

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 20, 2016

COMMISSIONERS PRESENT:

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

CASE 10-T-0080 - Application of Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Construction of a New 115kV Electric Transmission Line from Spier Falls, Saratoga County to Rotterdam, Schenectady County - Sodeman Road Substation Amendment.

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

(Issued and Effective April 22, 2016)

BY THE COMMISSION:

INTRODUCTION

Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or the Applicant) is the holder of a Certificate of Environmental Compatibility and Public Need (Certificate) issued by the Commission pursuant to Article VII of the Public Service Law (PSL) for the 115 kilovolt (kV) Spier Falls to Rotterdam Transmission Line #302 (Line 302) and the busing of its existing 115 kV Spier Falls to Luther Forest Transmission

Line #2 (Line 2).¹ The Certificate was amended on July 16, 2012.² By this order, the Commission is approving an additional amendment to the Certificate to allow National Grid to construct and operate an interconnecting 115 kV / 13.2 kV distribution substation (Sodeman Road Substation) and associated 115 kV tap lines (115 kV Tap Lines) in the Town of Milton, Saratoga County.

BACKGROUND

On August 18, 2015, National Grid submitted an application for amendment of the Certificate to allow for the construction of a 115 kV / 13.2 kV distribution substation (Sodeman Road Substation) and associated 115 kV tap lines (115 kV Tap Lines) that would tie into the Applicant's existing Line 2 and Line 302 (Amendment Application).

Pursuant to 16 NYCRR §85-2.10(c), public notice of the Amendment Application was published in The Recorder, the Times Union, The Saratogian, The Post-Star, the Daily Gazette, and the Ballston Journal Online, newspapers of general circulation in the project area. Electronic copies of the Amendment Application were served on local municipal and county government agencies and elected officials and local public libraries of the time of filing. No comments were received from the public regarding the proposed amendment to the Certificate.

In addition to proper notice, PSL §123(2) requires that the Commission hold a hearing "if the change in the facility to be authorized would result in any material increase

¹ Case 10-T-0080, Niagara Mohawk Power Corporation, Order Granting Certificate of Environmental Compatibility and Public Need (issued February 24, 2011).

² Case 10-T-0080, Supra, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need (issued July 16, 2012).

in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application." A hearing is required by the Commission in this case since the proposed changes will substantially change the location of the facility. A public statement hearing was held on November 16, 2015 in Ballston Spa, Saratoga County. At the public statement hearing both the Staff of the Department of Public Service (Staff) and the Applicant gave presentations and answered questions about the project; there were no formal public statements made by any members of the public.

A procedural conference was held on November 17, 2015. In attendance at the procedural conference were the Applicant, Staff, and the New York State Department of Environmental Conservation (DEC). DEC raised concerns with respect the Applicant's proposed method of clearing in wetlands and the proposed method of mitigating and controlling the spread of invasive species. The Applicant responded to DEC's concerns on December 1, 2015, and DEC replied on December 9, 2015.

On December 11, 2015, amendments to Article VII of the PSL were enacted³ that, among other things, add new requirements that require notification by first class mail to each landowner of land on which any portion of such proposed facility is to be located; and that the Commission may not grant a Certificate (or amendment) unless it shall find and determine that the facility represents a minimum adverse impact on active farming operations considering the state of available technology and the nature and economics of various alternatives, and the ownership and easement rights of the impacted property.

³ Chapter 521 of the 2015 Laws of New York.

On December 28, 2015, the Administrative Law Judge (ALJ) assigned to this case ruled that there was no need for an evidentiary hearing and that Advisory Staff would complete the further processing of the Application and make internal recommendations to the Commission on whether, and under what conditions, to grant the relief requested in the Application.

On January 25, 2016, a Notice Soliciting Comments addressing the newly required agricultural impacts finding was issued by the Secretary. Comments were accepted until February 1, 2016. Although it is not clear whether the new landowner notification requirements apply to pending applications, landowner notification letters were mailed by the Applicant on February 9, 2016.

LEGAL AUTHORITY

PSL §126(1) provides the Commission may not grant a certificate for the construction or operation of a major utility transmission facility unless it shall 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, including consideration of the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations including but not limited to, the effect on agricultural lands, wetlands, parklands and river corridors traversed;
- (d) that the facility represents the minimum adverse impact on active farming operations that produce crops, livestock, and livestock products, as defined in Section 301 of the Agriculture and Markets Law, considering the state of available technology and the nature and economics of various alternatives, and the ownership and easement rights of the impacted property;

- (e) (1) what part, if any, of the line shall be located underground; (2) that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability;
- (f) [PSL §126(f) is not applicable to electric facilities];
- (g) that the location of the facility as proposed conforms to applicable state and local laws and regulations . . . , all of which shall be binding upon the commission, except that the commission may refuse to apply any local ordinance, law, resolution or other action or any regulations . . . or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality; and
- (h) that the facility will serve the public interest, convenience, and necessity.

The concept of "environmental compatibility and public need" requires that the Commission "protect environmental values, and take into account the total cost to society of such facilities" when making a decision on whether to grant a PSL Article VII certificate.⁴ In rendering this decision, the Commission cannot look at any single aspect of an application in a vacuum; rather the Commission must consider the totality of all of the relevant factors. Moreover, if the Commission determines that the location of all or a part of the proposed project should be modified, or is not needed, it may condition

⁴ See Chapter 272 of the Laws of 1970, Section 1, Legislative Findings.

the certificate upon such modification, provided that the municipalities and persons residing in such municipalities affected by the modification shall have had notice of the application as provided in PSL §122(2).⁵

THE APPLICATION

National Grid proposes to construct a 115 kV/13.2 kV distribution substation and associated 115 kV Tap Lines that would tie into the Company's existing 115 kV Spier Falls to Rotterdam Transmission Line 2 and its existing 115 kV Spier Falls to Luther Forest Transmission Line 302.

The Sodeman Road Substation will be located on a 5.7 acre parcel (the Crootof Parcel) located south of State Route 29, near its intersections with Murray Road (County Route 104) and Sodeman Road, in the Town of Milton, Saratoga County. Line 302 and Line 2 run in a northeast-southwest direction along the eastern boundary of the Crootof Parcel in an existing 120-foot wide right-of-way (ROW). The existing ROW is comprised of a 100-foot wide corridor owned in fee by National Grid and a 20-foot wide corridor on the west side held by National Grid as an easement. National Grid does not own the Crootof Parcel at this time, but intends to acquire the property in fee, prior to construction of the Project.

Construction of the project would include clearing approximately 3.2 acres of vegetation and approximately 1.2 acres of ground disturbance/grading. The substation would include a single 15/20/25 megavolt amperes (MVA) transformer, seven position 15 kV metal-clad switchgear, and a 3.6 MVA reactive (MVAR) capacitor bank arrangement. The 115 kV Tap Lines would be comprised of transmission line structures

⁵ PSL §126(3).

designed to provide a dual supply feed from Lines 2 and 302 to the Sodeman Road Substation. One tap line would be approximately 125 feet in length; the other would be approximately 235 feet in length. The proposed size of the Sodeman Road Substation is approximately 130 feet wide by 160 feet long (0.48 acre) and would be surrounded by a fence and surfaced in crushed stone. A permanent gravel turnaround/parking area approximately 120 feet by 70 feet would be located adjacent to the north side of the substation, and a new 20-foot wide permanent gravel access road approximately 300 feet in length would connect to an existing paved road that runs south from State Route 29 to the Milton Manor Pet Spa. Construction of the access road and connection with Route 29 would require a new permanent easement, totaling approximately 0.7 acres, along the existing Milton Manor Pet Spa road. National Grid also plans to acquire vegetation management/clearing easements and danger tree removal rights on the easterly edge of the existing ROW, in the tap connection area, and danger tree removal rights along a portion of the substation site's northwest property line.

The proposed structures supporting the 115 kV Tap Lines would be constructed of both wood and steel. The proposed 3-way tap pole, installed on the mainline of Line 302, would be galvanized steel and the remaining tap structures would be guyed wood pole structures, 50-60 feet in height. The take-off structures entering the substation would be galvanized steel "A" frame construction, 45 feet in height with a lightning rod extending approximately an additional 15 feet, with reinforced concrete foundations. The insulators on the steel 3-way structure would be 10-disc string insulators and gray to match the insulators on the mainline, and the insulators on the wood pole structures would be 10-disc string insulators and brown to

match the wood pole color. All transmission line tap conductors would be non-specular 795 ACSR "Drake."

Alternative Locations

National Grid identified several alternatives that were evaluated, including alternative substation locations. National Grid considered and evaluated three alternative locations for the substation within a five mile long section of the Spier Falls to Rotterdam transmission corridor. Based on this evaluation, National Grid determined that the proposed Sodeman Road Station site is preferred. Its rural setting and screening provided by surrounding vegetation and topography would minimize visual and noise impacts.

Environmental Analyses

In preparing its Amendment Application, the Applicant consulted with DEC, the Office of Parks, Recreation and Historic Preservation (OPRHP), the New York Natural Heritage Program (NYNHP), the United States Fish and Wildlife Service (USFWS), and the Town of Milton to ensure that the proposed substation location, layout, and structure placements would minimize impacts on resources in or adjacent to the Project area. In addition, field evaluations and review of existing data and literature were conducted to evaluate existing environmental conditions within the project Study Area.

As described by 6 NYCRR §750-1.21(b)(2), a State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (SPDES Permit) will be required for the project's construction activities. Approximately 1.2 acres of ground disturbance/grading would be required for the Project. In accordance with the General Permit, the Project will be subject to the requirements of a regulated, traditional land use control Municipal Separate Storm Sewer System (MS4) in the Town of

Milton. Prior to construction, National Grid will obtain coverage by filing a Notice of Intent to the Town of Milton. A Stormwater Pollution Prevention Plan (SWPPP) addressing stormwater management, temporary soil erosion and sediment controls, and spill-prevention and control measures will be developed in accordance with the requirements of the SPDES Permit.

There are no mapped or unmapped streams, or flood hazard zones within the 5.7-acre Crootof Parcel. Although the site does contain a small portion of an overlapping state and federally jurisdictional wetland (M-67 and PF01/4E, respectively) located at the southern end of the site, there is sufficient buildable area to avoid impacts to this resource. The portion of the wetland within the work site is devoid of trees and only minimal clearing would be required in a very small, sparsely treed, area of the DEC state-regulated 100-foot adjacent area to the east of the already maintained ROW.

Water-bodies would not be directly impacted by the project. National Grid states that any tree clearing that may be required would be selective and done by hand within the wetland. There are no streams to be crossed or planned vehicular activity within wetland boundaries, therefore, a 401 Water Quality Certificate has not been requested nor will it be required.

Based on correspondences with the NYNHP dated October 3, 2014 and October 23, 2014, there are no records of rare or state-listed animals or plants, or significant natural communities on the Project site in the immediate vicinity. In addition, National Grid provided correspondence dated September 19, 2014 from OPRHP Division of Historic Preservation indicating that the proposal had been reviewed pursuant to §14.09 of the New York Parks, Recreation and Historic Preservation Law, and

expressing its opinion that the project would have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places.

Vegetation clearing would be required for project construction. Permanent loss of wildlife habitat would be minimized but will include conversion of 0.81 acres of natural communities to built facilities. In order to avoid potential impacts to roosting Northern Long-eared bats and breeding birds clearing of trees and shrubs greater than three inches in diameter at breast height will be restricted to the period between October 1 and April 1.

An initial survey for invasive species was done in the Spring/Summer of 2014 using DEC's Revised Interim List of Invasive Plant Species in New York State (May 14, 2012). National Grid states that it will conduct an additional survey prior to the start of construction which will be based on DEC's list of Prohibited and Regulated Invasive Species contained in 6 NYCRR Part 575, September 10, 2014 (effective March 10, 2015). The survey will identify type, relative abundance, and location of the invasive species on the Project site. Each species will be considered in its landscape context, such as, whether a species is contributing positively to vegetation management of the Project site or adjacent ROW and whether the same species has been observed, or otherwise is known to be abundant, on adjacent lands.

The one mile visual study area for this project includes the Champlain Valley National Heritage Area, the Mohawk Valley Heritage Corridor, and the Kayaderosseras Creek. No other resources of statewide significance, including National Register of Historic Places-listed sites or districts, state parks, state forest preserves, national wildlife refuges or

state wildlife management areas, national natural landmarks, national parks or forests, scenic byways, scenic areas of statewide significance, state or federally designated trails or state nature/historic preserve areas, occur within the visual study area. Based on the results of viewshed analyses and field review, visibility of the project will be limited to partially screened views of the project to the east along County Route 59 and immediately adjacent to the Project site from the Milton Veterinary Hospital and the Milton Manor Pet Spa driveway. The project will not affect visually sensitive resources and no mitigation measures are proposed.

Existing ambient noise levels were measured continuously over a seven day period at six different locations, and were found to be higher during the daytime and to fall considerably to the 25 to 35 dBA (decibel A-weighting) range at night when vehicular activity diminished. Noise levels from the proposed transformer were forecasted at different locations and noise contours were rendered by using a three-dimensional computer noise model. Results showed forecasted noise levels to be about 35 dBA at an adjacent existing commercial building and lower than 35 dBA at all residential receptors. Although the transformer, including fans in operation, is warrantied at a sound level of 65 dBA, it was actually measured at 59.9 dBA. Since the acoustical model was set by using a conservative estimate of 72 dBA for the transformer, future noise levels at all positions are expected to be lower than estimated. The Applicant's acoustical consultants concluded that sound emissions from the project will be largely or completely inaudible at all residences and no noise impact is expected.

Engineering Justification

The Sodeman Road Substation is needed to relieve capacity constraints, and voltage and reliability issues in the

western half of the City of Saratoga Springs and parts of the Towns of Greenfield and Milton. The area currently suffers voltage and reliability issues, and the projected load growth over the next few years will create overload conditions in the affected area. The distribution feeder in the Ballston Substation is projected to reach 101% of its summer normal rating in 2016. The Brook Road Substation has two distribution feeders, one is projected to be loaded in excess of 100% by 2016, the other by 2017. If the expected in-service date of May 2018 is not reached, then it could expose distribution customers on the Ballston Substation or Brook Road Substation to an increased risk of long duration outages. The Sodeman Road Substation will serve the existing distribution load and support the projected load increase.

ANALYSIS OF COMMENTS

Agricultural Impact

Comments were submitted by the Applicant with respect to the recent amendment of PSL §126(1)(d) clarifying that "[n]o agricultural land would be impacted by construction or operation of the Project." New York State Agriculture & Markets (Ag&Mkts) also provided comment on February 1, 2016 stating that, according to National Grid's Application Section 4.3.3 of Exhibit 4 "[n]o agricultural land would be impacted by construction or operation of the Project."

Discussion

While much of the land in Saratoga County is agricultural land, the proposed site of the Sodeman Road Substation is almost a mile away from the nearest agricultural district. The site is not currently used as an active farm operation and does not produce crops, livestock or livestock products. Considering the ownership of the proposed site and

easement rights applicable thereto, the Project as proposed would not impact active farming operations.

Construction Issues

DEC filed comments December 8, 9, and 23, 2015 and February 3, 2016 to address the clearing disposal method (chipping) associated with DEC Wetland M-67 100-foot adjacent area and the Applicant's invasive species control plan (ISCP), including post-construction monitoring.

Discussion

National Grid submitted a letter on December 1, 2015 stating that it does not intend to use chipping as a disposal method in the wetland adjacent area. The Commission finds National Grid's letter fully addresses DEC's concern about the clearing disposal method. Similarly, on February 1, 2016, National Grid filed an ISCP for this project that addresses DEC's invasive species concern. The ISCP includes provisions for an additional invasive species plant survey prior to construction using the current list of Prohibited and Regulated Invasive Species, dated September 10, 2014 (effective March 10, 2015). As to post-construction monitoring of the possible spread of invasive species during and as a result of construction, the Commission will not require post-construction monitoring for the Sodeman Road project because it does not present a concern to a unique habitat. The Commission awaits the results of such monitoring for the Spier Falls to Rotterdam facility where post-construction monitoring was ordered in view of the fact that little data was available regarding the possible spread of invasive species during and as a result of construction. After that monitoring is completed, there will be an opportunity to consider whether the results indicate that such post-construction monitoring is necessary more generally.

LOCAL LAWS

Pursuant to 16 NYCRR §86.8, the Applicant submitted a list of all "local ordinances, laws, resolutions, regulations, standards, and other requirements applicable to the proposed facility, together with a statement that the location of the facility as proposed conforms to all such local legal provisions, except any that the applicant requests that the commission refuse to apply because, as applied to the proposed facility, such local legal provision is unreasonably restrictive in view of the existing technology, factors of costs or economics, or the needs of consumers whether located inside or outside any particular municipality."

Substantive requirements or prohibitions of local laws are applicable under PSL §126(1)(g) relative to a transmission facility unless the Commission finds the local laws to be unreasonably restrictive and refuses to apply them under the statute.⁶ Where local laws and regulations have both substantive and procedural requirements, the procedural requirements are inapplicable under PSL §130, but substantive requirements or prohibitions remain in force unless found to be unreasonably restrictive under PSL §126(1)(g). Applicants have the burden of identifying applicable local laws with substantive requirements

⁶ Paragraph (g) of § 126(1) requires that the Commission, in granting an Article VII certificate for a major utility transmission facility, find: "That the location of the facility, as proposed conforms to applicable state and local laws and regulations issued thereunder, 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 regulation issued thereunder or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality."

and justifying any need for the Commission to refuse to apply any such requirements they consider unreasonably restrictive, or that would prohibit construction of the facility.

The Applicant has identified several Town of Milton local laws as being applicable to this project, including Chapter 180 - Zoning Section 180-86 - District Schedule of Area and Bulk Regulations; Chapter 180 - Zoning Section 180-20 - Minimum Lot Frontage; Chapter 180 - Zoning Section 180-24 - General Performance Standards Subsection 180-24A - Noise; Chapter 180 - Zoning Section 180-26 - Signs; Chapter 180 - Zoning Section 180-27 - Fences and Walls; Chapter 180 - Zoning Section 180-28 - Excavations as Part of Site Preparation; Chapter 180 - Zoning Section 180-29 - Restrictions Near Wetlands; and Chapter 180 - Zoning Section 180-36 - Required Screening for Non-Residential Uses. As noted above, while the Applicant need not comply with the procedural requirements of these local laws, or make application to the local government for site plan approval and/or special use permits, the criteria that the Town would apply in such cases must here be evaluated by the Commission.

According to the Applicant, the Town of Milton Town Code Section 180-86 - District Schedule of Area and Bulk Regulations imposes lot size, set-back requirements, and height restrictions that the Company claims it will be unable to comply with. The Application lists the various restrictions with respect to Milton Town Code Section 180-86 including, a minimum lot area of five acres, with a minimum lot width of 200 feet and minimum required yards of 150 feet in the front, 75 feet in the rear, and 50 feet on each side and a 35-foot height restriction. Our refusal to apply the minimum lot size requirement is not necessary in this case, given that the Town Code requires "a minimum lot size of five acres" and the current lot size of the

Crootof parcel is 5.7 acres. With respect to set-back requirements we decline to refuse to apply the minimum set-back requirements because the Applicant has failed to provide the necessary demonstrations required by the Commission's regulations⁷ as to technology, costs, or needs of consumers. In fact, the Application states that "[t]he Applicant could, in theory ... take steps to merge the Project Site with the Applicant's fee-owned transmission right-of-way, or acquire a much larger lot in order to satisfy some of the minimum yard requirements." As was stated by the Commission in Case 15-T-0384 "[t]he municipal process may be preferred from a land use perspective because the local planning board would have the broadest jurisdiction to consider the best layout for both the parcel to be acquired and the remainder parcel."⁸ The substation layout is compact and lends itself to conformance with the set-back requirements of the Town as it is possible for the

⁷ The statement of justification shall show that the request cannot be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The statement shall include a demonstration: (1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, layout, process or materials that make compliance by the applicant technically impossible, impracticable or otherwise unreasonable; (2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local legal provision outweigh the benefits of applying such provision; and (3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the local legal provision. [16 NYCRR §86.8(b)].

⁸ Case 15-T-0384, Niagara Mohawk Power Corporation, Order Denying Rehearing and Making Limited Clarifications for Compliance Matter (issued December 21, 2015).

Applicant to comply with all requirements merely through acquiring sufficient land without such additional acquisition being unreasonably burdensome.

In addition, Milton Town Code Section 180-20 - Minimum Lot Frontage requires that on all lots proposed for building purposes, a minimum lot frontage of 50 feet and a minimum width of 50 feet for the lot's entire depth between its frontage and its buildable portion. For the same reasons as those stated above we decline to refuse to apply the Town's requirements for a minimum lot frontage. Again, the substation could comply with the Town's requirements through means other than the Commission's refusal to apply the Town's code.

Milton Town Code Section 180-86 states that there is a 35-foot maximum height limit. The request to refuse to apply the substantive height requirement is granted because it is not technically feasible to alter the design of the Project to meet the ordinance's requirements. As Application Figure 5.3 Electrical Elevation indicates, there will be several structures that need to exceed the Town's height limitations by 35 or more feet, including structures that will range between 80 and 45 feet in height that are required for the 115 kV tap lines, in order to ensure the minimum ground clearances necessary to ensure safety.⁹ Therefore, pursuant to PSL §126(1)(g), the request to refuse to apply the substantive height requirement of Milton Town Code Section 180-86 is granted because such requirement is unreasonably restrictive in view of the existing technology. Although not requested in the Application, the Commission for reasons stated above, also refuses to apply the substantive requirements under Milton Town Code Section 180-

⁹ See, Application Figure 5.3 Electrical Elevation.

15(A)(2) which restrict transmission poles "to a maximum height of 50 feet above average finished grade at its base."¹⁰

The Application seeks relief from the standards under Milton Town Code Chapter 180 - Zoning Section 180-24 - General Performance Standards Subsection 180-24A - Noise, stating that it would be technologically infeasible to comply with local regulations. The Milton Town Code Chapter 180 - Zoning Section 180-24 requires that no "use, occupancy, and operation" shall create a sound level that exceeds 55 dBA at the property line. It is our interpretation of this code that temporary construction activities are not a "use, occupancy, and operation," and therefore Section 180-24 does not apply and the relief sought is not granted. If however, upon review with the Town it is determined that temporary construction operations are included within the definition of "use, occupancy, or operation" then the relief requested is granted for construction operations and the Commission will waive the substantive provisions of the Town Code under PSL §126(1)(g) because it is not technically feasible to conduct construction operations within the range provided by the Town Code, provided that the Applicant mitigates noise construction activity to the greatest extent practicable.

The Company seeks relief from Chapter 180 - Zoning Section 180-26 - Signs, which requires certain size and duration limitations on signs. The Application states that in order to comply with National standards many of the restrictions in the Town Code are unduly restrictive. Specific relief was requested by the Applicant from Section 180-26(B)(4) which would limit or prohibit the types of signs National Grid maintains must be presented such as "the substation name and address (for 911

¹⁰ Id.

emergency response purposes); danger/warning signs; no trespassing signs; and safety signs for transformers."¹¹ We, therefore, refuse to apply any applicable substantive requirements for this Section of the Milton Town Code under PSL §126(1)(g) in view of the applicable National standards and the needs of consumers.

In addition the Applicant seeks relief from restrictions under Zoning Section 180-27 - Fences and Walls which restricts fence heights to six feet. The Applicant proposes a chain link fence with barbed wire on top that will exceed six feet. This will be done to prevent the public from entering the property and to comply with National standards set by the National Electric Safety Code. Because the Town Code restrictions are unduly restrictive when applied to fences surrounding hazardous electric equipment, the Commission refuses to apply the applicable substantive requirements for this Section of the Milton Town Code under PSL §126(1)(f) in view of the existing technology.

The Applicant seeks relief from standards under Chapter 180 - Zoning Section 180-36 - Required Screening for Non-Residential Uses which requires certain screening of all nonresidential uses sufficient to obscure the use from view of adjoining lots or highway rights-of-way. The Applicant states that it will be unable to comply with these requirements due to safety, security, and reliability concerns. In order to comply with state and National safety standards many of the restrictions listed under this Section are unduly restrictive for technical or safety reasons. Therefore we refuse to apply all applicable substantive requirements for this section of the Milton Town Code under PSL Section §126(1)(g) in view of the

¹¹ See, Application Section 7.3.9.7 - Section 180-26 - Signs.

needs of consumers. However, the applicant should present a reasonable screening plan to Staff prior to construction that seeks to comply, to the extent practicable, with the local laws.

Chapter 180 - Chapter 180 - Zoning Section 180-28 - Excavations as Part of Site Preparation requires "an effective cover crop to any area of land from which topsoil has been removed or covered within the first growing season following the start of such operation." National Grid maintains that construction of the substation will take 18 months making compliance with this ordinance unreasonably restrictive. The Commission interprets this section of the Town Code to apply to inactive construction sites and not active construction sites. To the extent that it takes the Company more than the proscribed time period to complete construction within the proscribed time period National Grid should make every effort to maintain and stabilize the soil on-site during construction. This would include the laying of short-term grass seed to any inactive areas of construction. Because compliance is possible and not unduly burdensome we will not grant the relief sought by the applicant and National Grid must comply with this section of the Town Code.

Chapter 180 - Zoning Section 180-29 - Restrictions Near Wetlands which restricts activities within 150 feet of a wetland, and contains restrictions on vegetation clearing. Specifically, the Applicant requests relief from Section 180-29(B)(3)(a) which states "[n]o structure or improvement ... shall be built or expanded within 150 feet of the center line or within the one-hundred-year floodplain." According to the Application in Figure 3-8: NWI Wetlands and FEMA Floodplains the proposed site of the Project is not located within, near, or adjacent to any FEMA Floodplains. In addition, there are no streams located within the project area from which to measure

"150 feet from the center line." Although §180-29(A) states that "[w]ithin the Stream Corridor Overlay District and within 150 feet of the center line of any Department of Environmental Conservation (DEC) classified stream or federal or state classified wetland and flood zones, the underlying land use district rules shall remain in effect, except as modified below in this section" we have determined that the "centerline" of any wetland is by its very nature unknowable since wetlands are non-linear in nature. As such, we have determined that this law does not apply to the Project since there is no stream, no floodplain, and no way to determine the "centerline" of the wetland present. Based on this interpretation, we find this section of the Town Code inapplicable and will not grant the relief requested to refuse to apply all applicable substantive requirements for this Section of the Milton Town Code under PSL Section §126(1)(g).

Secondly, the Applicant seeks relief from Section 180-29(B)(4)(a) which states that no more than 30% of trees in excess of six inches in diameter at breast height may be removed over a ten year period. The Application states that there are many reasons, including the nationally mandated transmission line vegetation management requirements that prevent the Applicant from complying with the vegetation management in the Milton Town Code. However, after review the Commission has determined that this Section of Town Code does not apply to the construction or operation of Project. Based on this interpretation, we find this section of the Town Code inapplicable and will not grant the relief requested to refuse to apply applicable substantive requirements for this Section of the Milton Town Code under PSL Section §126(1)(g).

With respect to the Uniform Fire Prevention and Building Code regulations, the Application, Figure 5.2.2, states

that there will be an enclosed space proposed for this site. After final designs are submitted for construction the Uniform Fire Prevention and Building Code will apply and the Applicant shall first review and obtain written certification by a public entity recognized by the Department of State as having the requisite training or qualifications that the construction plans are in compliance with the Uniform Fire Prevention and Building Code.

FINDINGS AND DETERMINATIONS

The construction of the Sodeman Road Substation is needed to address existing capacity and projected overload conditions expected to arise in the western half of the City of Saratoga Springs and parts of the Towns of Greenfield and Milton as a result of expected load growth over the next several years. Parts of this area have already experienced chronic voltage issues and poor reliability. Based on the foregoing the Commission finds that, as discussed herein, the Project is needed, will have generally short-term adverse environmental impact, represents the minimum adverse impact to the environment including impact to agricultural land, farm operations and associated property rights, should not be installed underground, conforms to a long-range electric system plan, conforms to applicable substantive legal requirements (except to the extent described above), and will serve the public interest, convenience and necessity. Accordingly, the Commission grants to National Grid the Amendment for the construction and operation of the Sodeman Road Station and the associated 115 kV Tap Lines connecting the Sodeman Road Station and to the existing Rotterdam transmission Line 2 and Spier Falls to Luther Forest transmission Line 302.

The Commission orders:

1. The application for a Certificate Amendment for the construction and operation of the Sodeman Road Station, and the 115 kV Tap Lines, filed on August 18, 2015, by Niagara Mohawk Power Corporation d/b/a National Grid (Certificate Holder) is granted subject to the above discussion and the following conditions:

- a) The Certificate Holder shall follow all applicable terms and conditions of the original Certificate and subsequent amendments, unless superseded by this Order;
- b) All limits of vegetation clearing shall be field delineated and marked at least one week prior to commencement of clearing activities;
- c) Clearing of trees and shrubs greater than three inches in diameter at breast height shall be restricted to the period between October 1 and April 1;
- d) Certificate Holder shall not commence construction until it has received a "Notice to Proceed with Construction" sent by the Chief of the Environmental Certification and Compliance Section of the Office of Electric, Gas and Water (EG&W);
- e) At least ten days prior to the start of construction, the Certificate Holder shall hold a preconstruction meeting. An agenda, location and invitee list shall be agreed upon between DPS Staff and the Certificate Holder. 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; if, for any reason, the contractor cannot finish the construction of this

project and a new contractor is needed, then another preconstruction meeting with the same format as outlined above shall be held;

- f) Prior to the commencement of construction, the Certificate Holder shall provide the Secretary with a copy of the Notice of Intent for the Storm Water Pollution Prevention Plan and a signed copy of the approved Storm Water Pollution Prevention Plan; and
- g) After final designs are submitted and a building is identified for construction, the Uniform Fire Prevention and Building Code will apply and the Certificate Holder shall first obtain review and written certification by a public entity recognized by the Department of State as having the requisite training or qualifications that the construction plans are in compliance with the Uniform Fire Prevention and Building Code.

2. If the Certificate Holder does acquire a different land configuration than the parcel proposed in the Application, it shall file a diagram with the Commission as a compliance filing showing the boundaries of the acquired parcel and the improvements built or to be built thereon demonstrating compliance as to the land area and set-back requirements of the Town Code.

3. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. 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.

4. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary