

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 18-T-0202 - Application of Eight Point Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII to Construct and Operate a 16.5 Mile 115 kV Transmission Line.

ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED, WITH CONDITIONS

Issued and Effective: October 18, 2019

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 17, 2019

COMMISSIONERS PRESENT:

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

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(Issued and Effective October 18, 2019)

BY THE COMMISSION:

INTRODUCTION

By this Order, we grant to Eight Point Wind, LLC  
(EPW), pursuant to Article VII of the Public Service Law (PSL),  
a Certificate of Environmental Compatibility and Public Need  
(Certificate) to construct and operate a 16.5-mile 115 kilovolt  
(kV) transmission line and associated facilities (Project or  
Facility). The completion of this Project will enable EPW to

connect the generation from its Wind Energy Facility<sup>1</sup> to the bulk power transmission grid.

BACKGROUND AND PROCEDURAL HISTORY

On March 29, 2018, EPW filed an application pursuant to PSL Article VII for a Certificate of Environmental Compatibility and Public Need seeking authorization to construct and operate a 16.5-mile 115 kV transmission line to connect its proposed Wind Energy Facility to the electric grid. On June 12, 2018, the Secretary issued a letter notifying EPW of deficiencies in its application. A supplement and a waiver petition were filed by EPW on July 31, 2018. By order issued December 17, 2018, we granted EPW's motion for waiver.<sup>2</sup>

On December 20, 2018, the Secretary issued a compliance letter informing EPW that its Article VII application, as supplemented, complied with PSL §122 as of December 17, 2018. A prehearing conference was held before the Administrative Law Judges (ALJs or Judges) on Wednesday, March 6, 2019, in Albany. In accordance with PSL §123(1), public statement hearings were held on Wednesday, February 27, 2019, in Hornell, New York, during which 7 people spoke.

On March 18, 2019, EPW filed a notice of impending settlement negotiations. EPW stated that the issues to be

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<sup>1</sup> The EPW Wind Energy Facility was granted an Article 10 Certificate in Case 16-F-0062, Application of Eight Point Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a Wind Energy Project, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued August 20, 2019) (EPW Article 10 Order).

<sup>2</sup> Order on Waiver Requests (issued December 17, 2018). The Commission waived requirements for the Department of Transportation maps specified by our regulations, and instead allowed EPW to use recent US Geological Service topographic maps.

addressed as part of the discussions included those "typical of an Article VII proceeding," meaning that the conditions would address the environmental resources to be impacted by the proposed transmission line and methods to avoid or mitigate such impacts to the maximum extent practicable.<sup>3</sup> Settlement discussions ensued, culminating in Proposed, Revised Certificate Conditions.<sup>4</sup>

An evidentiary hearing was held on Thursday, June 13, 2019. At the evidentiary hearing, testimony and exhibits were proffered by witnesses for EPW, trial Staff of the Department of Public Service (DPS Staff), Department of Environmental Conservation (DEC), and Department of Agriculture and Markets (Ag & Markets). The evidentiary hearing record consists of 85 hearing exhibits and over 150 transcript pages. On June 27 and 28, 2019, the parties submitted post-hearing briefs.

#### PUBLIC COMMENTS

Seven people spoke at the public statement hearings and about the same number commented on the Department's website.<sup>5</sup> The public comments were divided with respect to supporting or opposing this Facility. Opponents of the proposed transmission facility claim that it would negatively impact property values, human health, and local wildlife and roads. Supporters state that the proposed transmission facility would facilitate the use of renewable (wind) energy, help promote energy independence, and begin to help combat negative environmental impacts, such as

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<sup>3</sup> See Affidavit of Service for the Notice of Impending Settlement Negotiations, dated March 13, 2019. In accordance with 16 NYCRR 3.9, the ALJs reported the notice to the Commission on March 22, 2019.

<sup>4</sup> The conditions were entered into the evidentiary record as Hearing Exhibit 85.

<sup>5</sup> Some people commented several times.

air pollution. They note that the EPW will have to upgrade the local roads. One adds that, as an impacted landowner, his experience dealing with EPW has been good, with EPW being responsive to his concerns, professional and helpful.

Public comment in Article VII proceedings is welcomed and actively solicited by the Commission, as it helps to inform the parties and the Commission of the issues that are important to members of the public that live or work near a proposed project. Such comments provide an opportunity to explore relevant and jurisdictional concerns and impacts and craft ways to address them. As noted in the discussion section, below, it appears that such concerns and impacts were considered by the parties during this proceeding and, where appropriate, have resulted in changes or in proposed conditions that are designed to address such concerns and impacts.

#### PROPOSED CERTIFICATE CONDITIONS

According to EPW, the Proposed Certificate Conditions (Hearing Exhibit 85) represent extensive efforts by the parties to reach agreement on all issues. EPW and DPS Staff note that the conditions are based, in part, on the Certificate Conditions proposed in the Wind Energy Facility proceeding<sup>6</sup> and subsequently recommended, with some modifications, by the Examiners in that proceeding.<sup>7</sup> EPW, along with DPS Staff, say that the conditions also track conditions approved by the Commission in prior Article VII proceedings.<sup>8</sup> EPW urges us to adopt the Proposed Certificate Conditions, asserting that they, together with the record, provide the complete evidentiary basis we need to make

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<sup>6</sup> EPW Initial Brief, p. 2; DPS Staff Initial Brief, pp. 3-4.

<sup>7</sup> EPW Initial Brief, p. 2.

<sup>8</sup> EPW Initial Brief, p. 2; DPS Staff Initial Brief, pp. 3-4.

the statutory findings required to issue a Certificate for the Facility.<sup>9</sup> EPW adds that certification of the Facility is necessary to ensure that deadlines for the EPW Wind Energy Facility are met.

DPS Staff notes that the Proposed Certificate Conditions relate to, among other things, the preparation, content, filing, and review of an Environmental Management and Construction Plan (EM&CP); public health and safety; the handling of complaints; Project construction, operation, maintenance, and restoration; and environmental supervision. DPS Staff asserts that these conditions will ensure that the Project is developed pursuant to the Commission's regulations. DPS Staff states that it reviewed the initially proposed conditions and recommended several changes thereto, including measures to avoid impacts to cultural resources; removal of herbicide broadcast and aerial spray methods in favor of more targeted approaches that will be performed with notice to participating landowners; and requiring EPW to become a member of Dig Safely New York.<sup>10</sup> DPS Staff further notes that the proposed conditions would protect bat species, and rare, threatened or endangered species; limit or avoid transportation impacts; address decommissioning of the transmission line and ensure that the Project will be designed in accordance with applicable electrical and mechanical engineering design and construction standards.<sup>11</sup>

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<sup>9</sup> Ag & Markets supports the Proposed Certificate Conditions. Ag & Markets Initial Brief, p. 4. DEC does not object to them. DEC Initial Brief, p. 2.

<sup>10</sup> DPS Staff Initial Brief, pp. 4-5, citing Tr. 96, 116, and 127-129.

<sup>11</sup> DPS Staff Initial Brief, pp. 2-5, citing Tr. 89-92, 99, and 131-132.

As discussed below, we are adopting Certificate Conditions that are based largely on the conditions proposed by the parties to this proceeding, but that are in several instances revised.<sup>12</sup> These conditions, as revised, are attached to this order as Appendix A, and the Certificate is subject to them.

PROJECT DESCRIPTION<sup>13</sup>

The transmission line will originate in the Town of Greenwood, New York, at the Wind Energy Facility's 34.5 kV collection substation located at the corner of Town Line Road and Christian Hollow Road.<sup>14</sup> The Project right-of-way (ROW) will proceed approximately 7.5 miles through the Town of Greenwood, 6.8 miles through the Town of Hartsville and 2.2 miles through the Town of Hornellsville. It will be located on private property, using easement rights that have been previously acquired by EPW from the host landowners. It will terminate at a new interconnection point within New York State Electric and Gas Corporation's (NYSEG) existing 115 kV Bennett substation in the Town of Hornellsville, New York.

The proposed transmission line will require the installation of steel monopoles, steel 3-pole structures, wood H-frame, and wood 3-pole structures at approximately 160 locations along the route. The height of the poles ranges from

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<sup>12</sup> We revised Conditions 22, 29, 35, 126, and 161, among others. The revisions include, but are not necessarily limited to, adding email addresses as a part of the contact information to be provided by EPW, and adding to the notice requirements of Condition 29.

<sup>13</sup> Except where otherwise noted, the following is a summary of the description and location information that is set forth Hearing Exhibit 3.

<sup>14</sup> The collection substation was approved as part of the related Article 10 proceeding. See EPW Article 10 Order.



65 to 135 feet tall, with an average height of 100 feet tall.<sup>15</sup> Most of the line is comprised of single monopole steel structures, which limit the overall visual and land impacts.

The new point of interconnection (POI) will be within NYSEG's existing Bennet Substation, which is located on the east side of NY-36 in the Town of Hornellsville. The new POI will utilize NYSEG's existing pole yard south of the main substation to extend the 115-kV bus so that an additional 115-kV bay can be added to it. The Project will be attached to a new H-frame dead-end structure, to be built on the west side of the substation. The transmission line conductors will be owned and maintained by EPW, but everything else inside of the fence line will be owned, operated and maintained by NYSEG. EPW will perform the engineering, design, procurement, construction, testing, and commissioning of the POI facilities.

#### Other Permits

Certificate Condition 156 calls for issuance of a Water Quality Certificate (WQC) pursuant to §401 of the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act).<sup>16</sup> DPS Staff and DEC support the adoption of this condition, noting that Section 401 of the Clean Water Act requires that any applicant seeking a federal license or permit to conduct an activity that may result in a discharge into navigable waters must obtain a WQC from the State where the activity occurs.<sup>17</sup> DPS Staff adds that the record in this proceeding supports the proposed WQC.

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<sup>15</sup> Tr. 119.

<sup>16</sup> The WQC would be signed by the Chief of the Environmental Certification and Compliance Section in the Office of Electric, Gas, and Water of the New York State Department of Public Service. See Certificate Condition 156.

<sup>17</sup> DEC Initial Brief, p. 8; DPS Initial Brief, p. 10.

EPW also must obtain, as required, authorization for work performed at state highway crossings, including New York State Department of Transportation highway work and use permits; U.S. Army Corps of Engineers (USACE) permits for construction in federal wetlands affected by the facility; a permit pursuant to §404 of the Federal Clean Water Act; and the State Pollutant Discharge Elimination System (SPDES) General Permit.

DISCUSSION

The PSL provides that we may not grant a certificate for the construction or operation of a major utility transmission facility unless we find and determine:

- (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;<sup>18</sup>
- (d) that the facility represents a minimum adverse impact on active farming operations;
- (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) [not applicable]<sup>19</sup>

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<sup>18</sup> Considering 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.

<sup>19</sup> PSL §126(f) applies to gas transmission lines.

(g) that the location of the facility as proposed conforms to applicable state and local laws and regulations;<sup>20</sup> and

(h) that the facility will serve the public interest, convenience, and necessity ...<sup>21</sup>

We generally have used the statute as our guide for the sequence in which we discuss the issues, below.

Need<sup>22</sup>

The record evidence shows that this Project is needed to connect the generation from the Wind Energy Facility to the bulk power transmission grid and that this Project will deliver such output without adversely impacting the bulk transmission system.<sup>23</sup> Based on this evidence, we find and determine that this Project is needed.

Probable Environmental Impacts and Minimization of Adverse Impacts<sup>24</sup>

The nature of the probable environmental impacts associated with the Project, described in detail in Hearing Exhibit 5, are summarized, below. As indicated in this summary,

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<sup>20</sup> 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.

<sup>21</sup> PSL §126(1).

<sup>22</sup> PSL §126(1)(a).

<sup>23</sup> Tr. 92-93, 102.

<sup>24</sup> PSL §126(1)(b) and (c).

such impacts are expected to be minimal, and mostly limited to temporary, construction-related disturbance and inconvenience.<sup>25</sup>

#### Land Uses

Project construction activities would occur primarily on private property in accordance with easements obtained from participating landowners. A ROW of approximately 100 feet will be established along the transmission line, except for some relatively short segments where the ROW could be 75 feet or 150 feet. Within the 100-foot study area, the dominant land cover type is forested (72.78%), followed by agricultural (19.8%). The Project is not located near a significant acreage of developed lands and is not anticipated to change the existing uses adjacent to the ROW.<sup>26</sup>

The Project is consistent with the local land uses addressed by the 2009 New York State Open Space Conservation Plan, and with the land use plans of Steuben County and the town of Hornellsville. With respect to the 2009 Conservation Plan, the Project does not cross the Chemung River, which is the only regional priority conservation project located in Steuben County. Moreover, in the four places where the Project crosses tributaries of this river, erosion control measures will be in place. The Project will advance the goals of the land use plans of Steuben County and of the town of Hornellsville by helping to harvest local wind power resources in a manner that is

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<sup>25</sup> Hearing Exhibit 5 is Exhibit 4 of the Application.

<sup>26</sup> While DPS Staff testified that the likely be conversion of forested land to transmission ROW could result in potentially significant impacts, it added that any such impacts would be offset and limited because (1) the impacts would occur mostly on property of participating landowners, who, says DPS Staff, will benefit from the project, and (2) such impacts will be mitigated by the requirements of the Certificate Conditions. DPS Staff Initial Brief, p. 9, citing Tr. 111-112.

compatible with existing farming and timber harvesting activities. Consistent with the goals and objectives of the Steuben County Economic Development Plan (2014-2015), the Project will facilitate the delivery of renewable energy, which is an objective that is consistent with that plan's strategic priority # 1. Finally, as designed, the Project will help to preserve agriculture as a part of the local economy and help to preserve the more scenic local resources, consistent with the goals of the Town of Hornellsville Comprehensive Plan. No state or local parks, state forests or other public lands are crossed by the Project.

#### Visual Resources

Few significant visual resources occur within the Visual Impact Assessment's (VIA) 0.5-mile transmission line Visual Study Area (VSA). There are no historic sites, State parks, State forest preserves, Scenic Areas of Statewide Significance, or State Nature of Historic Preserve Areas. There also are no National Wildlife Refuges, Natural Landmarks, Recreation Areas, or Forests. The Greenwood State Forest, Canisteo River, and Veteran's Memorial Park are the only visual resources with potential visibility of the Facility that occur in the VSA, and the Project was sited to avoid visibility from Rock Creek and Greenwood State Forests.<sup>27</sup>

Potential visual impacts of the Project are minimized as it is sited in an area that is approximately 70% forested, where existing trees act as a mitigative visual impediment to many full or partial views of structures. Monopoles with slender, uniform profiles are proposed for most of the ROW and

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<sup>27</sup> Rock Creek State Park, though within the VSA located east of the proposed line, is deemed unlikely to have any potential visibility of the transmission structures. Hearing Exhibit 5, pp. 17-18.

non-specular material is proposed for conductors. In addition, to further minimize visual impacts, EPW also will use non-specular wires and, consistent with DPS Staff's recommendation, which is now reflected in Certificate Condition 121, use poles that are painted in a suitable color, such as medium to dark brown or green, or are manufactured of self-weathering steel that uniformly transforms to a rust-brown color.<sup>28</sup>

During construction, visual impacts are anticipated to be minor and temporary in nature. They are expected to include potential visual impacts associated with building and upgrading roads; grading the site; removing vegetation from construction and laydown areas; constructing laydown areas; and installing transmission structures.

#### Cultural Resources

EPW consulted with the Office of Parks, Recreation and Historic Preservation to develop cultural resource studies and, pursuant to these consultations, it performed Phase 1A and Phase 1B studies. Shovel tests during the Phase 1B study identified one historic archaeological site within the Area of Potential Effects (APE), which resulted in EPW rerouting the Facility to avoid impacts to this site. No above-ground architectural resources 50 years or older within the APE were deemed eligible for listing in the National Register of Historic Places. Nonetheless, Cultural Resource Protection Measures will be submitted in the EM&CP to minimize impacts to archaeological and historic resources to the maximum extent practicable.<sup>29</sup> To minimize impacts to unknown archaeological resources, EPW will employ an Unanticipated Discovery Plan to ensure that potential

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<sup>28</sup> Tr. 65.

<sup>29</sup> See Hearing Exhibit 85, Condition 42; Tr. 116.

discoveries are dealt with in accordance with State and federal requirements.<sup>30</sup>

Wetlands/Water Resources

As described in Hearing Exhibit 5, EPW identified wetlands, streams, and other surface waters by means of wetland delineations, field investigations, and review of existing mapping. Existing mapping showed one federal wetland of 0.26 acres within a 200-foot corridor centered on the ROW centerline (Survey Area). Delineations revealed other federal wetlands in the Survey Area as well. No mapped State-regulated wetlands occur within the Survey Area, and the nearest one is located approximately 0.4 miles east of the northern end of the Facility. No other State-regulated wetlands were identified during delineations. Construction of the Facility is expected to only temporarily disturb approximately 1.7 acres of total wetlands.<sup>31</sup>

Efforts were made during the siting process to avoid wetlands and minimize disturbances to them. As a result, no permanent impacts to wetlands associated with pole placement will occur. The impacts of siltation and sedimentation during construction will be negligible, with indirect impacts minimized by prohibiting or restricting construction activities in sensitive areas.

As part of the EM&CP and pursuant to the Certificate Conditions, EPW will submit a final Spill Prevention, Containment, and Counter Measures (SPCC) Plan that will minimize the potential for unintended releases of petroleum and other

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<sup>30</sup> See Hearing Exhibit 5, p. 30; Hearing Exhibit 85, Condition 42(c).

<sup>31</sup> DEC notes that the Project does not include State-jurisdictional wetlands. DEC Initial Brief, p. 3.

hazardous chemicals.<sup>32</sup> Equipment will regularly be inspected for leaks, and equipment and fuels will be stored away from wetlands. Erosion controls and other measures will be employed including DEC's recommendation to use biodegradable mats and blankets for erosion control and to remove temporary silt fencing after construction.

Any temporary disturbances to regulated freshwater wetlands will be restored upon completion of the work. Though there are no regulated or mapped State wetlands within the ROW construction area, EPW will be applying to the USACE for a nationwide wetlands permit concerning potential impacts to federally regulated wetlands.

Open water is uncommon within the ROW, accounting for roughly 0.3% of the total area. Existing mapping showed four State-protected streams within the Survey Area, and field investigations identified 48 total streams in the Survey Area.<sup>33</sup> No poles will be installed within streams, and no fill material will be placed in them. As a result, potential impacts to streams within the ROW are limited to clearing, grading, and other temporary construction activities, and any such impacts will be avoided or minimized through the SWPPP, as specified in the Certificate Conditions. Any temporary stream crossings will be restored following construction.

#### Vegetation Resources/Topography and Soils

The ROW is comprised of three major cover types: open uplands, forested uplands, and terrestrial cultural communities.

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<sup>32</sup> See Hearing Exhibit 85, Condition 14.

<sup>33</sup> DEC notes that the Environmental Conservation Law (ECL) Article 15 applies to the Project because EPW has proposed temporary stream crossings. DEC Initial Brief, p. 3. Certificate Conditions 47, 56, and 58 outline restrictions and processes to ensure that the protections afforded by ECL Article 15 are observed.



No State-listed threatened or endangered plant species were identified.

Poles were sited to confine disturbances to the smallest areas possible, and existing corridors, farm lanes, and logging roads will be used when possible. In addition, existing open fields will be used to the extent practicable, and the width of access roads will be limited to 20 feet. Clearing of the ROW and for access roads will be performed mechanically, thus avoiding the use of herbicides during construction. And, tree clearing will be limited to only 2% of the forest land within one-half mile of the ROW centerline, with such areas thereafter maintained as successional communities for the life of the Facility.

EPW will engage an Environmental Monitor to ensure that construction activities comply with applicable Certificate Conditions and to further avoid, mitigate, or minimize vegetation impacts, where practicable, based upon actual field conditions. EPW also will maintain clean work sites and employ best management practices (BMPs) during construction, including marking the areas to which construction activities are restricted to ensure no disturbance occurs outside these areas. Additionally, construction vehicles and equipment will be restricted to areas within the ROW and designated staging areas. After construction, temporarily disturbed areas will be restored by seeding them with native and typical species and by stabilizing the seeded areas with mulch or straw to help re-establish pre-existing conditions.

Consistent with the requirements adopted by the Siting Board in the EPW Article 10 Order, we likewise require that EPW ensure that all required emission control systems are maintained on all transportation and construction machinery and that any such machinery not be left idling if it is not actively being

used. This requirement will further help to mitigate potentially adverse environmental impacts.

Transportation<sup>34</sup>

The Facility will not cause permanent impacts to transportation as its operation does not require the constant flow of vehicles to the ROW. If repairs are required during operation, temporary impacts, consistent with typical utility maintenance, may occur.

During construction, the ROW will need to be accessed from the roads near the Facility. The impacts resulting from construction-related traffic will be temporary and minimal, with workers likely arriving and departing outside of peak traffic periods. EPW will submit a Maintenance and Protection of Traffic (MPT) Plan as part of the EM&CP that will be designed to minimize traffic-related inconveniences to residents. EPW also will consult with State and local highway transportation agencies regarding traffic conditions near the Facility and notify and coordinate with these agencies regarding construction dates and the implementation of the MPT Plan.

Noise

Because the Facility will interconnect to an existing substation, it does not require new transformers, meaning that no new permanent noise impacts will occur. Noise impacts related to construction will be temporary and minimal, with construction noise mitigated by the attenuating effects of distance and the use of functional mufflers on all construction equipment. Also, since transmission line construction moves along the ROW, no one residence will be exposed to noise impacts for an extended time period.

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<sup>34</sup> See Hearing Exhibit 85, Condition 19.

Electric and Magnetic Fields

The electric and magnetic field (EMF) studies conducted by EPW demonstrated that the EMF levels of the Facility are well below the maximum levels at the edges of the ROW as recommended by Commission guidelines for electric transmission lines, guidelines which also are imposed by the Certificate Conditions. DPS Staff concurred that the Facility's EMF will not exceed the Commission's guidelines.<sup>35</sup>

Communications

The Facility is not expected to present any significant impacts to communication technology, including but not limited to, television, radio, cellular, microwave communications, and Global Positioning System (GPS) antennas.<sup>36</sup> If residents do experience any adverse impacts after the Facility is constructed, they may submit a formal complaint and pursue the resolution of that complaint through the Complaint Resolution Plan, a final version of which is required to be provided as part of the EM&CP.<sup>37</sup>

To help ensure that existing underground communications and gas infrastructure is protected, EPW agreed to the DPS Staff recommendation that it register with and become a member of Dig Safely New York prior to the commencement of construction and that EPW further require all contractors, excavators, and operators associated with its facilities to comply with Commission requirements regarding the protection of

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<sup>35</sup> Tr. 101.

<sup>36</sup> Tr. 93-96.

<sup>37</sup> See Condition 34.

underground facilities.<sup>38</sup> This agreement is incorporated as a condition of this Certificate.<sup>39</sup>

Wildlife Resources

Potential impacts to wildlife species will be minimal as only a small amount of forest habitat will be converted to shrubland. Impacts resulting from construction, such as equipment noise, will be temporary and minor.

The Facility is sited on the edge of forested areas to the maximum extent practicable to minimize forest fragmentation. Species that thrive in the edges of forests will experience a net gain of habitat as a result of the cleared ROW.

The only federally listed species that may potentially occur in the Facility Area is the northern long-eared bat (NLEB), which is listed as threatened. The NLEB also is State-listed as threatened. Impacts to the NLEB, as well as other roosting bats and birds, will be minimized or avoided by limiting tree clearing to November 1 to April 1. Another bat species, the eastern small-footed myotis, may potentially occur in the Facility Area and is State-listed as a species of special concern. The Facility avoids impacts to this species because construction will not disturb potential hibernacula. Several State-listed avian species also may occur in the Facility Area, but no impacts are anticipated to these species or their habitats. The Certificate Conditions include procedures designed to protect any roosting trees or bald eagle nests that

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<sup>38</sup> Tr. 96.

<sup>39</sup> See Condition 118.

may be discovered during construction.<sup>40</sup> As a result, the Facility's construction and operation impacts are not expected to affect local wildlife populations nor will they adversely impacts federal or State threatened or endangered species.

Invasive Species

Eleven invasive species were observed by EPW during its vegetation surveys and field activities. Accordingly, EPW will submit a final Invasive Species Control Plan (ISCP) that details steps to prevent the introduction and spread of invasive species. The ISCP's effectiveness will be evaluated after five years and, if control requirements have not been achieved, the Certificate Holder will submit an Invasive Species Remedial Plan that evaluates the likely reasons for not achieving the goals and schedules remedial work.<sup>41</sup>

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<sup>40</sup> DEC notes that the Environmental Conservation Law (ECL) Article 11 and 6 NYCRR Part 182 apply to the Project because its construction could result in a take if a threatened or endangered species or its nest is discovered during construction or maintenance activities associated with the Project. DEC Initial Brief, p. 3. However, DEC states that there are no identified bald eagle nests within the buffer areas that are recommended by the DEC's Conservation Plan for Bald Eagles in New York State (NYSDEC 2016). Moreover, as a precaution, comprehensive measures have been added through the Certificate Conditions to address potential, unexpected discoveries. DEC expressly notes its support for Certificate Conditions 43-46, which address these concerns. DEC Initial Brief, pp. 8-9.

<sup>41</sup> DEC notes that the Environmental Conservation Law (ECL) Article 9 applies to the Project because the construction of the Project could result in the spread of invasive species. It supports the conditions related to protecting against invasive species. DEC Initial Brief, pp. 3-5. These conditions include 51, 57, 66(b), 70 and 86. EPW Initial Brief, p. 7.

Conclusion Regarding Environmental Impacts

As noted above, most environmental impacts are expected to be temporary and minor. The conditions now adopted by us require the use of Commission-approved BMPs and provide for restoration of any impacted areas once construction is completed. Even the visual impacts, which given the height of the poles cannot be fully avoided, have been minimized by requiring the use of monopole structures that are painted in a suitable color or manufactured of self-weathering steel, and by the use of non-specular wires. Thus, based on the record evidence, we find that the Facility represents the minimum adverse environmental impacts considering the state of available technology and other pertinent considerations, such as the effect on agricultural lands and wetlands.

We also find that the Facility represents the minimum adverse environmental impacts considering the nature and economics of alternatives. We note that alternative routes were evaluated but were deemed inferior to the proposed route in terms of environmental impacts, construction and logistics, and other considerations. For example, an alternative that would have run alongside NYS Route 28 would have, among other things, materially increased the visual impacts of the Facility, while another alternative, sited along County Roads 61 and 28, would have been longer and would have increased visual and agricultural impacts. Alternative transmission methods and undergrounding also were considered but were rejected due to infeasibility or significantly increased cost and environmental impacts.<sup>42</sup>

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<sup>42</sup> Hearing Exhibit 5, pp. 1-3.

Active Farming Operations That Produce Crops, Livestock, and Livestock Products<sup>43</sup>

Agricultural land (including pasture, hay, and cultivated crop fields) covers approximately 19.8% of the ROW.<sup>44</sup> Some of these fields are in designated Agricultural Districts.<sup>45</sup>

EPW states that, through careful siting and design, it avoided unnecessary impacts to active agricultural land. It states that the construction of the Facility will temporarily disturb only 2% of the agricultural land in the Study Area.

EPW notes that it consulted with farmers on pole siting to minimize agricultural impacts and says it will consult with participating farmers to coordinate construction with farming activities to further avoid impacts. EPW adds that, if any adverse impacts do occur during the growing season, it will compensate the affected landowner at appropriate fair market value.<sup>46</sup>

An Agricultural Monitor will be employed by EPW to ensure that applicable Certificate Conditions are enforced, and agricultural impacts are minimized.<sup>47</sup> Temporarily disturbed active agricultural lands will have topsoil stripped prior to construction and replaced upon completion of the Facility,<sup>48</sup> thus allowing temporarily disturbed agricultural lands to return to pre-existing crop and pasture land over time. Farm roads used for access will be improved.<sup>49</sup> Generally, all temporary

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<sup>43</sup> PSL §126(1)(d).

<sup>44</sup> Hearing Exhibit 5, p. 10.

<sup>45</sup> Id.

<sup>46</sup> EPW Initial Brief, p. 16.

<sup>47</sup> Hearing Ex. 85, Certificate Condition 93.

<sup>48</sup> Hearing 5, p. 51; Hearing Ex. 85, Certificate Conditions 101, 112.

<sup>49</sup> Hearing Ex. 85, Certificate Condition 99.

disturbances to agriculture will be restored or remediated, with such restoration and remediation activities monitored for at least two growing seasons following construction.<sup>50</sup>

The conditions we are adopting to help minimize impacts to active farmlands highlight the importance that we and the parties place on preserving this resource and on responding to stakeholders' input. We note, for example, that when Ag & Markets testified that several poles should be shifted away from the locations originally proposed by EPW so that the poles would (1) not be in the middle of agricultural fields, (2) allow the farmer sufficient room to maneuver between the poles and the field edge, or could be eliminated altogether, thereby fully avoiding permanent agricultural impacts,<sup>51</sup> EPW generally agreed, except for the instances where relocating the transmission structures would violate EPW's agreement with the landowner.<sup>52</sup> In response to a request by the Administrative Law Judges, Ag & Markets and EPW specifically addressed the locations of pole structures 110, 123, 127, 134, 135 and 161 with respect to their placement and impact on agricultural lands.<sup>53</sup> Both Ag & Markets and EPW confirmed that the identified pole structures were either in inactive agricultural land, non-agricultural land, or an existing hedgerow, or that their locations complied with Ag & Markets guidelines.<sup>54</sup> Also both Ag & Markets and EPW confirmed their conclusions that the Project represents the minimum adverse impact to active farming to the maximum extent practicable. Based on the record as summarized above, with the

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<sup>50</sup> Hearing Ex. 85, Certificate Conditions 97, 100, 105-108, 111.

<sup>51</sup> Tr. 74, 158.

<sup>52</sup> Tr. 74.

<sup>53</sup> Tr. 18-19.

<sup>54</sup> Ag & Markets Initial Brief, p. 6; EPW initial Brief, pp. 17-18.



inclusion of the Certificate Conditions that we are adopting, we find that this Facility represents a minimum adverse impact on active farming operations.

Undergrounding

The Commission must also determine what part of the Facility, if any, will be underground. PSL § 126(1)(e)(1). We determine that no part of the Facility will be located underground. This is due, in large part, to the significantly increased costs and environmental impacts attributable thereto.<sup>55</sup>

Conformance to Long-Range Plan<sup>56</sup>

The State Energy Plan (SEP) states that the transmission network may need to be enhanced to accommodate new large-scale renewable resources.<sup>57</sup> It sets targets to reduce greenhouse gas emissions and increase the amount of electricity that is generated using renewables.<sup>58</sup> EPW asserts that this Facility will contribute to the State's renewables goals, by connecting a renewable generation facility to the grid, thereby helping to reduce GHG emissions.<sup>59</sup> DPS Staff likewise notes its testimony that EPW has demonstrated that the Facility is needed and that it supports long-range electric planning designed to meet the State CES goals.<sup>60</sup> We must make a finding that the 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." PSL

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<sup>55</sup> Hearing Exhibit 5, pp. 1-3.

<sup>56</sup> PSL §126(1)(e).

<sup>57</sup> EPW initial Brief, p. 19.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> Tr. 102.

§126(1)(e)(2). We can and do make this finding because, among other things, this Facility has been demonstrated, as summarized above, to conform to the SEP and related State policies.

Conformance to State and Local Laws<sup>61</sup>

The discussion of issues elsewhere in this order demonstrates that the construction and operation of the Facility will comply with applicable State laws.<sup>62</sup> In this section, we discuss compliance with certain local laws.

At the outset, we note a discrepancy between EPW's description in its Initial Brief of its request for waiver of substantive provisions of local laws, the language of Certificate Conditions 8(a) and 126 as proposed by the parties, and the local laws of Hornellsville and Greenwood that were submitted as part of this record. Specifically, the two conditions, as proposed, refer to waiver requests that are not mentioned by EPW in its Initial Brief (i.e., waiving construction hours in the local laws of Town of Hornellsville and construction noise limits in the local laws of the Town of Greenwood). Moreover, the local laws of Hornellsville and Greenwood that were submitted as part of this record do not appear to contain the construction hours and construction noise limits. To address these inconsistencies, we are deleting the

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<sup>61</sup> PSL §126(1)(g).

<sup>62</sup> See pp. 7-8, *supra*; see also Hearing Exhibit 85, Certificate Conditions 8(b), 20, and 82.

unnecessary language from the proposed conditions and adopting the conditions as revised.<sup>63</sup>

In its brief, EPW raises a concern with respect to Section 12(N) of the Town of Greenwood's Wind Energy Facility Law, a provision that restricts construction of wind turbine generators to daylight hours. EPW does not interpret the law as applying to this Facility -- because it is not a wind facility -- but EPW nonetheless asks that we refuse to apply Section 12(N) if we, or any party, disagrees with its interpretation. DPS Staff agrees that the law does not apply. We concur and therefore are denying EPW's request as moot. However, we are adopting the construction time limits contained in Certificate Condition 126 (7:00 a.m. to 7:00 p.m.). In so doing, we note that these limits are the same as those supported by the Town of Greenwood and adopted by the Siting Board in the Wind Energy Article 10 proceeding.<sup>64</sup> Having consistent time limits should avoid undue confusion and should help facilitate the timely completion of this Facility.

Considering the foregoing, we find and determine that the location of the Facility conforms to applicable State and local laws.

#### Public Interest Finding

As discussed *supra*, this Facility is necessary to interconnect the Wind Energy Facility to the electric grid and

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<sup>63</sup> Thus, we are deleting ", except for the construction hours contained in the Section 301.2(3) of the Town of Hornellsville Zoning Ordinance that the Public Service Commission refuses to apply as unreasonably restrictive in this proceeding" from Certificate Condition 8(a) and "The Certificate Holder has requested that the Commission not apply the construction noise limits in the Town of Greenwood Local Law because they are unreasonably burdensome. Accordingly the following shall apply:" from Certificate Condition 126.

<sup>64</sup> EPW Article 10 Order, p. 59, and Attachment A, Condition 120.

will serve the public interest by ensuring that generation from the Wind Energy Facility can contribute to achieving New York's renewables and Green House Gas emissions reductions targets. As also discussed above, EPW has made extensive efforts to avoid and minimize the Facility's impacts on the public and on the local environmental resources. Accordingly, we determine that the record supports a finding by us that the Facility will serve the public interest, convenience and necessity.

Certificate Condition 161 - Decommissioning

Certificate Condition 161 requires a Final Decommissioning Plan and proof of financial security to be filed in the EM&CP. The condition refers to the Decommissioning Plan that was filed and approved in the EPW Article 10 Order and it specifies the type of information that must be provided in the plan, including, in relevant part, the requirement that EPW "shall work with DPS Staff on an acceptable form of letter of credit to be held by the DPS."

In the EPW Article 10 Order, the Siting Board approved a similar, proposed condition. However, that condition requires EPW to work with DPS Staff and the Towns of Greenwood and West Union on an acceptable form of irrevocable letter of credit representing each Town's portion of decommissioning costs, which states on its face that it is held by and for the sole benefit of the Town of Greenwood or the Town of West Union.<sup>65</sup> We find that a similar outcome should be explored and implemented in this case. Therefore, we direct EPW to contact the Towns of Greenwood, Hartsville, and Hornellsville to determine each

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<sup>65</sup> EPW Article 10 Order, p. 60. The wind generation facilities authorized to be constructed in the EPW Article 10 case will be located on leased or purchased land in the Towns of Greenwood and West Union. The Towns of Greenwood and West Union are parties to the EWP Article 10 case.

Town's willingness to work with EPW, in consultation with DPS staff, to craft an acceptable form of irrevocable letter of credit to be held by and for the sole benefit of each Town.<sup>66</sup> We further modify proposed Certificate Condition 161 to replace "Applicant" with "Certificate Holder" and to state that the Certificate Holder shall not encumber, or create any security interest(s) in, the letter of credit in favor of a third party.

#### CONCLUSION

PSL §126 requires that we find and determine need for a proposed facility; whether a facility will achieve the minimum imposition of adverse environmental impacts, considering the state of available technology and the nature and economics of various alternatives; that the facility represents a minimum adverse impact on active farming operations; what portion of the line should be underground; that the facility conforms to a long-range plan for expanding the State grid; and that the location of the facility conforms to applicable State and local laws and regulations, except for those local laws we refuse to apply because they are unreasonably restrictive in view of the existing technology, factors of cost or economics, or the needs of consumers; and that the facility will serve the public interest, convenience, and necessity. As discussed, *supra*, after considering the relevant factors, we find and determine that the record in this proceeding enables us to make those findings. And, based on the record before us, the arguments of

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<sup>66</sup> As noted above, the transmission line will traverse private property located in the Towns of Greenwood, Hartsville, and Hornellsville (Towns). The Towns were served with copies of the Application but did not request party status in this proceeding. In the event that any of the Towns decline to hold a letter of credit and execute an agreement with EPW, EPW shall, as part of its EM&CP filing, propose comparable, alternative financial security.

the parties, and all applicable laws and policies, we grant the Certificate of Environmental Compatibility and Public Need to Eight Point Wind, LLC, subject to the conditions set forth in Appendix A to this order.

The Commission orders:

1. Subject to the conditions adopted in this Order, Eight Point Wind, LLC is granted a Certificate of Environmental Compatibility and Public Need (Certificate) authorizing it to construct and operate approximately 16.5 miles of new overhead 115 kV transmission line to connect the Eight Point Wind, LLC energy center in West Union and Greenwood, New York, to the existing New York State Electric and Gas Corporation (NYSEG) 115 kV Bennett substation in Hornellsville, New York and to construct the point of interconnection facilities that will allow the transmission line to interconnect within the existing NYSEG substation.

2. The Certificate Conditions included as Appendix A, attached to this Order, are hereby approved and incorporated into this Order.

3. The Chief of the Environmental Certification and Compliance Section in the Office of Electric, Gas, and Water of the New York State Department of Public Service is authorized to sign and issue a Water Quality Certification as contemplated by Certificate Condition 156.

4. Except for deadlines established by statute, the Secretary may extend any deadlines established by this order for good cause shown. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

5. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 18-T-0202 - Application of Eight Point Wind, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII to Construct and Operate a 16.5 Mile 115 kV Transmission Line.

APPENDIX A - CERTIFICATE CONDITIONS

1. Subject to the conditions adopted in the attached Order, Eight Point Wind, LLC (Certificate Holder) is granted a Certificate of Environmental Compatibility and Public Need (Certificate) authorizing it to construct and operate approximately 16.5 miles of new overhead 115 kV transmission line to connect the Eight Point Wind, LLC energy center in West Union and Greenwood, New York, to the existing New York State Electric and Gas Corporation (NYSEG) 115 kV Bennett substation in Hornellsville, New York, and to construct the point of interconnection facilities (POI) that will allow the transmission line to interconnect within the existing NYSEG substation. The 16.5-mile 115 kV transmission line and associated facilities are hereafter referred to as the Project or the Facility.

2. The Certificate Holder shall, within 30 days after the issuance of the Certificate, submit to the Commission either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate. Failure to comply with this condition shall invalidate the Certificate.

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



4. The Certificate Holder shall integrate and coordinate maintenance of the certified Project with that of adjacent facilities, if any.

5. The Certificate Holder shall construct the Project in accordance with this Certificate, with the approved Environmental Management and Construction Plan (EM&CP), including any Best Management Practices (BMP) provided therein, and any subsequent Commission orders.

6. Except for deadlines established by statute, the Secretary may extend any deadlines established by this order for good cause shown. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

#### **B. Description of Route**

7. The proposed location of the Project is approved as set forth in the "Location of Facilities" in Exhibit 2 of the Application.

#### **C. Laws and Regulations**

8. Consistent with the discussion concerning State and local laws:

a. The Certificate Holder shall construct and operate the Facility in accordance with the substantive provisions of the applicable local laws as identified in Exhibit 7 of the Application and as such Application has been further clarified and supplemented in the evidentiary record of this proceeding by the Certificate Holder. Certificate Conditions contained herein impose reasonable construction time/hour limits.

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 authorized by the Certificate shall apply, except (i) as required by Public Service Law (PSL) Section 68 and regulations and orders adopted thereunder; (ii) a Highway Work Permit and Use and Occupancy Permit pursuant to 17 NYCRR Part 131; (iii) those provided by otherwise applicable State law for the protection of employees engaged in the construction and operation of the facilities; and (iv) those permits issued under a federally delegated or pursuant to federally approved environmental permitting program.

c. The Certificate Holder shall construct the Project in a manner that conforms to all standards of the American National Standards Institute (ANSI) including, without limitation, the National Electrical Safety Code (NESC), including Institute of Electrical and Electronics Engineers (IEEE) Standard IEEE C2 latest version, and any stricter standards adopted by the Certificate Holder.

9. Nothing herein shall preclude the Certificate Holder from voluntarily subjecting itself to any State or local approval, consent, permit, certificate, or other condition for the construction or operation of the Project, subject to the Commission's ongoing jurisdiction.

a. The Certificate Holder shall coordinate all work performed in the rights-of-way of city, town, and county highways with the respective highway departments for such highways, subject to the Commission's ongoing jurisdiction.

b. A copy of each permit or approval received from the issuing agencies including any host community agreements and executed road use permits, if any, shall be provided to New York State Department of Public Service (DPS Staff) by the Certificate

Holder promptly after receipt by the Certificate Holder of such permit or approval and before commencement of construction across the affected area.

10. If the Certificate Holder believes that any action taken, or determination made, by a State or local agency in furtherance of such agency's review of any applicable regulatory permits or approvals, or any action or inaction by a utility subject to the Commission's jurisdiction, is unreasonable or unreasonably delayed or withheld, the Certificate Holder may petition the Commission, upon reasonable notice to that agency or utility, to seek a determination of any such unreasonable or unreasonably delayed action, inaction or determination. The permitting agency or utility may respond to the petition within ten business days to address the reasonableness of any requirement or delay.

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

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

12. The Certificate Holder shall engineer and construct the Facility to be fully compatible with the operation and maintenance of any nearby electric, gas, telecommunication, water, sewer, and related facilities; details of such other facilities and measures to protect the integrity, operation and maintenance of those facilities shall be presented in the proposed EM&CP. The Facility shall be designed and constructed to avoid adverse effects on the cathodic protection system and

physical conditions of existing structures and any fuel gas pipelines. The EM&CP will include any agreements with the owners or operators of adjacent or nearby utilities, that will be impacted by construction or operation of the Project.

13. The Certificate Holder shall notify persons who own properties that abut the Facility Right-of-Way (ROW), and persons who reside on such properties (if different from the owner), of the planned construction activities and schedule affecting their residences at least fourteen days, but no more than 30 days, prior to the commencement of construction. The Certificate Holder may give such notices by affixing them to the doors of residences, notifying them by United States Mail or by electronic mail. The Certificate Holder shall provide a copy of the generic form of such notice to the Secretary prior to the commencement of construction.

14. A final Spill Prevention, Containment and Counter Measures (SPCC) Plan or an equivalent to minimize the potential for unintended releases of petroleum and other hazardous chemicals during Facility construction and operation shall be filed in the EM&CP. The SPCC Plan or its equivalent shall be applied to all relevant construction activities and contain information about water bodies, procedures for loading and unloading of oil, discharge or drainage controls, procedures in the event of discharge discovery, a discharge response procedure, a list of spill response equipment to be maintained on-site (including a fire extinguisher, shovel, tank patch kit, and oil-absorbent materials), methods of disposal of contaminated materials in the event of a discharge, and spill reporting information. Any spills shall be reported in accordance with State and/or federal regulations.

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

16. Dust Control Procedures Plan for minimizing the amount of dust generated by construction activities, consistent with the Standards and Specifications for Dust Control, as outlined in the New York State Standards and Specifications for Erosion and Sediment Controls, shall be submitted in the EM&CP.

17. Parking for Project construction workers shall be in designated areas which do not interfere with normal traffic, cause a safety hazard, or interfere with existing land uses; these areas shall be designated in the EM&CP.

18. Direct disturbance to adjacent properties shall be avoided by accessing the Facility ROW from existing roadways or approved off-ROW access roads.

19. For each road crossing and location where construction vehicles will access the Facility ROW frequently from local roadways, the Certificate Holder shall implement a Maintenance and Protection of Traffic (MPT) plan that identifies procedures to be used to maintain traffic and provide a safe construction zone for those activities within the roadway ROW. The MPT plan will be included in the EM&CP and shall address temporary signage, lane closures, placement of temporary barriers and traffic diversion.

a. All signage utilized shall comply with the New York State Department of Transportation (NYSDOT) Manual of Uniform Traffic Control Devices. Placement of signs shall be determined in consultation with the jurisdictional agency. At a minimum, signs shall be placed at the following distances: i. Signs

announcing construction at 500 feet and 1,000 feet; ii. Signs depicting workers at 300 feet; and iii. Where blasting is to take place within 50 feet of a road, a blast warning sign at 1,000 feet.

b. Flagmen shall be present at all times when equipment is crossing any road, when equipment is being loaded or unloaded, and where two-lane traffic has been reduced to one lane. All flagging operations shall comply with 17 NYCRR Part 131.

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

21. The Certificate Holder shall have the right to require that any person seeking to access the Facility or supporting areas first be appropriately trained in environmental protection and safety.

#### **E. Environmental Management and Construction Plan**

22. The Certificate Holder shall not begin site preparation or construction with respect to a specific portion of the Project -- except surveying, soils testing, and such other related activities as are necessary to prepare the final design plans -- before it has filed with the Commission and served the parties, and the Commission has approved, the EM&CP for the relevant portion of the Project. The Certificate Holder is also authorized to file with the Secretary a proposed plan for tree clearing, commencing November 1, 2019, and ending March 31, 2020 (the Tree Clearing Plan). A copy will also be provided to New York State Department of Environmental Conservation (DEC) staff. The Tree Clearing Plan shall comply with all applicable Certificate Conditions and shall also include sufficient

information regarding how proposed clearing activities are directly tied to facility layout so that, including facility design drawings as necessary, to ensure clearing is limited to what will be required for Project construction.

23. The EM&CP shall be prepared in accordance with the terms of the Certificate and, as applicable, to the construction, operation and maintenance of the Facility, and the environmental protection measures contained in the Application. The exhibits supplied for the record shall be incorporated into the EM&CP, as applicable. These environmental protection measures shall be employed, as applicable, during construction, operation and maintenance of the Facility. Provisions of the Certificate, EM&CP, and orders approving the proposed EM&CP, shall be accommodated, as applicable, in any design, construction, ownership, or maintenance contracts associated with the Facility.

24. The EM&CP shall be organized and developed in accordance with these Certificate Conditions.

25. During the preparation of the EM&CP, the Certificate Holder shall contact the DEC Region 8 Natural Resources Supervisor and the NYS Natural Heritage Program to check for any updates or changes of known Rare, Threatened, or Endangered species or habitat or Significant Natural Communities in the Project Area.

26. Except where this Certificate requires otherwise, the environmental protection measures contained in the Application, all supplemental filings, and exhibits supplied for the record, including but not limited to the BMP, shall be incorporated into the EM&CP. These measures shall be applied during construction, operation and maintenance of the certified Project.

27. Deviation from the certified centerline, design height and location of structures described in "Location of Facilities" Exhibit 2 in the Application shall be allowed for appropriate environmental or engineering reasons, except where a conflict with a provision of the Order would be created.

**F. EM&CP Contents**

28. The EM&CP shall include the requirements contained in the guidance document provided in Hearing Exhibit 79 (ENV-4, DPS Staff Environmental Panel Exhibit). In its sole discretion, the Certificate Holder will endeavor to submit drafts of applicable sections to DEC for review and comment, within 10 days prior to submitting the EM&CP. There will be no extensions of the 10-day period.

**G. EM&CP Process**

29. For applicable phases of the EM&CP filing, contemporaneously, the Certificate Holder shall file five hard copies and one electronic copy of the EM&CP to the Commission; and provide one electronic copy to each party listed on the party list; and one hard copy and one electronic copy to the DEC Region 8 Natural Resources Supervisor at DEC's Office in Avon, New York. The Certificate Holder shall also place hard copies for inspection by the public in at least one public library or other convenient location in each municipality in which construction will take place. Contemporaneously with the filing and service of the EM&CP, the Certificate Holder shall provide notice, in the manner specified below, that the EM&CP has been filed.

- a. The Certificate Holder shall serve written notice(s) of filing the EM&CP on all parties to this proceeding, on all statutory parties to this proceeding, on all persons



required to be served with the Application by statute or regulation, on owners of all properties that abut the ROW and all properties on which property rights are required, and on the residents of properties abutting the line, and shall attach a copy of the notice to each copy of the EM&CP. Further, the Certificate Holder shall contemporaneously publish the notice in a newspaper of general circulation in the vicinity of the Project. Service upon state agencies shall be in the same manner and at the same time as filing with the Secretary.

For all permanent ROW or off-ROW access that may be acquired for the Project after issuance of the Certificate, the Certificate Holder shall cause an examination of title (title search) to be conducted in the same manner as would be conducted by a reputable title insurance company to identify all of-record owners, mortgagees, lien holders, leaseholders, or others with an interest in such property rights to be acquired. The Certificate Holder shall serve written notice(s) of filing the EM&CP on each such person identified, on each person owning the underlying land right to an existing easement being used, and on each person currently leasing a portion of any ROW to be used for the Project.

b. The written notice(s) and the newspaper notice(s) shall contain, at a minimum, the following: i. a statement that the EM&CP has been filed; ii. a general description of the Project, the need for the Project, the alternatives considered, if any, and of the EM&CP; iii. a listing of the locations where the EM&CP is available for public inspection; iv. a statement that any person desiring additional information about a specific geographical location or specific subject may request it from the Certificate Holder; v. the name, mailing address, local or toll-free telephone number and email address of the Certificate Holder's representative; vi. the mailing address and email address of Secretary to the Commission and the DPS website; and

vii. a statement that any person may be heard by the Commission on any matter or objection regarding the EM&CP by filing written comments with the Commission and the Certificate Holder within 30 days of the filing date with the Commission of the EM&CP (or within 30 days of the date of the newspaper notice, whichever is later). Comments on subsequent revisions to the EM&CP, in response to the aforementioned written comments, shall be permitted within 15 days of service by electronic means of said revisions.

30. 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.

31. After the EM&CP has been approved by the Commission:

a. The Certificate Holder shall report any proposed changes to the EM&CP to DPS Staff. DPS Staff will refer to the Commission for approval any proposed changes that cause substantial change in environmental impact, any proposed changes that relate to contested issues decided during the proceeding, and any proposed changes affecting State highways. DPS Staff will have authority to approve all other proposed changes, in accordance with the procedure outlined here, and shall submit reports of such changes to the Secretary or the Secretary's designee, which reports shall be posted on the Department's website under the case number.

b. Upon being advised that DPS Staff will refer a proposed change to the Commission, the Certificate Holder shall notify all parties that have requested (before the approval of the

EM&CP) to be so notified, as well as participating and adjacent property owners or lessees whose property is affected by the proposed change. The notice shall: (1) describe the original conditions and the requested change; (2) state that documents supporting the request are available for inspection at specified locations; and (3) state that persons may comment by writing to the Secretary of the Commission within 15 days of the notification date and (4) provide the Secretary's electronic mail address, phone number and mailing address. Any delay in receipt of written confirmation will not delay Commission action on the proposed change.

c. The Certificate Holder shall not execute any proposed change until it receives written approval of the Commission, if Commission approval is required pursuant to subparagraph (a) of this paragraph, or oral or written approval from DPS Staff, in the case of a change that DPS Staff has authority to approve, except in emergency situations threatening personal injury, property damage, or severe adverse environmental impact, or as specified in the EM&CP. Where the Certificate Holder has obtained oral approval from DPS Staff for a change, DPS Staff shall confirm such approval in writing within ten business days. All DPS Staff approvals of changes made pursuant to subparagraph (a) of this paragraph shall be filed on the Department's website under this case number.

#### **H. Notices, Reports, and Consultations**

32. Applicable provisions of the Certificate, EM&CP, and orders approving the EM&CP shall be accommodated in any design, construction, ownership, or maintenance contracts associated with the Project.

33. The Certificate Holder shall notify all construction contractors that the Commission may seek to recover penalties for violation of the 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.

34. A Final Complaint Resolution Plan for both construction and operation phase shall be filed as part of the EM&CP. A copy of the Final Complaint Resolution Plan shall be submitted to the Facility document repositories. The plan shall address complaint reporting and resolution procedures for all construction and operation issues. The plan shall include protocols for:

- a. Registering a complaint;
- b. Notifying the public of the complaint procedures;
- c. Notifying Town officials of complaints as they are received and responded to, and informing Town officials of the manner of response and actions taken;
- d. Responding to and resolving complaints in a consistent and respectful manner;
- e. Logging and tracking of all complaints received and resolutions achieved;
- f. Reporting to DPS Staff any complaints not resolved within 60 days of receipt;
- g. Complaints not resolved within 60 days may be brought by the complainant to the Commission and will be subject to Commission complaint resolution procedures;
- h. Filing an annual report of complaint resolution with the Secretary; and

i. Addressing impacts to existing off-air television coverage, if the Complaint Resolution process determines that Facility operation has resulted in impacts to existing off-air television coverage, by requiring the Certificate Holder shall address each individual problem by investigating methods of improving the television reception system. Should this prove ineffective, cable television hookups shall, at the Certificate Holder's expense, be provided (in areas where cable service is available), or in areas where cable service is not available or not practical, direct broadcast satellite reception systems to any affected resident so desiring this compensation.

35. The following notice requirements shall apply to the Certificate Holder:

a. No less than two weeks before commencing site preparation, the Certificate Holder shall: i. provide notice to local officials and emergency personnel; ii. provide notice to NYSEG; and iii. 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).

b. The notice shall be written in language reasonably understandable to the average person and shall contain: i. a map and a description of the Project in the local area; ii. the anticipated date for start of construction; iii. the name, address, and local or toll-free telephone number of an employee or agent of the Certificate Holder; and iv. a statement that the Project is under the jurisdiction of the Commission, which is responsible for enforcing compliance with environmental and construction conditions, and which may be contacted at an

address, email, and telephone number to be provided in the notice;

c. Upon distribution, a copy shall be submitted to the Secretary of the Commission.

36. The following pre-construction meeting requirements shall apply to the Certificate Holder:

a. At least two weeks prior to the start of construction, the Certificate Holder shall hold a preconstruction meeting. An agenda, location, and invitation list shall be agreed upon between DPS Staff and the Certificate Holder.

b. The invitation list shall include at a minimum DPS Staff and staffs of the DEC, NYSDOT, Town supervisors and Town Highway superintendents, NYSEG, and New York State Department of Agriculture and Markets (Ag & Markets).

c. The invitation list for the preconstruction meeting and all subsequent construction meetings for the duration of the project shall include NYSEG.

d. The Certificate Holder shall supply draft minutes from this meeting to all attendees, the attendees may offer corrections or comments, and the Certificate Holder shall issue the finalized meeting minutes to all attendees.

e. If, for any reason, the construction contractor cannot finish the construction of this Project, and a new construction contractor is needed, there will be another preconstruction meeting with the same format as outlined above.

37. Before Project construction begins in a particular ROW segment with respect to issues such as highway and traffic safety, both edges of the Project ROW shall be delineated and marked as specified in the EM&CP for that segment. Also, the Certificate Holder shall stake and flag all off-ROW access

roads, working and staging areas and mark any known danger trees.

38. During construction the Certificate Holder shall provide DPS Staff with weekly status reports transmitted by electronic mail summarizing construction and indicating construction activities and locations scheduled for the next two weeks.

39. Within ten days after the Project is in service, the Certificate Holder shall notify the Commission of that fact.

40. Within ten days of the completion of final restoration that may be necessary, the Certificate Holder shall notify the Commission that all restoration has been completed in compliance with this Certificate and the EM&CP.

41. During construction, the Certificate Holder shall periodically consult with State and local highway transportation agencies about traffic conditions near the project site and shall notify each such transportation agency of the approximate date work will begin using access points that take direct access from the highways under their respective jurisdictions.

#### **I. Cultural Resources**

42. Cultural Resources Protection Measures shall be submitted in the EM&CP and contain the following:

- a. Plans to avoid or minimize impacts to archaeological and historic resources to the extent practicable. Construction, including site preparation, clearing or other disturbance, shall not be allowed in any areas that have not been evaluated or inventoried and assessed by the Certificate Holder for the presence of historic properties. The Certificate Holder shall indicate on

- final EM&CP measures for avoidance of archaeological sites identified within the Facility site. The mapped locations of all identified archaeological sites within 100 feet (31 meters) of proposed Facility-related impacts shall be identified as "Environmentally Sensitive Areas" or similar on the final Facility construction drawings and marked in the field by construction fencing with signs that restrict access.
- b. Specific resource avoidance and protection measures, as contained in the Archeological Avoidance Plan, dated April 3, 2019, will be implemented for the location and construction of the Project. These measures will be included in the Cultural Resources Protection Measures Plan that will be submitted in the EM&CP.
  - c. Final Unanticipated Discovery Plan, establishing procedures in the event that resources of cultural, historical, or archaeological importance are encountered during Facility construction. The plan will include a provision for immediate work stoppage of all ground-disturbing construction-related activities within 100 feet (31 meters) of the discovery of possible archaeological or human remains. Evaluation of such discoveries, if warranted, shall be conducted by a professional archaeologist, qualified according to New York Archaeological Council Standards. Work shall not resume in the area of the discovery of such remains until written permission is received from the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP).
  - d. If complete avoidance of archaeological sites is not possible, the Certificate Holder shall consult with the NYSOPRHP and DPS Staff to determine if Phase II investigations or mitigation is warranted. The results of any Phase II investigations and/or identification of mitigation measures will be included in the plans.
  - e. Final Cultural Resources Mitigation and Offset Plan, either as adopted by a federal permitting agency in a subsequent National Historic Preservation Act (NHPA) §106 review, or as proposed in the Application and as revised in further consultation with SHPO in the event that the NHPA §106 review does not require that the mitigation plan be implemented, or as further supplemented pending any negotiations among parties.



Proof of mitigation funding awards for offset project implementation to be provided within two years of the start of construction of the Facility shall be included.

#### **J. Terrestrial and Wildlife Resources**

43. Tree and vegetation clearing shall be limited to the minimum necessary for Facility construction. To reduce mortality to nesting/roosting birds and bats, all tree clearing activities (except for hazard tree removal) shall be conducted between November 1 and April 1 and does not include trees less than or equal to 3 inches in diameter at breast height.

44. The Certificate Holder shall promptly notify DPS Staff, the DEC Chief of the Major Project Management, Division of Environmental Permits, 625 Broadway, Albany, and the DEC Region 8 Natural Resources Supervisor (NRS) if any threatened or endangered plant or animal species or special concern species listed in New York is encountered on the Facility ROW, access roads or marshalling yards so as to determine the appropriate measures to be taken to protect such species (the Certificate Holder shall refer to 6 NYCRR Part 182 and <http://www.dec.ny.gov/animals/7494.html> for lists of threatened or endangered plant or animal species of special concern). If necessary to protect a species or its habitat from immediate harm, the Certificate Holder shall secure the area and cease construction in the area. All reports of threatened or endangered species shall include the following information: species, observation date(s) and time(s); GPS coordinates of each individual observed (if operations and maintenance staff do not have GPS available, the report should include the nearest pole number and cross roads location); behavior(s) observed; identification and contact information of the observer(s); and

the nature of and distance to any project construction or maintenance activity.

45. Excluding bald eagles, if at any time during the life of the Project, a nest of any federally or State-listed threatened or endangered bird species is discovered within an active construction, ground clearing, grading, or maintenance site, DEC will be notified within 24 hours of the discovery, and the nest site will be marked. The Certificate Holder shall record the location of the nest and then shall post and avoid the area of 500 feet, or the maximum accessible distance, whichever is greater, in radius from the nest until notice to continue construction at that site is granted by DEC. DEC's response and approval to continue construction if a nest is encountered shall not be unreasonable delayed, conditioned, or withheld, and will be subject to the terms of the dispute resolution procedures established and contained herein.

46. If at any time during the life of the Project, including construction, a nest of a bald eagle is located, the DEC Chief of the Major Project Management, Division of Environmental Permits, 625 Broadway, Albany, NY 12233-1750 and the DEC Region 8 NRS will be notified within 24 hours of discovery, and the nest will be marked. An area of one quarter (1/4) mile in radius from the nest will be posted and avoided if no visual buffer exists between the nest and the construction activity, until notice to continue construction, ground clearing, grading, maintenance, or restoration activities at that site is authorized by the Region 8 NRS. If a visual buffer exists between the construction activity and the nest, an area of at least six hundred sixty (660) feet in radius from the nest shall be posted and avoided, until notice to continue construction, ground clearing, grading, and maintenance at that site is

authorized by the Region 8 NRS. DEC's Region 8 NRS response and approval to continue construction if a nest is encountered shall not be unreasonable delayed, conditioned, or withheld, and will be subject to the terms of the dispute resolution procedures established and contained herein. The nest(s) or nest tree(s) will not be approached under any circumstance unless authorized by the Region 8 NRS.

**K. Wetlands and Streams, Vegetation and Invasive Species**

47. Construction in streams protected under Environmental Conservation Law (ECL) Article 15 shall comply with work period restrictions established in consultations with DEC that are protective of fish spawning and migration. In protected streams with the standard of supporting trout species, all instream work, as well as any work that may result in the suspension of sediment, is prohibited during the trout spawning and incubation period commencing October 1 and ending May 31, unless the Certificate Holder received prior approval from the DEC Region 8 Supervisor of Natural Resources, which approval shall not be unreasonably delayed, conditioned or withheld, shall be subject to the dispute resolution procedures contained herein.

48. All necessary precautions shall be taken 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.

49. The Certificate Holder shall submit a Notice of Intent to Commence Work to the Region 8 Supervisor of Natural Resources, DEC Region 8 Headquarters, 6274 E. Avon-Lima Road, Avon, NY 14414-9519, the DEC Chief of the Major Project Management, Division of Environmental Permits, 625 Broadway, Albany, and NYS

DPS at least 72 hours in advance of the commencement of construction and shall also notify them within 10 business days in writing of the completion of work.

50. All construction activity, including operation of machinery, excavation, filling, grading, clearing of vegetation, disposal of waste, street paving, and stockpiling of material, is to occur within the Project site as depicted on Project plans. No construction activity is authorized to occur within areas to be left in a natural condition or areas not specifically designated by this Certificate. Staking and/or flagging construction limits (i.e., ROW, off-ROW access roads, and extra work areas) shall occur prior to any ground disturbance.

51. During construction, erosion control devices (including but not limited to straw bales or silt fences) shall be installed to prevent erosion of excavated material or disturbed soil, along with other measures as described in the Storm Water Pollution Prevention Plan (SWPPP). All erosion control devices shall be installed in accordance with construction techniques described in 2016 New York State Standards and Specifications for Erosion and Sediment Control (Blue Book), including placing the straw bales and silt fence in a shallow trench, backfilling the toe of the silt fence and securing the straw bales with stakes. All erosion and sediment control practices shall be installed prior to any grading or filling operations, or other ground disturbance, to the extent practicable. They shall remain in place until construction is completed and the area is completely restored to pre-existing conditions. Use of hay bales is strictly prohibited to minimize the risk of introduction of invasive species. Temporary silt fencing will be used and removed after construction is completed. The matting/blankets used shall be 100% biodegradable and not contain plastic. All

disturbed soils within regulated freshwater wetlands and the state-regulated adjacent areas must be seeded with a native seed mix.

52. All equipment and machinery shall be stored and safely contained more than 100 feet landward of any regulated freshwater wetland or water body at the end of each work day. This will serve to avoid the inadvertent leakage of deleterious substances into the regulated area.

53. Fuel or other chemical storage tanks shall be contained and located at all times in an area more than 300 feet landward of any regulated freshwater wetland or waterbody. If the above requirement cannot be met by the Certificate Holder, then the storage areas must be designed to completely contain any and all potential leakage. Such a containment system must be approved by DEC staff in writing prior to equipment, machinery or tank storage.

54. All mobile equipment, excluding dewatering pumps, must be fueled in locations that are a minimum of 100 feet from the top of stream bank, wetland, or other waterbody. Dewatering pumps operated closer than 100 feet from the stream bank, wetland, or waterbody, must be on an impervious surface with absorbents capable of containing any leakage of petroleum products.

55. Spillage of fuels, waste oils, other petroleum products or hazardous materials shall be reported to the DPS and DEC's Spill Hotline (1-800-457-7362) within two hours in compliance with the DEC Spill Reporting and Initial Notification Requirements Technical Field Guidance. In an emergency situation, the contractor will work (to the extent practicable) to contain the

impacted material until appropriate emergency spill response services arrive.

56. All equipment used within bed or banks of streams or in regulated freshwater wetlands and state-regulated 100-foot adjacent areas must be inspected daily for leaks of petroleum, other fluids, or contaminants; equipment may only enter a stream channel if found to be free of any leakage. A spill kit must be on hand at the immediate work site and any equipment observed to be leaking must be removed from the work site, and leaks must be contained, stopped and cleaned up immediately.

57. All fill material shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, fly ash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, metal objects, and all invasive species. The introduction of materials toxic to aquatic life is expressly prohibited.

58. Where underground construction is necessary and horizontal directional drilling (HDD) is employed, HDD operations are outlined below:

a. A Frac-Out Risk Assessment and Contingency Plan shall be submitted in the EM&CP where horizontal directional drilling is proposed. Biodegradable drilling solutions shall be used for HDD to minimize harm to aquatic species in the event of a drilling frac-out. Exit and entry points shall be located a minimum of 50 feet from the edge of the stream or wetland to minimize disturbance to the extent practicable. At a minimum, the plan shall include procedures to address inadvertent surface returns (frac-out), a response procedure, and a list of spill response equipment to be maintained on-site. All equipment and

provisions of the plan shall be readily accessible at the locations where HDD technology is used during construction. If inadvertent drilling fluid surface returns occur in wetlands or streams, the DEC's Division of Environmental Permits, Chief of the Major Project Management Unit and DPS Staff shall be notified within 2 hours or as soon practicable, considering internet and cell phone coverage in the area and a written monitoring report describing the location, estimated volume, and cleanup efforts shall be submitted within 24 hours of the occurrence.

b. Where underground construction is necessary, erosion and sediment control will be used at the point of HDD, so that drilling fluid shall not escape the drill site and enter streams or wetlands. The disturbed area will be restored to original grade and reseeded upon completion of directional drilling.

c. Drilling fluid circulation for HDD installations shall be maintained to the extent practical. If inadvertent surface returns occur in upland areas, the fluids shall be immediately contained and collected. If the amount is not enough to allow practical collection, the affected area will be diluted with freshwater and allowed to dry and dissipate naturally. If the amount of surface return exceeds that which can be collected using small pumps, drilling operations shall be suspended until surface volumes can be brought under control. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area (i.e., wetlands and water bodies), the returns shall be monitored and documented as described in the Frac-Out Risk Assessment and Contingency Plan. Drilling operations must be suspended if the surface returns pose a threat to the resource or to public health and safety. Removal of released fluids from environmentally sensitive areas will take place only if the removal does not cause additional adverse impacts to the

resource. If inadvertent drilling fluids surface returns occur in an environmentally sensitive area, the DEC Region 8 Supervisor of Natural Resources shall be notified immediately and a monitoring report summarizing the location of surface returns, estimated quantity of fluid, and summary of cleanup efforts shall be submitted within 48 hours of the occurrence; and

d. While conducting HDD operations under regulated freshwater wetlands, state regulated 100-foot adjacent areas, and streams, the Certificate Holder will maintain close monitoring for possible "frac-outs" that would result in the release of drilling fluids to sensitive areas as described in the Frac-Out Risk Assessment and Contingency Plan. The Certificate Holder will maintain a horizontal directional drilling spill response plan and the necessary response equipment will be kept on-site for the duration of the drilling. All releases of drilling fluids to sensitive areas (e.g., regulated freshwater wetlands, DEC regulated 100-foot adjacent areas, waterbodies) shall be reported to the DEC Region 8 Supervisor of Natural Resources and DPS Staff within 2 hours or as soon as practicable considering internet and cell phone coverage in the area.

59. Where underground construction is necessary and trenchless methods are not practicable, trench construction through unprotected streams and wetlands will include excavating for installation purposes and backfilling in one continuous operation. Trench construction methods within these areas will be described in the EM&CP, with accompanying profiles and maps. Detailed trenching operations are outlined below:

a. Before trenching occurs, upland sections of the trench shall be backfilled or plugged to prevent drainage of possible turbid trench water from entering the stream or wetland;



- b. Trench breakers/plugs shall be used at the edges of wetlands as needed to prevent wetland draining during construction;
- c. If there is an inadvertent puncturing of a hydrologic control for a wetland, then the puncture shall be immediately sealed, and no further activity shall take place until DPS and DEC are notified and a remediation plan to restore the wetland and prevent future dewatering of the wetland has been approved by the agency staffs;
- d. Only the excavated wetland topsoil and subsoil shall be utilized as backfill;
- e. In wetland areas, the topsoil shall be removed and stored separate from subsoil; and
- f. When backfilling occurs, the subsoil shall be replaced as needed, and then covered with the top soil, such that the restored top soil is the same depth as prior to disturbance.

60. Turbid water resulting from dewatering operations, including water that has infiltrated the construction site, shall not be discharged directly to or allowed to enter any regulated freshwater wetland, stream, or water body within the Project area. Turbid water resulting from dewatering operations shall be baffled or otherwise discharged directly to settling basins, filter bags, or other approved device or to an upland vegetated area prior to discharge to any regulated freshwater wetland, stream or other water body within the Project area. All other necessary measures shall be implemented to prevent erosion and any visible increase in turbidity or sedimentation downstream of the work site.

61. Visibly turbid discharges from blasting (if required), land clearing, grading or excavation and construction activities, or dredging operations shall not enter any surface water body. All

necessary measures shall be implemented to prevent any visible increase in turbidity or sedimentation downstream of the work site, including but not limited to the use of:

- a. Appropriately maintained upland settling basins;
- b. Crushed stone, sand, straw bales, or silt screening (maximum opening size of U.S. Sieve Number 20) to filter turbid waters;
- c. "Silt-bags" or similar pre-constructed structure designed to remove silt and sediment particles before they are discharged;  
or
- d. Grassy upland areas at a sufficient distance from the receiving water body to prevent a visually discernible turbid discharge to the receiving water.

62. Markers used to delineate/define the boundary of regulated freshwater wetlands and streams, and also the demarcated limits of disturbance for the Project shall be left in place and remain undisturbed until completion of construction activities and restoration of the impacted area.

63. All areas of temporary disturbance to regulated freshwater wetlands and state-regulated 100-foot adjacent areas, as applicable, must be restored and appropriately graded upon completion of temporary work items.

64. A minimum of 85% vegetative cover across all disturbed soil areas must be established by the end of the first full growing season following construction.

65. All regulated freshwater wetlands, and associated state-regulated 100-foot adjacent areas, as applicable, temporarily disturbed due to construction activities shall be restored to

pre-existing conditions and documented cover type to the extent practicable and in accordance with the following requirements:

- a. Restoration to pre-construction contours must be completed within 48 hours of final backfilling of the trench within regulated freshwater wetland boundaries and any state-regulated 100-foot adjacent area boundaries, as applicable. Immediately upon completion of grading, the area shall be seeded with native vegetation at densities as existed prior to construction. Seeding with an appropriate native wetland species mix such as an Ernst Wetland Mix (OBL-FACW Perennial Wetland Mix, OBL Wetland Mix, Specialized Wetland Mix for Shaded OBL-FACW, or equivalent) shall be completed to help stabilize the soils;
- b. Restored areas shall be monitored for the longer of 5 years or until an 85% cover of native species has been reestablished over all portions of the replanted area, unless the invasive species baseline survey indicates a smaller percentage of native species existed prior to construction;
- c. In areas of temporary disturbance dominated by trees and woody shrubs, monitoring for woody shrub vegetation establishment will take place during the growing season and over a 5-year period. Random sample points will be established within temporarily disturbed, regulated freshwater wetlands and state-regulated 100-foot adjacent areas, as applicable. At each sample point, absolute cover for each plant species present within a one-by-one-meter plot will be visually estimated and recorded. Cover estimates for woody species will then be totaled for each sample plot. Cover data collected at these sample plots will be averaged and extrapolated to the entire area of temporary disturbance within a given regulated freshwater wetland and state-regulated 100-foot adjacent area, as applicable. Vegetation reestablishment will be considered

successful if the temporarily impacted areas are restored to substantially the same amount of cover of non-invasive woody species that existed prior to Project construction activities. If at the end of the fifth year the aforementioned reestablishment goal is not achieved, then the Certificate Holder must evaluate the reasons for these results and submit an approvable "Wetland Planting Remedial Plan" for DPS and DEC approval. The "Wetland Planting Remedial Plan" must describe the reasons for not achieving the goal, describe the actions necessary to correct the situation to ensure a successful restoration, and the schedule for conducting the remedial work. Once approved by the agencies, the "Wetland Planting Remedial Plan" will be implemented according to the approved schedule;

d. These aforementioned replanted areas shall also be monitored for invasive species to ensure there is zero percent net increase (or other "reasonable definition" as agreed upon following the baseline survey) in areal coverage of invasive species compared with pre-construction conditions. If at any time during the monitoring the invasive species criteria above are not met, the Certificate Holder shall take immediate action to ensure control of the invasive species. Such actions shall be in accordance with the Final Invasive Species Control Plan submitted with the EM&CP; and

e. If at the end of five years the restored areas do not meet the above criteria for success, then monitoring and corrective action shall continue until the criteria are met.

66. Portions of the Project located in regulated freshwater wetlands or state-regulated 100-foot adjacent areas, as applicable, shall be constructed in accordance with the following requirements:

- a. Swamp mats must be used in any regulated freshwater wetlands for construction activities;
- b. Prior to installation in regulated freshwater wetlands and state-regulated 100-foot adjacent areas, as applicable, swamp mats must be cleaned of invasive species following protocols described in the final "Invasive Species Monitoring and Control Plan";
- c. Swamp mat removal must be conducted from adjacent mats (i.e., removal equipment always stationed on a mat) as soon as practicable, but no later than four months following installation of the transmission line. The Environmental Monitor shall provide notification to the DEC Region 8 Natural Resources Supervisor and the DEC Chief of the Major Project Management, Division of Environmental Permits, 625 Broadway, Albany, NY when compliance with this condition has been achieved.
- d. Disturbed areas will be monitored for 5 years following the installation of portions of the Project to assure an 85% cover of native species, unless the invasive species baseline survey indicates a smaller percentage of native species exists prior to construction. If after one complete growing season the pre-construction percentage of native species is not achieved, the Certificate Holder must: consult with DEC and evaluate the reasons for these results, obtain DEC's approval for remediation steps, and submit a "Wetland Planting Remedial Plan" to the Secretary for review and approval. The "Wetland Planting Remedial Plan" must describe the reasons for the achieved level of survival, describe the actions necessary to correct the situation to ensure a successful restoration, and the schedule for conducting the remedial work. Once approved, the "Wetland

Planting Remedial Plan" will be implemented according to the approved schedule.

67. Any construction debris (e.g., building materials, excess sediment, refuse from the work site) from the Project shall be completely removed prior to completion of restoration from the regulated freshwater wetland and state-regulated 100-foot adjacent area (upland), as applicable, and disposed of at a permitted waste disposal facility authorized to receive such material. No debris shall remain in regulated freshwater wetlands and/or state-regulated 100-foot adjacent areas.

68. Cleared vegetation and slash from regulated freshwater wetlands and state-regulated 100-foot adjacent areas will not be burned or buried within the regulated freshwater wetland and any applicable state-regulated 100-foot adjacent areas. Logs and large branches cannot be deposited into regulated freshwater wetland and any applicable state-regulated 100-foot adjacent areas from outside of the state-regulated 100-foot adjacent area, however, small branches (slash) that are cut in a drop and lop method or piled within wetland and adjacent areas may be left in place.

69. Permanent alteration of wetland hydrology is prohibited.

70. To control the spread of invasive insects during facility site clearing and timber removal, the Certificate Holder will:

a. Pursuant to a Timber Salvage Plan to be submitted in the EM&CP, which will include, subject to landowner preferences coordinating with logging contractors for sale and use of the merchantable timber; and provide unmerchantable timber as firewood to landowners or the general public pursuant to the

DEC's firewood restrictions to protect forests from invasive species found in 6 NYCRR Part 192.5; and

b. Make sure crews are trained to identify the Asian Longhorned Beetle and the Emerald Ash Borer and any other insects that the DEC identifies as a potential problem in accordance with 6 NYCRR Part 575, Prohibited and Regulated Invasive Species. If these insects are found, they must be reported to the DEC regional forester.

71. On-site waste concrete containment from concrete truck clean out activity and/or any wash water from trucks, equipment or tools, must be contained in a manner that will prevent it from escaping into water-bodies, water channels, streams, and wetlands. If a discharge occurs, DEC Region 8 Supervisor of Natural Resources shall be contacted within 2 hours. Disposal of waste concrete or wash water is prohibited within 100 feet from any waterbody or wetland or to any area that drains to a waterbody or wetland.

72. If a one-time, temporary crossing of a stream occurs as part of an installation of a temporary bridge (if not spanning the bed and banks), the following restrictions apply:

a. The temporary bridge must follow the contour of the streambed and allow for a low flow channel and not change the flow path of the stream thalweg; and

b. The temporary bridge shall be removed immediately after the equipment crossing occurs.

73. To the extent required, in-stream work shall only occur in dry conditions or by trenchless methods or dewatering measures (e.g., dam and pump or flume) must be used. If approved measures fail to divert all flow around the work area, in-stream

work must immediately stop until dewatering measures are in place and properly functioning again.

74. If instream work is required, the restored stream channel shall be equal in width, depth, gradient, length and character as the pre-existing stream channel and tie in smoothly to profile of the stream channel upstream and downstream of the project area. The planform of any stream shall not be changed.

75. Trees shall not be felled into any stream or onto the immediate stream bank. All trees and shrubs cut within the 50 feet of the stream shall be left on the ground.

76. Clearing of natural vegetation shall be limited to that material which poses a hazard or hindrance to the construction activity. Snags which provide shelter in streams for fish shall not be disturbed unless they cause serious obstructions, scouring or erosion. Trees shall not be felled into any stream or onto the immediate stream bank. To the extent required, such as for crossing bridges (permanent access), temporary water control devices/cofferdams for perennial streams must adhere to the following:

a. Specifications: Any temporary cofferdam shall be constructed of clean materials such as sheet piling, jersey barriers, inflatable dams, or sandbags that will not contribute to turbidity or siltation of the waterbody or wetland, and non-erodible materials, so that failure will not occur at Q2 or higher flow conditions. Where practicable, an upstream or interior membrane shall be installed to control percolation and erosion. Sandbags shall be of the filter fabric type, double bagged and individually tied to prevent sand leakage and only clean sand (e.g. free of debris, silt, fine particles or other foreign substance) shall be used as fill. They shall be placed



and removed manually to prevent spillage. Straw bale sediment control basins are prohibited;

b. Fill materials must not come from the waterbody or wetland;

c. The water control structure/cofferdam shall not impair downstream water flow in the waterbody or water flow into and/or out of a wetland;

d. If exposed for an extended period of time, excavated or temporarily stockpiled soils or other materials should be covered and protected to reduce runoff of fines which may cause a turbidity problem and to prevent rainwater from soaking the materials and rendering them unsuitable for backfill;

e. The work area shall remain isolated from the rest of the stream or wetland until all work in the streambed or bank, or wetland is completed, concrete is thoroughly set and the water clarity in the coffered area matches that of the open water;

f. To the extent required for access, a dam and pump diversion used as part of a dry open-cut crossing must be monitored continuously from time of installation until crossing is completed, streambed restored, and diversion is removed;

g. Dewatered sections of stream cannot exceed 50 linear feet (measured from the inside edges of the cofferdams) for each stream crossing unless the Certificate Holder has prior written approval from the DEC Region 8 Supervisor of Natural Resources, which approval shall not be unreasonably delayed, conditioned or withheld and shall be subject to the terms of the dispute resolution procedures contained in Condition 87(c) herein;

h. All temporary water control structures shall be removed in their entirety upon completion;

i. All fish trapped within the cofferdam shall be netted and returned, alive and unharmed, to the water outside the confines

of the cofferdam, in the same stream, before the dewatering process;

j. Dewatering within the coffer(s) shall be performed so as to minimize siltation and turbidity. Water taken from the coffered area will be passed through settling basins, filter bag, or well-vegetated upland areas more than 100 feet from the stream bank to prevent the discharge of turbid water into any wetland, stream or river. The pump discharge must be directed against a solid object (concrete slab, stone or steel container), or other effective method to prevent erosion by dissipating energy.

77. To the extent required and appropriate, to reduce thermal impacts to exposed streams, native woody plants will be planted at stream crossings. Plant cover will be restored to its pre-construction condition for areas of temporary disturbance. For stream crossings that are temporarily disturbed by construction activities that have, pre-construction, a 50% woody plant cover, a minimum of 50% woody plant cover will be established on such stream banks disturbed by Project construction by the end of the two full growing seasons following construction. Planting may be done at top of bank and/or among rocks along toe of slope. Restoration of these select riparian areas will be monitored along the same time frames as the Final Invasive Species Control Plan by the appointed Environmental Monitor to document the proper establishment of cover, survivorship of species, and mitigate any unforeseen issues with the revegetation effort.

78. During periods of work activity, flow immediately downstream of the work site shall equal flow immediately upstream of the work site.

79. To the extent required, all disturbed stream banks below the normal high-water elevation must be graded no steeper than 1

vertical to 2 horizontal slope, or to the original grade as appropriate, and adequately stabilized. All other areas of soil disturbance above the ordinary high-water elevation, or elsewhere, shall be stabilized with natural fiber matting, seeded with an appropriate perennial native conservation seed mix, and mulched with straw within 2 days of final grading. Mulch shall be maintained until suitable vegetation cover is established. Destroyed bank vegetation shall be replaced with shrub willow or silky dogwood planting, native trees, or other suitable species.

80. The Certificate Holder shall secure of all required U.S. Army Corps of Engineers (USACE) permits for construction in federal wetlands affected by the Facility pursuant to §404 of the Federal Clean Water Act. Copies of USACE permits will be provided to the Secretary.

81. A final DEC-approved SWPPP shall be filed with the Secretary. Impacts to soil resources shall be minimized by adherence to best management practices that are designed to avoid or control erosion and sedimentation and stabilize disturbed areas. Erosion and sedimentation impacts during construction shall be minimized by the implementation of an erosion and sedimentation control plan developed as part of the State Pollution Discharge Elimination System General Permit for the Facility. Erosion and sediment control measures shall be constructed and implemented in accordance with the SWPPP.

82. The Certificate Holder shall file a copy of the Notice of Intent required to implement the State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activities (GP-0-15-002) when it is filed with DEC prior to the start of construction of the Project.

83. The Certificate Holder shall inform USACE of any changes in the design of the Facility that have the potential to impact any water resources under USACE jurisdiction and shall provide a copy of such correspondence to the Secretary.

84. DEC staff field representatives shall be permitted on the Project site. DEC staff field representatives will notify the DPS Staff representative and the Certificate Holder's appropriate representative of any activities that violate or may violate either the terms of the Certificate, any permits issued by DEC, and/or the Environmental Conservation Law. DPS Staff and DEC staff field representatives will cooperate in assessing site conditions and determining whether DPS Staff stop work authority should be exercised, or whether directing the Certificate Holder to take action to minimize further impacts to State-protected streams and State-regulated wetlands is appropriate.

85. In accordance with the Invasive Species Control Plan (ISCP), a post-construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5 following completion of construction and restoration. The MP shall collect information to facilitate evaluation of ISCP's effectiveness. At the conclusion of the MP, a report shall be submitted to DPS Staff, DEC, and Ag & Markets, and filed with the Secretary, that assesses how well the goal of "no net increase" of invasive species per the recommendation of the Invasive Plant Species Survey Baseline Report, due to the construction of the Facility, is achieved.

86. If, after five years, post-construction, all invasive species control requirements have not been achieved, the Certificate Holder must evaluate the likely reasons for these

results and submit an "Invasive Species Remedial Plan" to the Secretary for approval. The "Invasive Species Remedial Plan" must describe the likely reasons for not achieving DEC requirements, describe the actions necessary to correct the situation, and the schedule for conducting the remedial work. Once approved, the "Invasive Species Remedial Plan" will be implemented according to the approved schedule.

#### **L. Environmental Supervision**

87. The Certificate Holder shall designate a full-time Supervisor and Construction Inspector for the Project. An Environmental Monitor, and/or designee, whose qualification shall satisfy those of a "Qualified Inspector" pursuant to the SPDES General Permit, shall be available as needed but, at a minimum, shall be on-site when work occurs near wetlands and streams, rare, threatened, or endangered species habitat, and in agricultural fields. The Environmental Monitor and any designee shall have stop-work authority over all aspects of this Project. The supervisor shall be on site during all phases of construction and restoration. A separate Agricultural Monitor shall also be designated, who may be the same person designated Agricultural Monitor for the construction of the Article 10 wind farm. Consistent with the applicable Article 10 Certificate Condition, the designated Agricultural Monitor is authorized to work on the wind farm and transmission line, need not be engaged on a full-time basis but with the understanding that there will be periods of time during construction and subsequent restoration where the Agricultural Monitor is required to be onsite full time.

88. 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 Certificate (including invasive species control), applicable sections of the Public Service Law, and the EM&CP.

89. The name and qualifications of the supervisor, inspector(s) and environmental monitor(s) shall be submitted to DPS Staff at least two weeks prior to the start of construction. All costs thereof shall be borne by the Certificate Holder.

90. The Certificate Holder's employees, contractors and subcontractors assigned to the construction of the Facility and inspection of such construction work shall be properly trained in their respective responsibilities.

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

a. The Certificate Holder shall regard DPS Staff representatives (authorized pursuant to PSL §8) as the Commission's designated representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate or may violate the terms of the Certificate or any other order in this proceeding, such DPS Staff representatives may issue a stop-work order for that location or activity.

b. A stop-work order shall expire in 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 representatives shall, wherever practicable, consult with the Certificate Holder 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, the Project Manager, and the Department of Public Service Chief, Environmental Certification and Compliance Section of the Office of Utility Rates and Services. In the event that a DPS Staff representative issues a stop-work order, neither the Certificate Holder nor the contractor will be prevented from undertaking any such safety-related activities as they deem necessary and appropriate under the circumstances. Stop-work or implementation of measures, as described below, may be directed at the sole discretion of the DPS Staff representative during these discussions.

d. If a DPS Staff representative discovers that a specific activity is a significant environmental threat that is, or may immediately become, a violation of the Certificate or any other Order in this proceeding, the DPS Staff representative may -- in the absence of responsible 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 Certificate Holder personnel are not on-site, the DPS Staff representative shall immediately thereafter inform the supervisor and/or environmental monitor of the action taken. The DPS Staff representative may lift the stop-work directive if the situation prompting its issuance is resolved.

e. If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the DPS Staff representative may, in the absence of responsible 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 directive immediately. The DPS Staff representative shall immediately thereafter inform the Certificate Holder's supervisor or environmental monitor of the action taken.

92. Certificate Holder shall organize and conduct site compliance audit inspections for DPS Staff as needed, but not less frequently than once per month during the site preparation and construction phases of the Project, and at least annually for two years after the Project becomes operational.

a. The monthly inspection shall include a review of the status of compliance with all Certification Conditions, requirements, and commitments, as well as a field review of the project site, if necessary. The inspection report shall also include:

i. review of all complaints received, and their proposed or actual resolutions;



ii. review of any significant comments, concerns, or suggestions made by the public, local governments, or other agencies;

iii. review of the status of the Project in relation to the overall schedule established prior to the commencement of construction; and

iv. other items the Certificate Holder or DPS Staff consider appropriate.

b. The Certificate Holder shall provide a written record of the results of the inspection, including resolution of issues and additional measures to be taken, to agencies involved in the inspection audit and to NYSEG. In addition to monthly inspection reports, Certificate Holder shall provide to DPS Staff, relevant agencies, and NYSEG the results of any special inspections or other inspections and tests.

#### **M. Agricultural Resources**

93. The Agricultural Monitor shall be available to provide site-specific agricultural information as necessary for EM&CP development through field review as well as to have direct contact with affected farm operators, County Soil and Water Conservation Districts, and the Ag & Markets. The Agricultural Monitor shall maintain regular contact with the Environmental Monitor or the Construction Inspector throughout the construction phase. The Agricultural Monitor shall maintain regular contact with the affected farmers and County Soil and Water Conservation Districts concerning farm resources and management matters pertinent to the agricultural operations and the site-specific implementation of the approved EM&CP.

94. The Certificate Holder shall identify Black Cherry trees located on the Project ROW near active livestock use areas

during preparation of the EM&CP. During the clearing phase, such vegetation shall be disposed of in a manner which prevents access by livestock.

95. In agricultural areas, logs, stumps, brush, or chips shall not be piled or buried in active agricultural fields or improved pasture.

96. The Certificate Holder shall design the Project to the extent possible to avoid or limit the placement of structures on crop fields or on other active agricultural land where the structures may significantly interfere with normal agricultural operations or activities. Where the location of a structure on such agricultural land is unavoidable, the Certificate Holder shall attempt to site the structure in a location that minimizes impact to normal farming operations.

97. During preparation of the EM&CP, a detailed drainage line repair procedure shall be developed, in consultation with the local Soil and Water Conservation District, for the repair of crushed/severed clay tile and plastic drain lines. Drawings showing the generic technique to be implemented for drain line repairs shall be provided by the Certificate Holder. All new plastic drain tubing shall meet or exceed the American Association of State Highway and Transportation Officials M252 specifications. The plan for the replacement of functional stone drainage systems severed during construction shall be prepared during the restoration phase, in consultation with Ag & Markets and the local Soil and Water Conservation District.

98. Where construction entrances are required from public roadways to the Project ROW in agricultural fields, an underlayment of durable, geotextile fabric shall be placed over

the exposed subsoil surface prior to the use of temporary gravel access fill material. In locations where underground utilities are located within 10 feet of the shoulder of the roadway, the Certificate Holder may elect, in order to minimize disturbance and protect the underground utilities, to place the geotextile fabric directly over the surface without stripping topsoil. In locations where underground utilities are located 10 feet or more from the shoulder of the roadway but still within the limits of the construction entrance, the Certificate Holder may elect to mat over the underground utilities instead of placing geotextile fabric and gravel access fill material. Complete removal of the construction entrance upon completion of the Project and restoration of the affected site is required prior to topsoil replacement, except where retention of the construction entrance would be more conducive to the existing land use than removal.

99. Segments of farm roads utilized for access shall be improved as required following consultation with the farm operator and Ag & Markets prior to use. Such improvements shall include the installation of geotextile fabric and crushed stone.

100. The Certificate Holder shall rebuild to as-good or better condition, at or prior to completion of construction, any of the following that is damaged by construction: (i) fences and gates on the Certificate Holder's fee-owned ROW that are not incompatible with the Project; (ii) fences and gates off of the Certificate Holder's fee-owned ROW; and (iii) any farm drainage features including drain tiles. The base of all new posts shall be secured to a reasonable depth below the surface to prevent frost heave.

101. Where repeated temporary access is necessary across agricultural portions of the Project ROW, topsoil shall be removed, including the "A" entire horizon down to the beginning of the subsoil "B" horizon, generally not to exceed a maximum of 12 inches. Topsoil removal up to a depth of 16 inches may be required in specially-designated soils encountered along the route. All topsoil shall be stockpiled directly adjacent to the travel way on the Project ROW and separated from other excavated materials. The Agricultural Inspector shall determine depth of topsoil stripping on each affected farm by means of the County Soil Survey and on-site soil augering, if necessary. All topsoil material shall be stripped, stockpiled, and uniformly returned to restore the original soil profile. During the clearing/construction phase, site-specific depths of topsoil stripping shall be monitored by the Agricultural Inspector.

102. Mats may be installed as an alternative to topsoil stripping. If so, the mats shall be layered where necessary to provide a level access surface. Once access is no longer required across agricultural areas, the mats shall be removed, and the Agricultural Inspector shall use a soil penetrometer to determine if soil compaction has occurred as a result of construction activities. All compacted areas shall be remediated as specified below.

103. In agricultural areas of till over bedrock where blasting is required, the Certificate Holder shall use matting or controlled blasting to limit the dispersion of blast rock fragments. All blasted rock not used as backfill shall be removed from croplands, hay lands and improved pastures. The till and topsoil shall be returned in natural sequence to restore the soil profile. Farm owners/operators shall be given timely notice prior to blasting on farm property.

104. Temporary work space in agricultural areas shall be of sufficient size to allow for positioning of conductor reels, tensioners, pullers, wire spools and other mechanized equipment required during pulling activities.

105. In all agricultural sections of the Project ROW disturbed during construction, the Certificate Holder shall break up the subsoil compaction to a depth of 18 inches (unless bedrock is encountered at a depth less than 18 inches) with deep tillage by such devices as a deep-ripper (subsoiler). Final soil compaction results shall not be more than 250 pounds per square inch ("PSI") as measured with a soil penetrometer. Following the deep ripping, all stone and rock material 4 inches and larger in size which has been lifted to the surface shall be collected and taken off site for disposal. The topsoil that has been temporarily removed for the period of construction shall then be replaced. Finally, deep subsoil shattering shall be performed with a subsoiler tool having angled legs. Stone removal shall be completed, as necessary, to eliminate any additional rocks and stones brought to the surface as a result of the final subsoil shattering process. Should subsequent construction and/or restoration activities result in compaction, then restoration activities shall include additional deep tillage.

106. Excavated subsoil material and stockpiled topsoil shall be used to restore the original soil profile at new structure locations. All holes or cavities created by structure installation shall be filled to the same level as the adjacent area, plus six to 12 inches of additional soil to allow for settling. Excess substratum material not used for backfill shall be removed from agricultural areas.

107. The Certificate Holder shall be solely responsible for providing monitoring and remediation for a period of no less than two growing seasons following completion of Project ROW restoration in active agricultural areas. The Certificate Holder shall be solely responsible for retaining the services of an Agricultural Monitor on at least a part-time basis through this period. The monitoring and remediation phase shall be used to identify any remaining agricultural impacts associated with Project construction that are in need of mitigation and to implement the follow-up restoration.

108. During the monitoring and remediation period, on-site monitoring shall be conducted at least three times during each growing season and shall include a comparison of growth and yield for crops on and off the Facility ROW. When the subsequent crop productivity within the affected ROW is less than that of the adjacent unaffected agricultural land, the Agricultural Inspector, in conjunction with the Certificate Holder and Ag & Markets, shall help to determine the appropriate rehabilitation measures for the Certificate Holder to implement (soil de-compaction, topsoil replacement, etc.). The Certificate Holder shall be solely responsible for implementing such measures. During the various stages of the Project, all affected farm operators shall be periodically apprised of the duration of remediation by the Agricultural Inspector. Because conditions which require remediation may not be noticeable at or shortly after the completion of construction, the signing of a release form prior to the end of the remediation period shall not obviate the Certificate Holder's responsibility to fully redress all Facility impacts. After completion of the specific remediation period, the Certificate Holder shall continue to respond to the reasonable requests of the farmland

owner/operators to correct Facility-related effects on the impacted agricultural resources.

109. The Certificate Holder shall provide all farm owners/operators with a toll-free or local telephone number to facilitate direct contact with the Certificate Holder and the Agricultural Inspector(s) through all of the stages of the Project. The farm owner/operators shall also be provided with a toll-free or local telephone number to facilitate direct contact with the Certificate Holder's Project Manager for the Facility during operation and maintenance of the transmission line.

110. The Agricultural Inspector shall work with the farm operators during the planning phase to develop a plan to delay the pasturing of the Project ROW, following construction until pasture areas are adequately re-vegetated. The Certificate Holder shall be responsible for maintaining the temporary fencing on the Project ROW until the Agricultural Inspector determines that the vegetation on the ROW is established and able to accommodate grazing. At such time, Certificate Holder shall be responsible for removal of the fences.

111. On affected farmland, restoration practices shall be postponed until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration shall not be conducted while soils are in a wet or plastic state. Stockpiled topsoil shall not be re-graded until plasticity, as determined by the Atterberg field test, is significantly reduced. No restoration activities shall occur in agricultural fields from October through May unless favorable soil moisture conditions exist. The Certificate Holder shall monitor and advise Ag & Markets and DPS Staff regarding tentative restoration planning. Potential schedules shall be determined by conducting the

Atterberg field test at appropriate depths into topsoil stockpiles, and below the traffic zone for a mutual determination of adequate field conditions for the restoration phase of the Project.

112. Following restoration of all disturbed areas, excess topsoil shall be distributed in agricultural areas of the site, provided this is practicable and can be accomplished without having any adverse impact on site drainage. All such activity shall be as directed by the Agricultural Inspector, based on guidance provided by the landowner.

113. After the moisture of the soil profile on the affected portion of the Project ROW has returned to equilibrium with the adjacent off-ROW land, subsoil compaction shall be tested using an appropriate soil penetrometer or other soil-compaction measuring device.

114. Topsoil stockpiles on agricultural areas left in place prior to October 31 shall be seeded with Aroostook Winter Rye or equivalent at an application rate of three bushels (168 #) per acre and mulched with straw mulch (or another material acceptable to the Agricultural Inspector) at a rate of two to three bales per 1000 Sq. Ft. Topsoil stockpiles left in place between October 31 and May 31 shall be mulched with straw mulch (or another material acceptable to the Agricultural Inspector) at a rate of 2 to 3 bales per 1000 Sq. Ft. Straw mulch (or another material acceptable to the Agricultural Inspector) shall be used to prevent soil loss on stockpiled topsoil from October through May.

115. After topsoil replacement, seedbed preparation (final tillage, fertilizing, liming) and seeding shall follow either Ag



& Markets recommendations as contained in Fertilizing, Lime and Seeding Recommendations for Restoration of Construction Projects on Farmlands in New York State (revised 9-25-2012) or landowner specifications.

116. Following construction, the Certificate Holder will work within the ROW in accordance with agreements with individuals who may farm within the ROW. The Certificate Holder shall not create any new paved or gravel access roads through lands that are used for agricultural purposes on the ROW.

117. The Certificate Holder shall move, raise, and eliminate the following poles:

- a. Shift Pole 26 approximately 200 feet south and raise the height of the pole by approximately 20 feet;
- b. Eliminate Pole 28;
- c. Raise Pole 29 by approximately 10 feet;
- d. Raise Pole 25 by approximately 10 feet;
- e. Eliminate Pole 103;
- f. Raise Pole 102 by approximately 20 feet;
- g. Raise Pole 104 by approximately 25 feet; and
- h. Shift Pole 11 approximately 100 feet south and increase the height of the pole by approximately 10 feet.

#### **N. Construction**

118. Prior to the start of construction, the Certificate Holder shall become a member of Dig Safely New York. The Certificate Holder shall require all contractors, excavators, and operators associated with its facilities to comply with the requirements of the Commission's regulations regarding the protection of underground facilities (16 NYCRR Part 753).

119. Certificate Holder shall design, engineer, and construct the Project in accordance with the New York Independent System Operation (NYISO) Class Year 2017 or any subsequent Facilities Studies approved by the NYISO, the Transmission Planning and Advisory Subcommittee, the NYISO Operating Committee, and in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, the New York State Reliability Council, the Northeast Power Coordinating Council, the North American Electric Reliability Corporation, and successor organizations depending upon where the facilities are to be built and depending on which standards and practices are applicable. The construction shall also be coordinated with NYSEG's operating, weather and safety restrictions.

120. Certificate Holder shall design and construct the Project in accordance with the following standards and specifications, to the extent applicable, and other standards and specifications including, but not limited to:

- a. ANSI 05.1.2017 Wood Poles - Specifications & Dimensions
- b. ANSI C2-2017 National Electric Safety Code ("NESC")
- c. ASCE 48-2011 Design of Steel Transmission Pole Structures
- d. ASCE MOP 74-2010 Guidelines for Electrical Transmission Line Structural Loading
- e. ASCE MOP 91-1997 Design of Guyed Electrical Transmission Structures
- f. IEEE 81-2012 Guide for Measuring Earth Resistivity, Ground Impedance, and Earth Surface Potentials of a Grounding System
- g. IEEE 516-2009 IEEE Guide for Maintenance Methods on Energized Power Lines
- h. IEEE 524-2016 Guide to the Installation of Overhead Transmission Line Conductors
- i. IEEE 563-1978 Guide on Conductor Self-Damping Measurements

- j. IEEE 644-2008 Standard Procedures for Measurement of Power Frequency Electric and Magnetic Fields from AC Power Lines
- k. IEEE 656-2018 Standard for the Measurement of Audible Noise from Overhead Transmission Lines
- l. IEEE 691-2007 Guide for Transmission Structure Foundation Design and Testing
- m. IEEE 738-2006 Standard for Calculating the Current-Temperature of Bare Overhead Conductors
- n. IEEE 977-2010 Guide to Installation of Foundations for Transmission Line Structures
- o. IEEE 1243-2008 Guide for Improving the Lightning Performance of Transmission Lines
- p. IEEE 1313.2-2005 Guide for the Application of Insulation Coordination
- q. IEEE 1542-2018 Guide for Installation, Maintenance, and Operation of Irrigation Equipment Located Near or Under Power Lines
- r. IEEE Std 80-2013 IEEE Guide for Safety in AC Substation Grounding
- s. ASCE MOP 111 Reliability-Based Design of Utility Pole Structures
- t. APLIC 2012 Reducing Avian Collisions with Power Lines- State of the Art - 2012
- u. APLIC 2006 Suggested of Practices for Avian Protection on Power Lines
- v. NACE RP0177-2000 Mitigation of Alternating Current and Lightning Effects of Metallic Structures and Corrosion System
- w. OSHA Std 2207 Safety and Health Regulations for Construction Part 1926
- x. Notwithstanding these provision(s), all installations of new facilities, including the new transmission line and all

modifications of the existing substation, shall be designed, engineered, and constructed in accordance with the latest standards that are enforceable by federal or state agencies as of the in-service date of the abovementioned facilities. All design drawings for the work the Certificate Holder will perform within the Bennett Substation are subject to NYSEG's review and approval.

y. The Certificate Holder shall be responsible for acquiring any additional necessary rights, licenses or permits for ROWs or off-ROW access.

121. The steel poles shall be colored or painted in a suitable color (such as medium to dark brown or green) to show less contrast with the background landscape; or be manufactured of self-weathering steel (such as "corten" or similar) that rusts uniformly to a rust-brown color.

122. The construction schedule shall be coordinated so as to minimize outages of the existing circuits adjacent to the Project, outages of the substations, and interconnected transmission facilities.

123. The Certificate Holder shall coordinate with NYSEG as to vegetation management during construction of the Project in the vicinity of the existing substation.

124. Certificate Holder shall identify any off-ROW danger trees and document them as part of the EM&CP.

125. If any off-ROW trees are determined by the Certificate Holder to pose a danger to construction, operation, or maintenance of the Project, the Certificate Holder shall arrange to have them removed during Project construction.

126. Construction work hours shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Sunday, with the exception of construction activities which may need to occur during extended hours beyond this schedule on an as-needed basis to address unusual circumstances. Construction work hour limits apply to facility construction, and to construction-related activities including the delivery and unloading of materials, and maintenance and repairs of construction equipment at outdoor locations, since these activities can result in extensive noise, large vehicles idling for extended periods at roadside locations, and related disturbances:

a. The Certificate Holder shall alert the Town and On-Site Monitor when construction activities will be required to occur past 7:00 p.m. DPS Staff shall be notified if such extensions are being considered prior to extending construction work hours; and

b. Notice of planned extra-hours construction shall be provided to residents of areas that may be affected by the noise, traffic or other aspects of construction, and appropriate measures taken to avoid, minimize and mitigate such impacts. Thirty days prior to the commencement of construction, the Certificate Holder shall compile a list cellphone numbers/electronic mail addresses/home phone numbers and addresses, to the extent reasonably available, of residents within 500 feet of the Project boundary lines and will contact the Towns' representative, and affected residents, assuming the aforementioned contact information has been provided to the Certificate Holder, as soon as practicable before the extended hour construction activity is to take place. This list shall not be filed with the Secretary nor publicized in any manner except for the use of the Certificate Holder, its employees, its

contractors and their respective employees, to implement the requirements of this Condition. If requested by DPS Staff, this list shall be provided to DPS Staff.

127. Following construction, all disturbed areas, ruts and rills shall be restored to pre-construction contours to reduce the effects of grading, except where construction grading in the vicinity of the existing substation is viewed as an improvement to the existing grade by DPS Staff. Erosion controls and permanent re-vegetation shall be restored as appropriate for those locations. Disturbed pavement, curbs, and sidewalks shall be restored to their original preconstruction condition or improved.

128. Neither the Certificate Holder nor any contractors in its employ shall clear or alter any areas outside the boundaries of the certified Project, except off-ROW access roads laydown areas designated in the EM&CP.

129. At the end of all construction, the Project ROW and respective work areas, including guy wire assembly and disassembly sites, shall be thoroughly cleared of debris such as nuts, bolts, spikes, wire, pieces of steel, and other assorted items.

130. Mid-span splices should not be located in wetlands, at road crossings, or in areas of limited accessibility. If mid-span splices are proposed at these locations (above wetlands, at road crossings, or in areas of limited accessibility) due to particular encumbrances, then explanation and justification shall be provided in the EM&CP for each proposed location.

131. The Certificate Holder shall provide to DPS Staff as-built drawings of the Project certified by a Professional Engineer

that is licensed and currently registered in New York State. As built drawings and construction record documentation of the Bennett substation work performed by the Certificate Holder shall be provided to NYSEG.

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

132. At least two weeks prior to construction, the Certificate Holder shall submit a report to the Secretary confirming that all required construction materials are available. For purposes of this paragraph, an item of construction material is available (i) if it is located at a marshalling yard, (ii) if it is in a Certificate Holder warehouse or other routine Certificate Holder inventory stocking location, or (iii) if it's on order from a vendor with a scheduled delivery date prior to the time scheduled for its use in the Project.

133. All equipment shall be located at the marshalling yard(s), laydown area or on the Project ROW, provided, however, that if a local contractor is used for the work, the local contractor's facility shall be considered an acceptable marshalling yard or laydown area.

134. DPS Staff will provide the name of a contact person(s) (DPS Staff Representative) and the contact information (mailing address, phone number, email, etc.) of that individual for purposes of this ordering clause and ordering clause numbers 130 through 132 of this Certificate. If a reportable accident occurs in connection with work on the Project, the Certificate Holder shall report any such accident to the DPS Staff Representative as soon as possible. A copy of the accident report, if any, shall be provided to the DPS Staff Representative after it has been finalized.

135. If a Contractor installs incorrect materials, structures, or components, the Certificate Holder, within 1 month after becoming aware of such incident, shall prepare and deliver to the DPS Staff Representative a summary report detailing the incident, the steps to be taken to rectify the mistake, the material and labor costs associated with rectifying the incident, and the manner in which such costs will be accounted for separately from such Certificate Holder's other Project costs.

136. The Certificate Holder shall develop a quality control plan (Quality Control Plan) for inclusion in the EM&CP describing how it will ensure that the transmission line structures and components it purchases for the Project conform to the specification for structures and components described in the approved EM&CP. At a minimum, the Quality Control Plan shall include: (i) the name(s) and qualifications of the individual(s) who will conduct audits under the Quality Control Plan ("Quality Control Audits"); and (ii) the frequency with which the Quality Control Audits will be performed.

137. Within five business days following completion of each Quality Control Audit, the Certificate Holder shall provide to DPS Staff a report of such audit that includes: (i) a description of the results of the audit, particularly with respect to results that identify that one or more structures or components the Certificate Holder purchased for installation in the Project did not conform to the specification for structures or components described in the approved EM&CP; and, (ii) any notes pertinent to the subject matter of such audit which were made at audit meetings by Certificate Holder personnel and contractors who performed the audit.



138. If any Quality Control Audit conducted by the Certificate Holder identifies that one or more structures or components the Certificate Holder purchased for installation in the Project did not conform to the specification for structures and components described in the approved EM&CP, the Certificate Holder shall: (i) provide written notification to the Secretary within 24 hours of the Certificate Holder's discovery of such non-conformity; and (ii) describe the steps the Certificate Holder will take to correct the non-conformity, including whether any components must be dismantled and sent back to the manufacturer, as well as a detailed estimate of all costs and expected delays in construction resulting from such non-conformity.

139. To better ensure a safe working environment for all persons at each Project work site, the Certificate Holder shall require its contractors or subcontractors, before any person who is authorized by the Certificate Holder to be present at the site that day, or any representative of a regulatory agency present on official business, commences performing or observing Project activities, to give such person an on-site tailboard safety briefing. The Certificate Holder shall ensure that: (a) any document that a person participating in a tailboard safety briefing is required to sign at such briefing is legible; and (b) the person conducting the briefing shall use his/her best efforts to give accurate and complete responses to all requests by such persons for clarification of the scope of work, construction methodology, and other pertinent personal safety information. If a person participating in a tailboard safety briefing who signed such a document desires a copy thereof, he/she shall request it in writing and the Certificate Holder shall provide a copy thereof to the requester within 48 hours of the request.

**P. Transportation, Roads and Highways**

140. The Certificate Holder shall minimize the impact of Project construction on traffic circulation. Traffic control personnel and safety signage will be employed to ensure safe and adequate traffic flow when secondary roadways are affected by construction. The Certificate Holder shall submit, as part of the EM&CP, a Maintenance and Protection of Traffic Plan for access to the transmission line. Construction worker parking shall be designated in areas that do not interfere with the normal flow of traffic, cause a safety hazard, or interfere with existing land uses and shall be specified in the EM&CP.

141. The Project ROW currently crosses a total of 16 state, county, or local roadways in Steuben County. Throughout construction, the Project ROW will be accessed at these public road crossings and potentially from new or existing construction access roads. The specific locations of access points to the ROW from local roadways will be developed with consideration for the maintenance of safe traffic operations. The EM&CP will address traffic control measures, including temporary signs, construction entrance locations, procedures for the movement of equipment and materials to the ROW, and potential road closure locations the Certificate Holder will use for construction of its Project Components. The EM&CP will also identify potential temporary storage locations for materials and equipment that the Certificate Holder will use for construction of its Project Components. The traffic control measures set forth in the EM&CP will also address procedures for conductor stringing to ensure maintenance and protection of traffic during construction of the Project.

142. Direct disturbance to properties shall be avoided by accessing the ROW from existing roadways or approved access roads.

143. The Certificate Holder shall delineate on the proposed EM&CP drawings, the locations of proposed temporary roads, proposed permanent roads and existing access roads. Proposed access road improvements and measures for environmental impact minimization and access control shall be included in the proposed EM&CP.

144. Neither the Certificate Holder nor any contractors in its employ shall construct, improve, or use any access roads not described in the EM&CP except in the case of an emergency situations threatening personal injury, property damage, or severe adverse environmental impact.

145. The Certificate Holder shall consult periodically with municipal highway transportation agencies about traffic conditions near the Facility site and shall notify each such transportation agency of the approximate date work will begin in its jurisdiction, using access points that take direct access from the highways in that jurisdiction.

146. In preparing the proposed EM&CP, the Certificate Holder shall consult with each transportation department or agency normally having jurisdiction over any roads in the Project vicinity that will be crossed by the certified Facility or used for direct access to the Project ROW. If the access road takes direct access from, or lies within the limits of, such roads, the Certificate Holder shall notify each relevant transportation department or agency of the approximate date when work will begin.

147. NYSDOT shall have authority to place inspectors on site to monitor and observe the Certificate Holder's activities on state highways, or to request the presence of state or local police to ensure the safety of freeway travelers, at such times and for such periods as NYSDOT deems appropriate. All costs thereof shall be borne by the Certificate Holder.

148. The Certificate Holder shall coordinate all State Highway crossings and longitudinal occupations with NYSDOT, if any. The Certificate Holder shall obtain the necessary permits from NYSDOT, including, as appropriate, a Highway Work Permit and Use and Occupancy Permit pursuant to 17 NYCRR Part 131. The NYSDOT Utility Work Permit will also include ROW occupancy by the Transmission Line, if required by NYSDOT.

149. The Certificate Holder shall coordinate with DPS Staff and NYSDOT for all work to be performed in the State highway rights-of-way. Prior to submitting its construction plan for any State highway right-of-way segment, the Certificate Holder shall provide to DPS Staff and NYSDOT a preliminary design marked to avoid conflict with potential future transportation projects that NYSDOT may seek to undertake in the future and shall offer to consult with NYSDOT concerning any comments it may offer and shall use reasonable efforts to accommodate any NYSDOT concerns.

150. All work within State highway rights-of-way shall be designed and performed according to the applicable traffic and safety standards and other substantive requirements contained in 17 NYCRR Part 131, entitled Accommodation of Utilities Within State Highway Right-of-Way, and applicable design standards of the American Association of State Highway Transportation Officials, the Manual of Uniform Traffic Control Devices, the

Highway Design Manual, and the NYSDOT 2008 Standard Specifications.

151. In preparing the proposed EM&CP, the Certificate Holder shall consult with NYSDOT regarding any State highways and/or related structures in the Project vicinity that will be crossed by the Facility or used for direct access to the Project ROW. If the access road takes direct access from, or lies within the limits of, such roads, the Certificate Holder shall notify NYSDOT of the approximate date when work will begin.

**Q. ROW Construction, Restoration, and Long-Term Maintenance  
after Construction**

152. In connection with the felling of trees, the Certificate Holder shall:

- a. Not clear or alter any area outside the boundaries of the fee-owned Facility ROW and permanent easement without prior notice to the owner(s) of the land to be cleared or altered, and the Certificate Holder also shall cause Contractors in its employ to comply with this prohibition.
- b. Negotiate in good faith with each landowner, appropriate compensation for the merchantable logs the Certificate Holder has determined it shall remove from such landowner's property.
- c. Comply with the provisions of 6 NYCRR Part 192, Forest Insect and Disease Control, and ECL §9-1303 and any quarantine orders issued thereunder.
- d. Note the disposal of all woody material resulting from clearing the ROW for the Facility on the EM&CP drawings.
- e. Not create a maximum chip depth greater than three inches, except for chip roads or for invasive species control.
- f. Not store chips in wetlands, active agricultural fields, or within 25 feet of streams.
- g. Adhere to DEC's then effective "New York State Standards and Specifications for Erosion and Sediment Control," also known as the "Blue Book."
- h. Include in the proposed EM&CP the SWPPP for the Project.
- i. Install temporary erosion control devices as soon as practicable and appropriate as indicated in the proposed EM&CP, but in any event no later than the end of the work day in which site disturbance occurs.

153. The Certificate Holder shall be responsible for checking all culverts and assuring that they are not crushed or blocked

during construction and restoration of the Facility; if a culvert is blocked, crushed, or otherwise damaged, the Certificate Holder shall repair the culvert or replace it with alternative measures appropriate to maintaining proper drainage.

154. Certificate Holder shall, upon completion of the Project:

a. Conduct an assessment of the need for landscape improvements, including vegetation planting, earthwork or installed features to screen or landscape the Facility with respect to road crossings, residential areas, and substations.

b. Prepare plans for any visual mitigation found necessary as a result of the assessment conducted pursuant to subdivision (a) of this condition, and, in connection therewith, removal, rearrangement and supplementation of existing landscape improvements or plantings should be considered, as appropriate.

c. Consult with DPS Staff on the content and execution of its assessment, resultant landscaping plan specifications and materials list; details shall include measures for third party or wildlife damage to any landscape and vegetation plantings; and,

d. Present draft assessments and plans to DPS Staff for review, and file a final plan with the Secretary within one year after the date the Facility is placed in service.

155. The proposed EM&CP shall include plans to prevent unauthorized access to and along the Facility ROW. Plans shall include the following:

a. Posting signs at the ROW edges in those locations where the ROW intersects public roads.

- b. Performing outreach to educate and inform the public concerning the risks and impacts of unauthorized access.
- c. Working with local law enforcement officials in an effort to prevent future trespassing.
- d. Identifying construction and material details of gates and berms.
- e. Identifying existing and proposed gate locations on the Plan and Profile drawings. Final determination of locations of gates and berms shall be made during post-construction assessment of the Facility, in consultation with DPS Staff.

156. Concurrent with Commission approval of the EM&CP for this Project, the Chief of the Environmental Certification and Compliance Section of the Office of Utility Rates and Services, pursuant to §401 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1341, and PSL Article VII, will execute the certification that the Facility will comply with the applicable requirements of §§301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended, and will not violate New York State water quality standards and requirements.

157. Following construction, the Project will be maintained in accordance with the long-term ROW Management Plan filed in the EM&CP. Within one year of the start of commercial operation of the Project, the Certificate Holder will file with the Secretary a long-range vegetation management program addressing compliance with 16 NYCRR §84.1 and other, applicable, substantive provisions of 16 NYCRR Part 84.

158. A Final Vegetation Management Program Manual shall be filed in the EM&CP. The proposed Manual will remove herbicide broadcast and aerial spray methods and replace them with more targeted approaches to vegetative management of the ROW. Any



required aerial spray treatment proposals will comply with 16 NYCRR §84.1.

159. After construction, the Certificate Holder is authorized to control regrowth of vegetation employing the use of herbicides. Only herbicides approved for use in any Federal wetland, State-regulated wetland, or State-regulated wetland 100-foot adjacent area (collectively "Regulated Wetlands") may be used. All herbicide applications will be conducted in accordance with applicable state regulations and standards.

160. Following construction, with the exception of spur access roads, the disturbed area will be restored to approximate pre-construction contours to reduce the effects of grading, except where construction grading is viewed as an improvement to the existing grade by DPS Staff.

161. A Final Decommissioning Plan and proof of financial security shall be filed in the EM&CP that contains the requirements, as it relates to the Transmission Line, of the Decommissioning Plan filed as Exhibit 29-1 of the Case 16-F-0062 Article 10 Application and the information contained in this paragraph. The Decommissioning Plan shall include (i) the anticipated life of the Transmission Line; (ii) the estimate of decommissioning in current dollars; (iii) the method of ensuring that funds will be available for decommissioning and restoration as provide in the Plan; (iv) the method that the decommissioning estimate will be kept current; and (v) the manner in which the Project will be decommissioned and the site restored. The decommissioning estimate contained in the Plan shall be updated by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and any other changes after one year of Transmission Line operation,

and every fifth year thereafter. No offset for projected salvage value is permitted in the calculation of the estimate. The Certificate Holder shall contact the Towns of Greenwood, Hartsville, and Hornellsville and shall work with each Town that is interested in doing so, in consultation with DPS Staff, to craft a letter of credit and an agreement that will establish a right for that Town (Greenwood, Hartsville, or Hornellsville) to draw on an irrevocable letter of credit in the event of the Certificate Holder's failure to timely decommission the Facility and restore affected Facility areas in accordance with the Certificate Holder's approved Final Decommissioning Plan(s). An acceptable form of irrevocable letter of credit shall state on its face it is held by and for the sole benefit of the Town. The Certificate Holder shall maintain the letter of credit for the benefit of the Town until the Facility is fully decommissioned and all affected areas are fully restored. The Certificate Holder shall not encumber or create any security interest(s) in the letter of credit in favor of a third party. The Certificate Holder shall file with the Secretary, proof that the irrevocable letter of credit has been obtained in the decommissioning estimate amount, as calculated pursuant to the Commission's Order in this proceeding and affirming that no security interest(s) in the letter of credit has been or will be created in favor of a third party. The letter should remain active for the life of the Facility, until it is decommissioned, as adjusted every fifth year in consultation with the Towns and DPS Staff. In the event any Town declines to hold a letter of credit, then the Certificate Holder shall, as part of its EM&CP filing, propose comparable, alternative financial security.