

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on May 14, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman

CASE 15-G-0167 - Petition of Niagara Mohawk Power Corporation to  
Amend its Certificate of Environmental  
Compatibility and Public Need Granted by Order  
issued in Case 90-T-0594.

ORDER APPROVING AMENDMENT OF THE CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED

(Issued and Effective May 19, 2015)

BY THE COMMISSION:

BACKGROUND

On March 30, 2015, Niagara Mohawk Power Corporation  
d/b/a National Grid (National Grid) submitted a petition to  
amend its Certificate of Environmental Compatibility and Public  
Need (Certificate).<sup>1</sup> The Certificate authorized construction of  
a 5,750-foot 6-inch diameter coated steel pipeline (Pipeline 61)  
in the City of Sherrill and Town of Vernon, Oneida County. In  
July 2013, the portion of Pipeline 61 running adjacent to and  
crossing beneath Sconondoa Creek in the City of Sherrill and the  
Town of Vernon was washed out and severed as a result of an  
unprecedented flood event.

The pipeline was, and is, the sole source of fuel to  
the Sterling Energy co-generation facility in the City of

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<sup>1</sup> Case 90-T-0594, Niagara Mohawk Power Corporation Gas  
Transmission Line, Order Granting Certificate of Environmental  
Compatibility and Public Need (issued September 6, 1990).

Sherrill. To ensure continued operation of this needed infrastructure, National Grid requested and was granted a "Minor Change" to its Certificate. In order to repair and return to service the damaged portion of the pipeline, National Grid constructed a temporary bridge over Sconondoa Creek and installed a temporary pipeline on it.

On March 19, 2015, National Grid formally requested permission to amend its Certificate for the purpose of removing the temporary bridge crossing and installing a new permanent crossing across Sconondoa Creek (the Project).

The petition was served on all the chief executive officers of the municipalities in which the Project is proposed to be constructed and on the list of active parties from Case 90-T-0594, on March 19, 2015. No comments have been received.

#### THE PROPOSED AMENDMENT

As proposed, the Project would consist of the following: (1) removing from service the temporary aerial pipeline crossing of Sconondoa Creek; (2) abandoning in place approximately 1,860 feet of existing underground pipeline; and (3) installing approximately 1,335 feet of new six-inch diameter steel underground natural gas pipeline. Approximately 710 feet of piping would be installed using Horizontal Directional Drilling (HDD) and the remaining 625 feet would be installed using open trenching. HDD is proposed for a portion of the Project's pipeline installation to avoid potential impacts to a New York State Department of Environmental Conservation (NYSDEC) wetland, Sconondoa Creek (a NYSDEC Class C(t) stream), and an intermittent stream.

The proposed pipeline would be installed a minimum of three feet below grade and a minimum of 10 feet below the bed of Sconondoa Creek. National Grid proposes to connect the new

pipeline with the existing 6-inch diameter Pipeline 61 at the location depicted on the attached map and extend it and connect to the Gas Large Meter Station at the co-generation plant. The proposed pipeline's maximum allowable operating pressure will be 524 pounds per square inch gage ("psig") (the maximum pressure authorized by the existing Certificate). No wells are proposed to be connected to the pipeline as part of the Project.

The 625-foot portion of the pipeline to be installed by trenching is located entirely within National Grid's existing fee-owned right-of-way (ROW) currently occupied by the 115 kilovolt Oneida-Sterling Line 4 electric transmission line (Line 4 ROW). The Line 4 ROW is 100 feet wide. Trenching within the Line 4 ROW would require a 10-foot-wide corridor and vegetation clearing along the pipeline route.

The 710 foot portion of the pipeline to be installed via HDD would require National Grid to obtain from three existing landowners a 20-foot-wide permanent easement from the proposed pipeline route's point of intersection with the Line 4 ROW to the point of the pipeline's terminus at the Sterling Energy co-generation plant. There are no known underground facilities that cross or parallel in close proximity to the proposed pipeline.

An existing gravel-paved and earthen access road is located within the Line 4 ROW that would be used to access the Project. The access road extends from Sholtz Road southeast along the Line 4 ROW. The Project would extend the gravel surface approximately 350 feet along the earthen portion of the access road and would create an approximately 0.08-acre gravel surfaced turnaround area for construction vehicles. An approximately 0.26-acre temporary marshalling yard would be constructed adjacent to the terminus of the new gravel-surfaced

portion of the access road to store Project equipment and materials.

ENVIRONMENTAL ASSESSMENT

Department of Public Service (DPS) Staff reviewed the proposed amendment and conducted field visits. DPS Staff advises that, since the majority of construction activities will take place on existing overhead electric ROW that has already been cleared the cumulative adverse environmental impacts of the Project will be minimal. The only aquatic resources present will be crossed by HDD and not physically impacted.

Moreover, because the proposed Project will occur within and/or immediately adjacent to the Project ROW, impacts to land use are expected to be minimal. With the exception of the new 20-foot-wide permanent easement National Grid will need to acquire for the 710-foot portion of the buried pipeline, all clearing will be done within National Grid's existing ROW. The new 20-foot corridor for the length of the new pipeline will be permanently maintained in an open ROW condition. All vegetation along the new 20-foot ROW will be chipped and removed from the site. Impacts from clearing in the Project workspace (marshalling yard, bore sites, temporary bridge removal sites, and along the trenching route) will be temporary and those areas will be restored and revegetated with native plant species following construction activities.

The only known threatened or endangered species in the Project area are the Indiana Bat (state- and federally-listed as endangered) and the Northern Long-eared Bat (federally-listed as threatened). To avoid potential adverse impacts to these species, ROW clearing of tree and shrubs greater than three inches in diameter would only be performed between the months of October and April, when the bats are hibernating in areas outside of the Project location.

National Grid reports that construction and operation of the Project is not expected to have any impact on archaeological or historic resources. The Project area is located outside of a New York State Office of Parks, Recreation and Historic Preservation (OPRHP) mapped "Archeologically Sensitive Area" and OPRHP issued a letter to National Grid indicating that the Project will have no effect on cultural resources listed on the National Register of Historic Places (NRHP) or eligible for listing on the NRHP (Petition, Exh. B, Appx. D). Should any archaeological resources be uncovered during construction, National Grid will be required to stop work and contact OPRHP and DPS Staff.

In accordance with PSL §121-a(1), all work will be performed in accordance with the DPS Revised Environmental Management and Construction Standards and Practices dated February 28, 2006 (EM&CS&P), adopted by the Commission on December 7, 2006, in Case 06-T-1383 (incorporated herein by reference).<sup>2</sup> Pursuant to 16 NYCRR §85-1.2(a)(3), National Grid has developed a checklist of those measures and techniques from this EM&CS&P which it shall follow in an effort to minimize or avoid adverse impacts on sensitive resources affected by the Project to the maximum extent practicable.

Therefore, consistent with the foregoing, the Commission grants the requested Certificate amendment.

#### APPLICABLE LOCAL LAWS AND WAIVER REQUEST

National Grid has reviewed the local laws, ordinances and regulations of the County of Oneida, City of Sherrill and Town of Vernon. According to National Grid, that review

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<sup>2</sup> Case 06-T-1383, Fortuna Energy Inc., Order Granting Certificate of Environmental Compatibility and Public Need and Approving Environmental Management and Construction Standards and Practices (issued December 7, 2006).

revealed one local law (Chapter 68 of the Town of Vernon Town Code) that, as applied to the Project, would be unreasonably restrictive in view of existing technology, factors of cost or economics or the needs of consumers. National Grid requests that the Project be reviewed in accordance with PSL Section 121-a(7) and that the Commission, pursuant to PSL Section 126(1)(f), refuse to apply to the Project Chapter 68 of the Town of Vernon Town Code, for the reason discussed below.

In its petition, National Grid states that: "Chapter 68 of the Town of Vernon Town Code, entitled 'Flood Damage Prevention,' prohibits development within a stream floodway unless: (i) a licensed engineer shows that such development will not result in increased flood levels, and (ii) the Town of Vernon agrees to apply to the Federal Emergency Management Agency ("FEMA") for a conditional Flood Insurance Rate Map ("FIRM") and floodway revision and FEMA approves such revision" (Petition, p. 9, citing Vernon Town Code §68-14(B)(2) (emphasis added)). National Grid further states that: "The Town Code defines 'development' to include '[a]ny man-made change to improved or unimproved real estate' including, among other things, 'drilling operations.'" Because the Project proposes to utilize HDD installation of the pipeline through the floodway surrounding Sconondoa Creek, the Flood Damage Prevention law applies. National Grid believes that requiring compliance with both sections of Vernon Town Code §68-14(B)(2) would be unreasonably restrictive in view of the existing technology, factors of cost or economics or the needs of consumers.

We disagree with National Grid's interpretation of the local law and see no reason to grant the waiver request. National Grid has mischaracterized Chapter 68 of the Town of Vernon Town Code in a way that interprets the law to be more

restrictive than it is. Chapter 68 of the Town of Vernon Town Code prohibits development in a floodway unless:

(a) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or

(b) The Town of Vernon agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Vernon for all fees and other costs in relation to the application .... §68-14(B) (2) (emphasis added).

The law requires compliance with either subsection (a) or (b), not both.

Because the pipeline is proposed to be installed a minimum of 10 feet below Sconondoa Creek, it would not affect flood levels. Consequently, National Grid should be able to comply with Town Code §68-14(B) (2) (a).

#### CONCLUSION

Based upon the information presented above, we find that, in accordance with PSL §121-a(7), the proposed Project will minimize or avoid adverse environmental impacts to the maximum extent practicable. Therefore, we hereby grant National Grid its requested amendment to the Certificate previously granted in Case 90-T-0594. We deny the requested waiver of Chapter 68 of the Town of Vernon Town Code.

The Commission orders:

1. The petition for an amendment to the Certificate granted in Case 90-T-0594 requested by National Grid on March 19, 2015, is approved consistent with the discussion in this Order.

2. The requested waiver of Chapter 68 of the Town of Vernon Town Code is denied.

3. This proceeding is continued, but shall close 10 days after the right-of-way has been completely restored, unless the Secretary to the Commission finds good cause to continue the proceeding further.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary