction of the Public Service Commission, which is responsible for enforcing compliance with environmental and construction conditions and which may be contacted at an address and telephone number to be provided. Where possible, the notice shall be written in language reasonably understandable to the average person. Upon distribution, a copy shall be submitted to the Secretary of the Commission and DEC staff. The Certificate Holder shall provide construction contractors with access to complete copies of

the Amended Certificate, EM&CP, updated construction drawings, any site specific plans, any permit issued pursuant to §404 of the Federal Clean Water Act and §10 of the Rivers and Harbors Act, and the §401 Water Quality Certification. To the extent that the listed documents are available before contracts for construction services are executed, such copies shall be provided to the contractors prior to execution of such contracts.

31. The Certificate Holder shall notify all construction contractors that the Commission may seek to recover penalties for violation of the Amended Certificate, not only from the Certificate Holder, but also from its construction contractors, and that construction contractors may also be liable for other fines, penalties and environmental damage.

32. The Certificate Holder shall inform the Secretary, the DPS Staff, and DEC Staff at least five (5) days before commencing construction or clearing associated with the Project.

33. The Certificate Holder shall provide DPS Staff and DEC Staff with monthly status reports summarizing the previous month's construction and indicating construction activities and locations scheduled for the next month.

34. Within six (6) months following completion of restoration of the Project, the Certificate Holder shall provide DPS Staff with a full accounting of all Project costs incurred to date for the Project, including an explanation of the reason(s) for variances, if any, between projected and actual costs.

35. Within ten days after the Project is in service (i.e., supplying customer load), the Certificate Holder shall notify the Commission of that fact.

36. Within six months after the Project is in service, the Certificate Holder shall provide as-built

drawings of the completed Project to DPS Staff.

RIGHT-OF-WAY CONSTRUCTION, MAINTENANCE AND RESTORATION

37. Any fines, penalties or environmental damage resulting from actions performed by contractor personnel working on this Project (from work directly or indirectly associated with this Project) shall be the responsibility of the contractor. The Certificate Holder shall notify its Contractors that the Commission may also seek appropriate penalties from, or take other appropriate action against, the Certificate Holder as a result of its contractors' actions.

38. The Certificate Holder shall confine construction and subsequent maintenance to the certified right-of-way and approved additional temporary work areas, as detailed in the EM&CP.

39. Both edges of the certified right-of-way, and the limits-of-disturbance set forth in the approved EM&CP, shall be marked as required in the EM&CP. Also, the Certificate Holder shall mark as required in the EM&CP all off-right-of-way access road easements and extra workspace areas; and mark as required in the EM&CP all delineated wetlands and the 100-foot adjacent areas associated with State-regulated wetlands, occupied T&E habitat as applicable, and archaeological resource areas as environmentally sensitive areas. All marking as required above shall be done in any area at least two weeks before transmission line construction begins in such area.

40. A "Maintenance and Protection of Traffic Plan" for each roadway crossing shall be included in the EM&CP to ensure the safe flow of traffic through construction areas.

41. The Certificate Holder shall delineate on the EM&CP drawings, the locations of proposed temporary roads, proposed permanent roads or existing access roads.

42. Disturbed areas, ruts, and rills shall be restored to original grades and conditions with permanent re-vegetation and erosion controls appropriate for the affected locations, unless otherwise shown on the construction drawings. Disturbed pavement, curbs and sidewalks shall be restored in accordance with the requirements of the agency or local government having jurisdiction over the roadway.

43. Within ten days of the completion of final restoration, the Certificate Holder shall notify the Commission that all restoration has been completed in compliance with the EM&CP.

44. All trees over four 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, operation, or maintenance, regardless of where located, shall be replaced by the Certificate Holder with the equivalent type trees or shrubs, subject to the provisions of 6 NYCRR Part 575, Prohibited and Regulated Invasive Species, except where:

- (a) permitted by any approved EM&CP;
- (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 right-of-way management practices or to any approved long-range right-of-way management plan applicable to the Project; or
- (d) a property owner (other than the Certificate Holder) on whose land the damaged or destroyed trees or shrubs were located declines replacement.

The EM&CP shall identify plans for tree protection and the location on the drawings where the measures will be applied, if any are known at the time of EM&CP preparation, and identify the measures to be taken if trees are damaged (e.g., pruning, feeding, periodic inspection, etc.).

OVERSIGHT AND SUPERVISION

45. The Certificate Holder shall designate a full-time construction supervisor with stop work authority over all aspects of this Project; the construction supervisor shall be on site during all phases of construction and restoration. The environmental monitor(s) and construction inspector(s) shall be equipped with sufficient documentation, transportation and communication equipment to effectively monitor contractor compliance with the provisions of this order, applicable sections of the Public Service Law and the EM&CP. The name and qualifications of the environmental monitor(s) shall be submitted to DEC Staff, and to DPS Staff for its approval, at least two weeks prior to the start of construction.

46. The authority granted in the Amended Certificate and any subsequent order(s) in the proceeding is subject to the following conditions necessary to ensure compliance with such order(s):

(a) The Certificate Holder shall regard the DPS staff representatives (certified pursuant to PSL Section 8) as the Commission's designated representatives in the field. The Certificate Holder, DEC Staff, and Monroe County shall be advised of the name(s) of the Commission's designated DPS staff representative(s) prior to the start of construction. In the event of any emergency resulting from the specific construction or maintenance activities that violate or may violate the terms of the Amended 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 stop-work order shall expire within 24 hours unless confirmed by a single Commissioner. 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 shall be exercised sparingly and with due regard to the potential economic costs involved and possible impact on construction activities.

Before exercising such authority, DPS staff field representatives shall consult (wherever practicable) with the Certificate Holder's representatives possessing comparable authority. Within reasonable time constraints, all attempts shall be made to address any issue and resolve any dispute in the field. In the event the dispute cannot be resolved, the matter shall be immediately brought to the attention of the Certificate Holder's Project Manager and the Chief of the Environmental Certification and Compliance (or a designee), DPS Office of Electric, Gas and Water. In the event that DPS staff field representatives issue a stop work order, neither the Certificate Holder nor the contractor will be prevented from undertaking such safety-related activities as they deem necessary and appropriate under the circumstances. The DPS staff representative may in his/her sole discretion stop work or direct implementation of measures, as described below, during these discussions. Stop work orders issued and corrective action taken by the Certificate Holder shall be summarized in monthly status reports to be provided to DPS Staff, DEC Staff, and where such stop work orders pertain to work in Monroe County, to Monroe County.

(d) If a DPS staff representative discovers a specific activity that is a significant environmental threat that is or may immediately become a violation of the Amended Certificate or any other Order in this proceeding, the DPS staff representative may - in the absence of responsible the Certificate Holder supervisory personnel or 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 environmentally harmful activity immediately. If responsible the Certificate Holder personnel are not on site, the DPS staff representative shall

immediately thereafter inform the Certificate Holder's construction supervisor and/or environmental coordinator of the action taken. The DPS staff representative may lift the stop-work directive if the situation prompting its issuance is resolved. Stop work orders issued and corrective action taken by the Certificate Holder shall be summarized in monthly status reports to be provided to DPS Staff, DEC Staff, and where such stop work orders pertain to work in Monroe County, to Monroe County.

(e) If the DPS staff representative determines that a significant threat exists such that protection of the environment at a particular location requires the immediate implementation of specific measures, the DPS staff representative may - in the absence of responsible the Certificate Holder supervisory personnel, or in the presence of such personnel who, after consultation with the DPS staff representative, refuse to take appropriate action - direct the Certificate Holder or its contractors to implement the corrective measures identified in the EM&CP. The field crews shall comply with the DPS staff representative's directive immediately. The DPS staff representative shall immediately thereafter inform the Certificate Holder's construction supervisor and/or environmental coordinator of the action taken. Corrective actions taken by the Certificate Holder shall be summarized in monthly audit meetings, and in monthly status reports which shall be provided to DPS Staff, DEC Staff, and where such stop work orders pertain to work in Monroe County, to Monroe County.

47. The Certificate Holder shall organize and conduct an audit meeting for DPS staff as needed but not less frequently than once a month during the site preparation, construction and restoration phases of the Project. The inspection shall include a review of the status of all certification conditions, requirements, and commitments, as well as a field review of the Project, if necessary. The inspection may also include:

- a) reviews of all complaints received, and their proposed or actual resolutions and any complaints that are unresolved;
- b) reviews of any significant comments, concerns or suggestions made by the public, local governments, or other agencies;
- c) reviews of the status of the Project in relation to the overall schedule established prior to the commencement of construction; and
- d) any other items the Certificate Holder or Staff considers appropriate.

ROADS AND HIGHWAYS

48. In preparing the EM&CP, the Certificate Holder shall consult with each local department or agency normally having jurisdiction over the roadways in the Project vicinity that would be crossed by the Project or used for direct access to the rights-of-way. If the access road lies in the limits of such roads or takes direct access therefrom, the Certificate Holder shall notify each such department or agency of the approximate date work will begin.

49. All work within State Highway rights-of-way shall be performed according to the traffic and safety standards and other requirements contained in 17 NYCRR Part 131, entitled "Accommodation of Utilities Within State Highway Right-of-Way." The detailed manner of State highway crossings shall be developed by the Certificate Holder in consultation with the appropriate road authority, and the information responding to the requirements of 17 NYCRR Part 131 shall be included by the Certificate Holder in the EM&CP. If the Certificate Holder and the highway officials cannot agree on the details of work within a State highway right-of-way, or if those officials fail to respond in a timely fashion, the Certificate Holder shall notify the Commission in its EM&CP filing and describe fully the disagreements. Nothing in this paragraph alters the

Commission's jurisdiction as the ultimate decision-making authority with respect to the siting of major utility transmission facilities.

WATERBODIES AND WETLANDS

50. The Certificate Holder shall perform all construction, operation, and maintenance in compliance with the standards in section 663.5(e) of 6 NYCRR Part 663. The Certificate Holder shall perform all construction in a manner that first demonstrates that wetland impacts cannot be avoided entirely, and then demonstrates that unavoidable losses or impacts on the functions or benefits of the State-regulated wetlands and the 100-foot adjacent areas have been minimized to the extent practicable. The EM&CP will be drafted to satisfy the wetlands and waterbodies sections of the EM&CP Specifications as supplemented by the DEC Supplemental Specifications for Wetlands and Waterbodies attached as Attachment B to the Amended Certificate order. The Certificate Holder shall ensure the following provisions to protect wetlands, waterbodies, and adjacent areas are followed as specified in the 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 marked in the field as required in Ordering Clause 39 above.
- b. 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; provided that, if the Certificate Holder determines that work in such locations is required during such prohibited times, the Certificate Holder shall justify and demonstrate to DPS Staff and DEC that impacts shall be avoided or minimized to the maximum extent practicable. The Certificate Holder shall

consult with the DEC Region 8 Bureau of Ecosystem Health Office during the development of the EM&CP to verify cold water and warm water fisheries that may be affected by the Project.

- c. Concrete washout areas shall be located a minimum of 300 feet away from any wetland or waterbody; provided that, if the minimum setback cannot be achieved, the 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.
- d. Temporary bridges and culverts should be at least 1.25 times the width of the stream and installed without causing damage to the stream bed or banks; provided that, if minimum width cannot be achieved, the EM&CP shall provide justification and demonstrate that impacts shall be avoided or minimized to the maximum extent practicable. Culverts or bridges that will remain in place for more than 180 calendar days shall be installed in accordance with the approved EM&CP, including the DEC Supplemental Specifications for Wetlands and Waterbodies attached as Attachment B to the Amended Certificate order.
- e. Notification shall be provided to the DEC Regional Natural Resources Supervisor and DPS once 80% cover with restorative, ROW-compatible plants of appropriate wetland indicator status (Facultative Wet to Obligate) has been achieved.

51. The Certificate Holder shall comply with any conditions contained in any permit issued pursuant to §404 of the Federal Clean Water Act, §10 of the Rivers and Harbors Act, and the §401 Water Quality Certification.

52. To address impacts related to the Project's establishment of additional ROW and installation of the

Project transmission structures, the Certificate Holder will develop a Wetland Mitigation Plan in accordance with the DEC Supplemental Specifications for Wetlands and Waterbodies attached as Attachment B to the Amended Certificate Order and propose in the EM&CP such a Wetland Mitigation Plan at a minimum 2:1 ratio for the clearing of forested wetland. The Certificate Holder will submit the Wetland Mitigation Plan no later than six months after the start of construction for DEC acceptance. If the Certificate Holder believes that DEC's acceptance of the Plan is unreasonably delayed or withheld, the Certificate Holder may petition the Commission, with a copy to DEC, to seek a resolution of any such unreasonable withholding or delayed acceptance. DEC may respond to the petition, within five (5) business days, to address the reasonableness or delay.

53. The Certificate Holder shall take all necessary precautions to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, or any other environmentally deleterious materials associated with the Project.

54. To the maximum extent practicable, the Certificate Holder shall secure and safely contain all equipment and machinery more than 100 feet landward of any wetland or water body at the end of each work day.

55. The Certificate Holder shall minimize any disruption to any DEC-regulated wetlands encountered along the certified route. For stream and DEC-regulated wetland crossings, DPS and DEC staff shall be provided advance notification of pending construction, and a DEC staff field representative shall be permitted on the Project site. If possible, the Certificate Holder shall be advised of the name(s) of the DEC staff field representative(s) prior to the start of construction. The DEC field representative shall notify the DPS staff representative and the Certificate

Holder's representative of any activities that violate the Environmental Conservation Law. The DEC staff field representative shall consult with the DPS staff field representative as to whether stop work authority should be exercised or whether the Certificate Holder should be directed to take action to further minimize impacts to streams and wetlands. This Ordering Clause in no way limits the individual enforcement authority of either the DEC or Commission.

56. As part of the EM&CP, the Certificate Holder shall provide DPS and DEC staff with maps/drawings of streams, wetlands, and significant habitat crossing locations and site-specific crossing techniques for construction of access roads. Within 100 feet of DEC-regulated wetlands and 50 feet of other water bodies, the Certificate Holder shall remove only the minimum vegetation necessary to allow construction and operation of the Project. The Certificate Holder shall indicate in the EM&CP the extent of clearing necessary to allow construction and operation of the Project and shall indicate the disposition of cleared vegetation and spoils.

57. The Certificate Holder shall utilize construction or silt fencing, as needed, to prevent inadvertent encroachment by contractors.

58. The Certificate Holder shall indicate in the EM&CP a chemical use plan for initial vegetative clearing. Long term vegetation management shall be in accordance with any approved long-range right-of-way management plan applicable to the Project. The conditions for which approved herbicides will be used in or adjacent to wetlands shall be included in the EM&CP. Herbicides shall not be applied to streams or standing water or within 100 feet of public water supplies.

59. Any herbicide use shall be under the direct supervision of a New York State Certified Applicator who

either owns or is employed by a business registered with the DEC for the purpose of herbicide application. Herbicide products utilized during construction shall have a valid registration with both the United States Environmental Protection Agency and DEC. Application of herbicides and pesticides shall conform to all manufacturer's label instructions.

60. The Certificate Holder shall ensure that the application of pesticides/herbicides within state and federal wetlands and state regulated 100-foot wetland adjacent areas, be done by low volume foliar spray from a backpack sprayer, cut stem and/or stump treatment, basal bark treatment or other approved treatment method and shall be conducted in a manner that prevents drift of pesticides into waterbodies or standing water.

61. Any material to be removed from wetlands or adjacent areas shall not be stored inside wetlands or adjacent areas. Excavated material shall be stockpiled outside wetlands areas and all excess material shall be disposed of in locations as set forth in the approved EM&CP.

62. To the extent feasible, all work shall proceed from adjacent upland areas, e.g. from uplands within existing right-of-way or from adjacent roadways and railroad beds. The Certificate Holder shall depict all pole locations, laydown and access areas in the EM&CP and shall indicate where equipment access cannot be limited to adjacent upland areas.

63. To the extent feasible, pole placement and spanning shall be configured to minimize adverse impacts.

64. The EM&CP will be drafted to satisfy the invasive species sections of the EM&CP Specifications as supplemented by the Invasive Species Management Plan

Specifications attached as Attachment C to the Amended Certificate order. The Certificate Holder shall comply with the substantive provisions of 6 NYCRR Part 575.

TERRESTRIAL AND WILDLIFE RESOURCES

65. In connection with vegetation management for the construction of the Project, the Certificate Holder shall:

- a. Comply with the provisions of 6 NYCRR Part 192, "Forest Insect and Disease Control," and Environmental Conservation Law § 9-1303, with any quarantine orders issued thereunder.
- b. Ensure crews are trained to identify insects that are identified as a prohibited or regulated invasive species as required by 6 NYCRR Part 575, "Prohibited and Regulated Invasive Species." The Certificate Holder shall report the discovery of such insects to the DEC Region 8 Supervisor of Natural Resources.
- c. Not create a maximum wood chip depth greater than three inches, except for wood chip roads or for invasive species control; these areas will be specified in the EM&CP.
- d. Not store or dispose of wood chips in wetlands, floodways, agricultural fields, or within 50 feet of streams.
- e. Limit clearing of natural vegetation to material that poses a hazard or hindrance to the construction activity or operation of the Project.

66. The Certificate Holder shall refer to 6 NYCRR Part 182 for lists of T&E animal species and Part 193 for T&E plant species, as well as any additional species identified per Condition 18. Prior to the commencement of construction, the Certificate Holder shall provide all personnel with information on any T&E plant species or animal species and their associated occupied habitat

identified within or contiguous to the Project limit of disturbance and indicate measures to minimize risks to said species during construction.

67. The Project will comply with the requirements of Part 182 as then applicable to Indiana bats and Northern long eared bats (or any other regulation(s) then applicable to such species) and DEC's then-current guidance for compliance therewith. DEC's current guidance for compliance with Part 182 is that, in the event that an Indiana or Northern long-eared bat hibernacula or roost tree is identified within the Project site at any time during the life of the Project, then within a (i) 5 mile radius around NLEB hibernaculum; (ii) 2.5 mile radius around an Indiana bat hibernaculum; (iii) 1.5 mile radius around a NLEB roost tree; and (iv) 2.5 miles radius around an Indiana bat roost tree:

- a. Snags and cavity trees will be left standing unless their removal is necessary for protection of human life or otherwise approved through consultation with DEC and DPS Staff.
- b. All tree clearing activities shall be conducted between November 1 and March 31, unless exception is granted in limited case(s) through consultation with DEC and DPS Staff.

68. If at any time during construction, operation and maintenance of the Project, any bald eagle nest is discovered within 0.25 miles of the Project ROW by a knowledgeable person employed by or contracted to the Certificate Holder, the Certificate Holder shall notify DEC and DPS Staff as soon as practicable, and preferably within 24 hours, following discovery and the nest shall not be approached. An area encompassing an estimated 0.25 mile radius from the nest tree based on aerial imagery ("buffer area") shall be marked, where the Certificate Holder has property rights to allow such marking, and this area shall be avoided until DPS Staff, in consultation with DEC,

authorizes activities in the buffer area (unless access is necessary for the protection of human life or in an emergency situation for the protection of property). If there is a visual barrier present (e.g., topography, tree line) that obstructs the view from the nest and shields it from work activities, the setback requirement may be reduced to 660 feet.

69. Except as otherwise specified in Conditions 67 and 68, if any T&E animal species, as defined in 6 NYCRR Part 182 (or any other regulation(s) then applicable to T&E animal species), or T&E plant species, identified under 6 NYCRR Part 193 (or any other regulation(s) then applicable to T&E plant species), is incidentally observed by a knowledgeable person employed by or contracted to the Certificate Holder on or from the Project's ROW, access roads, laydown yards, and any other areas where Project activities authorized in this Certificate are conducted:

- a. The Certificate Holder shall notify DEC and DPS Staff within 24 hours; and
- b. Unless continued operations are necessary for the protection of human life or in an emergency situation for the protection of property, the Certificate Holder shall secure the immediate area where rights exist and safely cease activities in that area until DPS Staff, in consultation with DEC, authorizes recommencement of activities. For grassland bird species, 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 where rights exist, whichever is greater, in radius from the nest or roost unless continued operations are necessary for protection of human life or in an emergency situation for the protection of property.
- c. Prior to the recommencement of activities in the

secured area, the Certificate Holder shall provide all workers with pertinent information on the species encountered and indicate measures to minimize risks to the T&E species.

70. The Certificate Holder shall maintain a record of all observations of State threatened or endangered species by a knowledgeable person employed by or contracted to the Certificate Holder 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 such records 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); the nature of and distance to any Project construction, maintenance, or restoration activity; and whether the death, injury, or damage to the T&E species, their eggs, or nest was caused by the Project. The Certificate Holder shall provide these records to DEC on a monthly basis during construction.

71. If the Certificate Holder determines it to be necessary to take occupied habitat or individuals of a species then listed in Part 182 (or any other regulation(s) then applicable to T&E animal species), the Certificate Holder will consult with DEC and DPS to determine whether a Net Conservation Benefit Plan (NCBP) is necessary for compliance with such regulation(s). If, after such consultation, the Certificate Holder determines that a NCBP is necessary, it will develop the NCBP in consultation with and accepted by DPS Staff and DEC. If the Certificate Holder believes that DEC's acceptance of the NCBP is unreasonably

delayed or withheld, the Certificate Holder may petition the Commission, with a copy to DEC, to seek a resolution of any such unreasonable delay or withholding of acceptance. DEC may respond to the petition, within five (5) business days, to address the reasonableness or delay.

CHEMICAL SPILLS

72. The Certificate Holder shall provide a spill response and route emergency plan as part of its EM&CP. This plan shall provide proposed methods of handling spills of petroleum products and any hazardous or controlled substances which may be stored or utilized during construction, operation or maintenance of the Project.

73. The Certificate Holder shall provide a plan detailing the action to be taken regarding unanticipated encounters with contaminated soil as part of its EM&CP. The Certificate Holder shall immediately notify DEC of any unanticipated encounters with contaminated soil.

74. Stationary fuel tanks and hazardous chemicals shall be appropriately contained and located a minimum of 300 feet from streams, waterbodies, and wetlands, unless: (i) the EM&CP provides justification, including that impacts have been avoided or minimized to the maximum extent practicable; or (ii) adequate secondary containment (containing at least 110% of the volume stored) is otherwise provided, in which case storage can occur within 100 feet of such resources.

75. In general, chemicals and petroleum products will not be mixed, or loaded, nor will equipment be refueled, within 100 feet of any watercourse or wetland.

76. Requirements for refueling within 100 feet of wetlands or streams will be allowed under certain circumstances as identified below.

- a. Refueling of hand equipment will be allowed within 100 feet of wetlands or streams when secondary

containment is used. Secondary containment will be constructed of an impervious material capable of holding the hand equipment to be refueled and at least 110% of the fuel storage container capacity. Fuel tanks of hand held equipment will be initially filled in an upland location greater than 100 feet from wetlands or streams in order to minimize the amount of refueling within these sensitive areas. Crews will have sufficient spill containment equipment on hand at the secondary containment location to provide prompt control and cleanup in the event of a release.

- b. Refueling of equipment will be allowed within 100 feet of wetlands or streams when necessary to maintain continuous operations and where removing equipment from a sensitive area for refueling would increase adverse impacts to the sensitive area. Fuel tanks of such equipment will be initially filled in an upland location greater than 100 feet from wetlands or streams in order to minimize the amount of refueling within these sensitive areas. All refueling of equipment within 100 feet of wetlands or streams will be conducted under the direct supervision of the environmental monitor. Absorbent pads or portable basins will be deployed under the refueling operation. In addition, the fuel nozzle will be wrapped in an absorbent pad and the nozzle will be placed in a secondary containment vessel (e.g., bucket) when moving the nozzle from the fuel truck to the equipment to be refueled. All equipment operating within 100 feet of a wetland or stream will have sufficient spill containment equipment on board to provide prompt control and cleanup in the event of a release.

CULTURAL RESOURCES

77. Following completion of archeological surveys and their review and approval by OPRHP and DPS staff, should archaeological materials be encountered anywhere within the Project limits during construction, the Certificate Holder shall, in accordance with the Unanticipated Discovery Plan to be provided in the EM&CP, stabilize the area and cease construction activities in the immediate vicinity of the find and protect the same from further damage. Within 24 hours of such discovery, the Certificate Holder shall notify DPS staff and OPRHP to determine the best course of action. No construction activities shall continue in the vicinity of the find until such time as the significance of the resource has been evaluated and the need for and the scope of impact mitigation has been determined.

78. Should human remains or evidence of human burials be encountered during the conduct of archaeological data recovery fieldwork or during construction, all work in the vicinity of the find shall be immediately halted and the remains shall be protected from further damage. Within 24 hours of any such discovery, the Certificate Holder shall notify the DPS staff, OPRHP, and the State and local police. All archeological/burial encounters and their handling shall be reported in the monthly status reports.

Attachment B

DEC Supplemental Specifications for Wetlands and Waterbodies

**DEC SUPPLEMENTAL SPECIFICATIONS FOR WETLANDS AND
WATERBODIES**

The Specifications set forth below are in addition to, or refinements of, the elements required in the Specifications for the Development of Environmental Management and Construction Plan ("EM&CP Specifications") contained in Appendix E of the Joint Proposal. The applicant must incorporate in the EM&CP all the information specifically described in this Appendix.

Wetland and Waterbody Construction Specifications

- 1) Show the extent of clearing and ground disturbance in each wetland, state-regulated wetland adjacent area, and waterbody on the construction drawings.
- 2) The wetland and waterbodies summary tables required under section (B)(5)(c) of the EM&CP Specifications must include the following information for each wetland and waterbody located within the Project ROW and along access roads: proposed structure/disturbance type; DEC ID; DEC classification code (e.g. , C(T) stream standards, and Class I, II, III, and IV state-regulated wetlands); wetland cover type; wetland functions and values; total area of temporary disturbance (sq. ft.); total area of permanent impact (sq. ft.); conversion of forested and scrub-shrub wetlands (sq. ft.); and stream

flow designation (perennial, intermittent, or ephemeral).

3) Provide a narrative description of construction activities within regulated wetlands, state regulated 100-foot wetland adjacent areas, and waterbodies that shows compliance with the following requirements:

- a. Where new permanent access roads are to be constructed through wetlands, a layer of geotextile fabric or equivalent underlayment must be used;
- b. In the event that construction results in an alteration to wetland hydrology, the breach must be immediately sealed, and no further activity may take place until DPS and DEC staff are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been accepted by DPS and DEC;
- c. Measures to minimize soil compaction in wetlands and waterbodies, including the use of temporary matting, low weight to surface area equipment or constructing when soils are frozen;
- d. Measures and details demonstrating how work areas will be isolated from flowing streams and standing water in wetlands, including the use of water handling methods such as sandbags, cofferdam, piping or pumping.

The details shall include a discussion of:

(i) the management of waters accumulated in the isolated work area to ensure settling and filtering of solids and sediments before water is returned to a wetland or waterbody;

(ii) restoration measures for the isolated work area in streams including the complete removal of the temporary measures, reestablishment of pre-construction contours, and stabilization and seeding immediately following the completion of work;

(iii) the manner by which low flow conditions will be maintained and water depths and velocities similar to undisturbed upstream and downstream reaches will be preserved so that the movement of native aquatic organisms is sustained;

e. Measures to minimize impacts to fish and wildlife during wetland and waterbody construction, including actions to prevent entrapment of fish and wildlife in the work area and, if entrapment occurs, actions to timely and safely move the animals to appropriate undisturbed locations outside the work area; and

f. Procedures to remove all excess fill materials to upland areas at least 50 feet from waterbodies and

outside of the state-regulated 100-foot adjacent area.

Wetland and Waterbody Restoration Specifications

Include the following measures and details:

- 1) Restoration of pre-construction site conditions and stabilization of disturbed wetlands and waterbodies as site conditions and facility design allow within 48 hours or as soon as practicable after completion of construction;
- 2) Restoration of disturbed streams as follows:
 - a. Stabilization of stream banks above ordinary high-water elevation with natural fiber matting, seeded with an appropriate perennial native riparian seed mix, and mulched with straw within two (2) days of final grading;
 - b. Streams must be equal in width, depth, gradient, length, and character as the pre-existing conditions and tie in smoothly to the profile of the stream channel upstream and downstream of the project area. The planform of any stream must not be changed; and
 - c. Woody stream bank vegetation must be replaced with ROW compatible native plantings as site conditions and facility design allow;
- 3) Revegetation of disturbed state-regulated wetlands and 100-foot adjacent areas with native plants. Appropriate native

wetland species mixes must be described (e.g., Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW; ROW compatible native plantings; and/or crop seed mixes consistent with existing, continued agricultural use);

4) Monitoring of restoration areas until an 80% cover of native plant species with the appropriate wetland indicator status has been reestablished over all portions of the restored area;

5) If, after two years, monitoring demonstrates that the criteria for restoration (80% native species cover) is not met, the Certificate Holder must submit a Wetland Planting Remedial Plan (WPRP). The WPRP must include an evaluation of the likely reasons for the results, including an analysis of poor survival; a description of corrective actions to ensure a successful restoration; and a schedule for conducting the remedial work. Once accepted by DPS and DEC, the WPRP must be implemented according to an approved schedule.

Wetland Mitigation Plan for State-Regulated Wetlands

The Wetland Mitigation Plan, intended to compensate for unavoidable loss of wetland functions and values, must include the following:

- 1) The creation of compensatory wetlands at appropriate ratios;
- 2) A construction timeline for the mitigation activities;
- 3) Construction details for meeting all requirements contained in the proposed certificate conditions;
- 4) Agreed-upon performance standards for determining wetland mitigation success;
- 5) Provisions for post-construction annual monitoring and reporting for a period of five years after completion of the wetland mitigation;
- 6) After each agreed-upon monitoring period, the Certificate Holder must take corrective action for any areas that do not meet the above-referenced performance standards to increase the likelihood of meeting the performance standards after five years; and
- 7) If, after five years, monitoring demonstrates that the wetland mitigation is still not meeting the established performance standards, the Certificate Holder must submit a Wetland Mitigation Remedial Plan (WMRP). The remedial plan must include an evaluation of the likely reasons for not achieving performance standards, a description of corrective actions to ensure a successful mitigation, and a schedule for conducting the remedial work. Once accepted

by DPS and DEC, 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.

Attachment C

Invasive Species Management Plan Specifications

Invasive Species Management Plan (ISMP) Specifications

An "Invasive Species" (IS) is a species that is non-native to the ecosystem and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. 6 NYCRR Part 575, ***Prohibited and Regulated Invasive Species***, was adopted in July 2014, to "restrict the sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in New York". The purpose of this Invasive Species Management Plan (ISMP) is to describe the procedures that will be used to help prevent the introduction of new and spread of existing regulated and prohibited invasive plant species as listed in part 575 within the limits of disturbance (LOD) due to construction of the Project.

Purpose and Goals of the Plan

An Invasive Species Management Plan (ISMP) shall at a minimum identify invasive species known or found on the project site, describe the methods which will be used to minimize the spread and expansion of invasive species found on site, and describe the methods which will be used to prevent introduction of new invasive species. The ISMP shall include baseline surveys, construction best management practices, post-construction monitoring and an adaptive management strategy plan.

Baseline Invasive Species (IS) Survey

1. During the development of the EM&CP, a **Pre-Construction Baseline Survey** shall be conducted during the growing season. This survey shall serve as a baseline for the preparation of the draft invasive Species Management Plan. If preconstruction surveys are completed at different times or as part of different phases, the results of the surveys will be incorporated into one ISMP. As the ISMP is revised to include surveys or survey updates the Certificate Holder shall evaluate, in consultation with DEC, DPS, and AGM, whether the results of the surveys also require revisions to the Adaptive Management Plan and the special and high concern species list.
2. The entire Limits of Disturbance (LOD) including permanent and temporary off-ROW access roads shall be surveyed for IS plants as identified in 6 NYCRR Part 575.
3. The survey shall include qualitative observations for IS spread potential from adjacent properties and land use (i.e., IS dominated adjoining property, private off-site access roads that cross the ROW) shall be documented.
4. The preferred survey protocol is for data to be collected in a format which can be uploaded into the statewide database *iMapInvasives*¹.

- a. An existing mobile application is available to facilitate data collection.
- b. Alternately, a custom ArcGIS collector application can be developed by DEC or an alternative protocol may be proposed for acceptance by DEC.
- c. The data collection protocol shall allow for:

¹ iMapInvasives is New York State's on-line, all-taxa invasive species GIS based data management system used to assist in the protection of the state's natural resources from the threat of invasive species. It is managed by the New York State Natural Heritage Program (NYNHP) in partnership with the New York State Department of Environmental Conservation.

- Point data collected in the field on GPS-enabled devices;
- Confidentiality controls to restrict information distribution. This coding hides the data from public view and is only visible to key state agency staff and PRISM² coordinators focused on IS work with funding from the state. Those with access to this data have signed a non-disclosure agreement.

Construction Best Management Practices (BMPs)

Construction BMPs shall be implemented for all IS in all LOD not just jurisdictional areas and at a minimum shall include:

1. Contractor/Subcontractor/Employee Training on cleaning and other IS management procedures;
2. Inspection of Construction Materials and Equipment by trained staff;
3. Minimizing Ground Disturbance in IS dominated areas;
4. Proper Clearing and Disposal Practices (*i.e., cut and leave in dominated area or dispose off-site in landfill-incinerator or approved disposal site*);
5. Equipment Cleaning; and
6. Restoration.

IS Propagation

IS Propagation shall be prevented by, among other stated techniques, the following:

1. Preparing ROW travel routes to prevent IS spread through contact with equipment/vehicles by any practical combination of matting, IS burial, clean fill cover or IS eradication; and/or
2. Providing cleaning stations for equipment/vehicles whenever leaving IS dominated areas along ROW; and/or
3. Other mutually agreeable practices.

Post-Construction Monitoring

1. Post construction surveys shall be conducted in all LOD, both within the ROW and off-ROW areas and access roads;
2. A post construction survey of IS shall be conducted in all temporary off-ROW access road areas during the final SWPPP inspections;

3. A post construction survey of IS shall be conducted in all ROW LOD areas, including permanent access roads, after the second full growing season from final SWPPP signoff;

² (PRISM) Partnerships for Regional Invasive Species Management. PRISMs coordinate invasive species management functions and the DEC has contracted with eight PRISMs across the State.

4. All post-construction surveys shall use the same IS Survey Protocols used during the baseline pre-construction IS survey;
5. Upon completion of the post-construction surveys, a final report shall be prepared and submitted to the DEC, AGM and DPS. The final report shall discuss whether the goals of the ISMP have been achieved and whether any additional post-construction monitoring may be warranted based on whether an expansion of identified IS of Special Concern (ISSC) or High Concern (ISHC) as a result of construction are present, as defined in the Adaptive Management Strategy (AMS) discussed below. If the post construction monitoring report shows the aerial extent of ISSC or ISHC has expanded as defined in the AMS as a result of construction of the Project, the final report shall include a Final Adaptive Management Strategy for achieving the goals of the ISMP. DPS, AGM and DEC will review the final report and DPS, in consultation with the other agencies, will determine whether the goals of the post construction monitoring have been achieved or, if applicable, whether the Final Adaptive Management Strategy must be implemented.

Adaptive Management Strategy Plan

The initial ISMP will include an Adaptive Management Strategy Plan prepared in consultation with and accepted by DEC, DPS and AGM and, at a minimum must include the following elements:

1. A project specific list of Prohibited Invasive Species pursuant to 6 NYCRR Part 575 divided into two sub-lists for which management and control will be required (these lists to be generated by DEC in consultation with DPS and AGM):
 - a. Invasive Species of Special Concern (ISSC), being comprised of *Prohibited* IS³ known to be present in the project area and for which DEC has deemed control is necessary such that there is no expansion as defined below. This list will be generated following results of pre-construction surveys and an analysis of regional threat, (e.g. PRISM Tier rankings).
 - b. Inclusion of a project specific list of Invasive Species of High Concern⁴ (ISHC), being those IS not present in the project area, but which if newly identified in post-construction monitoring, eradication is required. This list will include *Prohibited* IS with the highest management concern, e.g. Giant Hogweed.
2. Management of "expansion":
 - a. ISSC that have expanded under the following terms must be controlled.
 - b. ISHC that have been newly identified must be eradicated.
 - c. In comparing progressive monitoring data of ISSC, expansion may be defined in terms of categorical jump in *iMapInvasives*

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size categories, described as follows:

iMapInvasives size categories:

- New and distinct occurrence
- Up to 10 sq. ft.

³ See 6 NYCRR Part 575.3.

⁴ To be defined by DEC in consultation with the Certificate Holder, DPS and AGM. The list would be selected from the 6 NYCRR 575 species list.

- Up to 0.5 acre
 - Up to 1.0 acre
 - More than 1.0 acre
3. In consultation with DEC, DPS and AGM, a discussion of possible adaptive management strategies and control measures (e.g., eradication) and where and when they may be required if the post-construction survey identifies an expansion of ISSC or ISHC in LOD areas caused by construction. This should include consideration of IS phenology, control methodology (mechanical techniques, pesticide use etc.) and control objectives.
 4. Discussion of conditions that may necessitate additional post construction monitoring and the extent and duration of such extended monitoring considering ongoing Long-Range Vegetative Management Plan practices.

Upon completion of the post-construction monitoring surveys, if the post construction monitoring report shows the aerial extent of ISSC or ISHC has expanded as defined in the Adaptive Management Strategy as a result of construction of the Project, then DPS, AGM and DEC will review the final report and DPS, in consultation with DEC and AGM, will determine whether the goals of the post construction monitoring have been achieved or, if applicable, whether a Final Adaptive Management Strategy Plan must be implemented.

Attachment D

**Specifications for the Development of
Environmental Management and Construction Plan**

**SPECIFICATIONS FOR THE DEVELOPMENT OF
ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN**

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

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

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

A. EM&CP Plan and Profile Drawings and Maps

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

1. Plan and Profile Details

A Line¹² Profile (at an appropriate scale) and plan drawings (scale minimum 1 inch = 200 feet)¹³ showing:

- a. The boundaries of any new, existing, and/or expanded right-of-way (ROW)¹⁴ or road boundaries, and where cables

¹² 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.

¹³ Contour lines (preferably at 5-foot intervals) are desirable on the photostrip map if they can be added without obscuring the required information.

¹⁴ The term "right-of-way" in these *Specifications* includes property, whether owned in fee or easement, to be used for substations, disposal sites, underground terminals, storage yards, and other associated facilities. Where such properties cannot reasonably be shown on the same plan or

- are to be constructed overhead or underground; plus, areas contiguous to the ROW or street within which the Certificate Holders will obtain additional rights.
- b. The location of each Facility structure (showing its height, material, finish and color, and type), structural foundation type (e.g., concrete, direct bury), fence, gate, down-guy anchor, and any counterpoise required for the Facility (typical counterpoise drawings will suffice recognizing that before field testing of installed structures the Certificate Holder may be unable to determine the specific location of all required counterpoise), conductors, insulators, mid-span splices, and static wires and other components attached to Facility structures.
 - c. Existing utility or non-utility structures on the ROW, and indicate those to be removed or relocated (include circuit arrangements where new structures will accommodate existing circuits, indicate methods of removal of existing facilities, and show the new locations, types and configurations of relocated facilities).
 - d. Any underground utility or non-utility structure.
 - e. The relationship of the Facility to nearby fence lines; roads; trails; railways; airfields; property lines; hedgerows; surface waters; wetlands; other water bodies; significant habitats; associated facilities; flowing water springs; nearby buildings or structures; major antennas; oil or gas wells, and blowdown valves.
 - f. The location of any proposed new or expanded switching station, substation, or other terminal or associated utility or non-utility structure (attach plan¹⁵ - 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

photo-strip, maps, or plan drawings used for the transmission line, additional maps or drawings at convenient scales should be used.

¹⁵ Preferably 1" = 50' scale with 2-foot contour lines.

- 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).
- 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;
 - h. areas requiring (off-ROW) danger tree removal; and,
 - i. the location of any areas where specific vegetation protection measures will be employed and the details of those measures to avoid damage to specimen tree stands of desirable species, important screening trees, or hedgerows.

4. 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 Facility. On the plan and profile drawings, indicate:
 - i. stream crossing method and delineate any designated streamside "protective or buffer zone" in which construction activities will be restricted to the extent necessary to minimize impacts on rivers and streams;
 - ii. the activities to be restricted in such zones; and,
 - iii. identify any designated floodways or flood hazard areas to be traversed by the Facility or access roads, or otherwise used for Facility construction or the site of associated facilities.
- b. Show the location of all potable water sources, including springs and wells on the ROW or within 100 feet of the ROW or access roads, indicating, on a site-by-site basis, precautionary measures to be taken to protect each water source.

6. Wetlands

- a. All wetlands and wetland 100-foot adjacent areas (adjacent areas) located within the ROW or crossed by the ROW or any off-ROW access road constructed, improved, or maintained for the Facility shall be depicted on EM&CP drawings. The plan and profile drawings shall delineate the wetland "protective or buffer zone" in which construction activities will be restricted to the extent necessary to minimize impacts on wetlands.
- b. Indicate the location and type (i.e., identification code for regulated town, state, or federal wetlands) of any wetland (e.g., marsh, meadow, bog, or scrub-shrub or forested swamp) within or adjoining the ROW or any access road, as determined by site investigation and delineation.
- c. Indicate type and location of precautionary measures (e.g., mats) to be taken to protect all wetlands, associated drainage patterns, and wetland functions.

7. Land Uses

a. Agricultural Areas

- i. Indicate the locations of sites under cultivation or in active agricultural use including rotational pasture, pasture, hayland, and cropland.
- ii. Indicate the location of any unique agricultural lands including maple sugarbushes, organic muckland and permanent irrigation systems, as well as areas used to produce specialty crops such as vegetables, berries, apples, and grapes.
- iii. Indicate the location of vulnerable soils in agricultural areas that are more sensitive than other agricultural soils to construction disturbance due to slope, soil wetness, and shallow depth to bedrock.
- iv. Indicate the location of all land and water management features including subsurface drainage, surface drainage, diversion terraces, buried water lines, and water supplies.
- v. Designate the site-specific techniques to be

implemented to minimize or avoid construction-related impacts to agricultural resources.

b. Sensitive Land Uses and Resources

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

c. Geologic, Historic, and Scenic or Park Resources

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

d. Recreational

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

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

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

9. **Noise Sensitive Sites**

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

10. **Ecologically and Environmentally Sensitive Areas**

Indicate the general locations of any known ecologically and environmentally sensitive sites (e.g., archaeological sites; fish and wildlife habitat; rare, threatened, and endangered species or habitats; forest and vegetation; open space; areas of important aesthetic or scenic quality; deer winter yards, etc.), within or nearby the proposed or existing ROW or along the general alignment of any access roads to be constructed, improved or maintained for the Facility. Specify the measures that will be taken to protect these resources (e.g., fencing, flagging, signs "Sensitive Environmental Areas, No Access").

11. Invasive Species of Special Concern

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

12. Herbicide

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

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

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

1. Facility Location and Description

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

2. Stormwater Pollution Prevention

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

3. Vegetation Clearing and Disposal Methods

- a. Describe the specific methods and rationale for the type and manner of cutting and disposition or disposal methods for cut vegetation.

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

4. Building and Structure Removal

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

5. Waterbodies

- a. Describe the measures to be taken to protect stream bank stability, stream habitat, and water quality including, but not limited to: crossing technique; crossing structure type; timing restrictions for in-stream work; stream bed and bank restoration measures; vegetation restoration measures; and other site-specific measures to minimize impacts, protect resources, and manage Facility construction.
- b. Indicate the procedures that were followed to inventory such resources and provide copies of any resulting data sheets and summary reports.
- c. Develop a table of waterbodies crossed by the Facility and include: Town (location), Existing Structure Span (mileposts), Stream Name, Field/Map Identification Name, Perennial or Intermittent, New York Stream Classification, Water Index Number, Crossing Method and Length, Fishery Type, GPS coordinates.

6. Wetlands

- a. For each State-regulated wetland, indicate the following: town (location); existing Structure Span (milepost); wetland field designation; NYSDEC classification code; wetland type; proposed structure located within wetland; total area of temporary disturbance/impact; dead end structures in NYSDEC wetlands; tangent structures in NYSDEC wetlands; total area of permanent disturbance in NYSDEC wetlands (sq. ft.); area crossed by Facility (sq. ft.); conversion of State-regulated forested wetlands (sq. ft.).
- b. Describe all activities that will occur within State-regulated wetlands or adjacent areas (e.g., construction, filling, grading, vegetation clearing, and excavation) and assure that the activity is consistent with the weighing standards set forth in 6 NYCRR 663.5(e) and (f). Describe how impacts to wetlands, adjacent areas, associated drainage patterns, and wetland functions will be avoided, and how impacts will be minimized.
- c. Describe the precautions or measures to be taken to protect all other wetlands (e.g., town, federal wetlands) associated drainage patterns, and wetland functions.

7. Land Uses

a. Agricultural Areas

- i. Describe programs, policies, and procedures to mitigate agricultural impacts such as soil compaction. Explain how construction plans either avoid or minimize crop production losses and impacts to vulnerable soils.
- ii. Indicate specific techniques and references to appropriate agricultural protection measures recommended by NYSDAM.

b. Sensitive Land Uses

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

c. Geologic, Historic and Scenic or Park Resources

Describe the geologic, historic, and scenic or park resources that may be affected by construction of the Facility or by construction-related traffic and specify measures to minimize impacts on these resources.

Indicate the procedures that were followed to identify such resources and specify the measures that will be taken to protect or preserve these resources. Reports prepared to identify and analyze such sites shall be made available to Department of Public Service (DPS) Staff upon request.

d. Recreation Areas

Explain how proposed or existing recreation areas will be avoided or accommodated during construction, operation, and maintenance of the Facility.

8. Access Roads, Lay-down Areas and Workpads

- a. Discuss the necessity for access to the ROW, including the areas where temporary or permanent access is required; and the nature of access improvements based on natural features, equipment constraints, and vehicles to be used for construction and maintenance, and the duration of access needs through restoration and the maintenance of the Facility.
- b. Discuss the types of access which will be used and the rationale for employing that type of access including consideration of:
 - i. temporary installations (e.g., corduroy, mat, fill, earthen road, geotextile underlayment, gravel surface, etc.);
 - ii. permanent installations (e.g., cut and fill earthen road, geotextile 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 Facility. Indicate the types of major equipment to be

used in construction or Facility operation; sound levels at which that equipment operates; days of the week and hours of the day during which that equipment will normally be operated; any exceptions to these schedules; and any measures to be taken to reduce audible noise levels caused by either construction equipment or Facility operation.

10. Ecological and Environmentally Sensitive Sites

Indicate the procedures that were followed to identify ecological and environmental resources (e.g., archaeological sites; fish and wildlife habitat; rare, threatened, and endangered species or habitats; forest and vegetation; open space; areas of important aesthetic or scenic quality; deer winter yards) and specify the measures that will be taken to protect or preserve these resources. Reports prepared to identify and analyze such sites shall be identified, and made available upon request.

11. Invasive Species of Special Concern

- a. Provide an invasive species prevention and management plan for invasive species of special concern, prepared in consultation with DPS Staff, NYSDEC, and NYSDAM, based on the pre-construction invasive species survey of invasive species within the ROW.
- b. The plan shall include measures that will be implemented to minimize the introduction of invasive species of special concern and the spread of existing invasive species of special concern during construction (e.g., soil disturbance, vegetation clearing, transportation of materials and equipment, and landscaping/revegetation).

12. Herbicides

- a. Specify the locations where herbicides are to be applied. Provide a general discussion of the site conditions (e.g., land use, target and non-target vegetation species composition, height, and density) and the choice of herbicide, formulation, application method, and timing.
- b. Describe the procedures that will be followed during application to protect non-target vegetation, streams, wetlands, potable waters and other water bodies, and residential areas and recreational users on or near the

ROW.

13. Fugitive Dust Control

Specify appropriate measures that will be used to minimize fugitive dust and airborne debris from construction activity.

14. Petroleum and Chemical Handling Procedures

- a. Include a plan for the storage, handling, transportation, and disposal of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances which may be used during, or in connection with, the construction, operation, or maintenance of the Facility. Address how to avoid spills and improper storage or application in the vicinity of any wetland, river, creek, stream, lake, reservoir, spring, well, or other ecologically sensitive site, or existing recreational area along the ROW and access roads.
- b. Include a plan for responding to and remediating the effects of any spill of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances in accordance with applicable State and Federal laws, regulations, and guidance, and include proposed methods of handling spills of petroleum, fuels, oil, chemicals, hazardous substances, and other potentially harmful substances which may be stored or utilized during the construction and site restoration, operation, and maintenance of the Facility.

15. 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 Facility 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.