STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on July 13, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

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 - Lasher Road Substation Amendment.

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

(Issued and Effective July 18, 2017)

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, to utilize electric transmission towers using different materials and painted with product from different manufacturers and different colors from the towers authorized by the Certificate.[2] The Certificate was again amended on April 22, 2016, to allow National Grid to construct and operate an interconnecting 115 kV / 13.2 kV distribution substation and associated 115 kV tap lines in the Town of Milton, Saratoga County.[3] 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 and switching station (Lasher Road Substation or the Project), and associated 115 kV tap lines in the Town of Ballston, Saratoga County.

BACKGROUND

On August 5, 2016, National Grid submitted an application for amendment of the Certificate to allow for the construction of the Lasher Road Substation 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

[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).

[3] Case 10-T-0080, Supra, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need (issued April 22, 2016).

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 at the time of filing. In addition, pursuant to PSL §122(2)(c), an affidavit proving service of notice to landowners, as defined under PSL §120(5), was provided by the Applicant on December 6, 2016.

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 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 Application Amendment will substantially change the location of the Project. An informational forum and public statement hearing was held on Monday, December 19, 2016, in Ballston Spa, New York. Several members of the public attended the informational forum, and, during the public statement hearing, two individuals provided comments on the record. By letter dated December 19, 2016, the Saratoga County Prosperity Partnership also commented, expressing its support for the Facility.

A procedural conference, held in Albany, New York, on December 20, 2016, was attended by National Grid, the New York State Department of Public Service Staff (Staff), the New York State Department of Environmental Conservation (DEC), and the New York State Department of Agriculture and Markets (Ag&Mkts). Parties in attendance indicated that they were not requesting an evidentiary hearing and that there were no known issues of disputed fact.

On January 19, 2017, SolarCity requested party status and submitted comments. SolarCity asserted that by pursuing the traditional approach to transmission planning and not going through the new process utilizing non-wires alternatives and/or leveraging competitive opportunities as mandated by the Commission and as outlined in National Grid's Distribution System Implementation Plan (DSIP), National Grid's actions in this proceeding were not aligned with the Reforming the Energy Vision (REV) proceedings. SolarCity contended that this proposed Project lends itself to exploring opportunities for industry participants to meet load needs on-site. SolarCity argued, among other things, that National Grid should be required to provide its justification and analysis for determining that distributed generation does not address reliability and thermal issues, is not sufficient to meet anticipated demand, and is not a viable alternative to pursing this Project.

On January 27, 2017, National Grid filed a partially redacted, updated response to a December 15, 2016 Staff Request for Information related to non-wires alternatives. The updated response indicated, in relevant part, that National Grid used its February 2011 Non-Wires Alternative(s) (NWA) Guidelines to reach its determination that solar (of typical magnitude) and demand-side management would not be a viable alternative to the proposed transmission project. National Grid's March 31, 2017, supplement established that the Facility was assessed using the NWA Suitability Criteria set forth in the November 2016 Supplemental DSIP.

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 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]

DISCUSSION

National Grid proposes to construct a 115 kV / 13.2 kV distribution substation and switching station, and associated 115 kV tap lines that would tie into its existing 115 kV Spier Falls to Rotterdam Transmission Line 2 and its existing 115 kV Spier Falls to Luther Forest Transmission Line 302.

The Lasher Road Substation will be located on a portion of an 109-acre parcel (the Malloch Parcel) located south

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

[5] PSL §126(3).

of State Route 67, near the intersection of Randall Road, Lasher Road and the former Finley Road, in the Town of Ballston, Saratoga County. The proposed site is located west of Lines 302 and 2, both of which run in a northeast-southwest direction across the Malloch Parcel. The existing right-of-way (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 Malloch 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 1.10 acres of woody vegetation and permanent ground disturbance will be limited to approximately 1.59 acres of impervious surfaces (1.13 acres for the substation and 0.26 for the access road, emergency pull-off, and parking area). The substation would include a single 15/20/25 megavolt amperes (MVA) transformer, a four position 15 kV metal-clad switchgear, circuit breakers, and disconnect switches. The 115 kV takeoff structures will be designed for four independent sources of 115 kV power to the substation. The proposed size of the Lasher Road Substation is approximately 400 feet wide by 450 feet long (4.2 acres) and would be surrounded by a fence and surfaced in crushed stone. The substation would be accessed from Randall Road by way of a 140 foot permanent gravel road off of the former Finley Road. A metal clad outdoor enclosure (26 feet wide by 39 feet long by 12 feet high) would house the necessary switchgear, secondary electrical equipment, and the protective relaying for the distribution feeders. A second building, (pre-fabricated 36 feet wide by 62 feet long by 19 feet high) would house the 115 kV transmission switching gear.

The proposed structures supporting the 115 kV tap lines would be constructed of galvanized steel approximately 70

to 90 feet high and 3 to 5 feet wide at their base. The takeoff structures entering the substation would be two "A" frame and two "H" frame galvanized steel with reinforced concrete foundations. The height of each of these structures will be approximately 60 feet with a lightning rod extending approximately an additional 10 feet. Insulators on the structures would have 10-disc string and gray to match the steel pole finish. The 115 kV tap line conductors would be non-specular, 2156 MCM 84/19 aluminum conductor steel-reinforced ("ACSR") "Bluebird." Each of the 115 kV tap line would be comprised of three phases with one conductor per phase.

Alternative Locations

National Grid identified several alternatives that were evaluated, including alternative substation locations. According to National Grid, the optimal site for the new substation would be one located as close as possible to where Line 302 diverges toward Luther Forest Substation from the Spier Falls to Rotterdam transmission line corridor (Luther Forest Supply Point). This location would minimize the amount of new 115 kV line construction required and reduce the distance between the Project and the 13.2 kV load center, which is located to the south and east of the Luther Forest Supply Point. National Grid evaluated nine alternative locations for the substation within a 0.50 mile long section of the Spier Falls to Rotterdam transmission corridor. Based on this evaluation, National Grid determined that the proposed Lasher Road Station site is preferred. Its close proximity to the Luther Forest Supply Point and existing distribution feeders minimizes cost and land requirements for new distribution and transmission line construction. The preferred location avoids impacts to state and federal wetlands, has minimal impacts to agricultural land,

is remote from Randall Road, and would minimize visual and noise impacts on neighboring residents.

In addition to alternative locations the Applicant also evaluated alternatives to the Project such as non-wires alternatives. National Grid's March 31, 2017 supplement established that the facility was assessed using the NWA Suitability Criteria set forth in the November 2016 Supplemental DSIP. Staff concurs with the Company's conclusion that, given the timing of need for this Project and the limited timeframe available to address the need, NWAs are not viable alternatives to the addition of Lasher Road Substation.

Environmental Analyses

In preparing its Amendment Application, the Applicant consulted with DEC; Ag&Mkts; 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 Ballston 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's 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. Ground disturbance/grading required for the Project would be greater than 1.0-acre. 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 Ballston. Prior to construction, National Grid will obtain coverage by filing a Notice of Intent

to the Town of Ballston. 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, waterbodies, or flood hazard zones within the Project Site. Although the Project parcel does contain an overlapping state and federally jurisdictional wetland, located immediately adjacent to the substation site. The substation design has sufficient buildable area to avoid impacts to this resource. The portion of the wetland within the Project parcel is sparsely treed and only minimal clearing would be required to the west of the already maintained ROW. National Grid states that any tree clearing would be selective and done by hand within the wetland.

After review of the Amendment Application Staff determined that there will be wetland impacts and a §401 Water Quality Certificate[6] will be required for the construction activities related to the tap line structures. On June 28, 2017 the Applicant provided a supplement to the Amendment Application

[6] The Clean Water Act (CWA) requires a federal permit to discharge dredged or fill material into "navigable waters" (33 U.S.C. §§ 1311(a) and 1342(a)) and requires an applicant for a federal permit to provide a certification from the State that the discharge will comply with State water quality standards. CWA §410 defines "navigable waters" as waters of the United States, including the territorial seas (33 U.S.C. §1362(7)). The Army Corps of Engineers, which issues the permits, defines these waters to include tributaries (33 CFR §328.3(a)(5)) and other types of water sources. A CWA Section 401 Water Quality Certificate will be provided by the Chief of EC&C (Environmental Certification and Compliance) of the Office of Electric Gas, and Water. As requested, the Chief will issue a water quality certification after the Certificate has been granted for the construction activities related to Tap Line structures.

Section 4.7.3 and requested, in a letter to the Secretary, that the Commission issue a Water Quality Certificate pursuant to §401 of the Clean Water Act with respect to construction of the tap lines. Given the ministerial nature of decisions to grant water quality certifications and the normal 60-day period for granting the certifications established in federal rules (33 C.F.R. §325.2(b)(1)(ii)), the Commission delegates responsibility for granting water quality certifications in connection with Article VII Certificates to the Chief of EC&C (Environmental Certification and Compliance) of the Office of Electric Gas, and Water. As requested, the Commission anticipates the Chief will issue a water quality certification after the Certificate has been granted.

Based on correspondences with the NYNHP dated December 4, 2015, there are no records of rare or state-listed animals or plants, or significant natural communities on the Project Site or in the immediate vicinity. Although potentially suitable habit for the federally listed threatened Northern Long-eared bat exist, the U.S. Fish and Wildlife Service (Service), by way of correspondences dated February 9, 2016, concurs with the Applicant that the Project is not likely to adversely affect this species. The Service does recommend however, that until the proposed Project is complete, the Applicant continue to check their website every 90 days to ensure that listed species presence/absence information is current. In addition, National Grid provided correspondence dated November 3, 2015 from OPRHP Division of Historic Preservation indicating that the proposal had been reviewed expressing its opinion that the Project would have no impact on historic resources.

Vegetation clearing would be required for Project construction. Permanent loss of wildlife habitat would be

minimized but will include conversion of 3.23 acres of natural communities to built facilities. In order to avoid potential impacts to roosting Northern Long-eared bats 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 2015 to determine the presence of certain invasive plant species designated by DEC as Prohibited or Regulated Invasive Species pursuant to 6 NYCRR Part 575. National Grid states that it will conduct an additional survey prior to the start of construction to confirm the species on the Project Site. 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.

No 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 one mile visual study area. Although the Project is sited in generally open land, there is existing vegetation along roadsides and larger forested tree groups that already provide adequate screening from the local population. Distal views may see upper portions of the Project, but because the Project Site is already largely surrounded by forest vegetation, providing additional

screening around the perimeter of the substation (in the form of fencing, berms, or plantings) would provide little, if any, benefit to preclude views of the upper portions of Project components. Based on the results of the viewshed analyses and field review, visibility of the Project will be limited to partially screened views of the Project to the south along Randall Road and immediately adjacent to the Project Site from what is formerly known as Finley Road. The Project will not affect visually sensitive resources and no mitigation measures are proposed at this time. On completion of the Project construction, National Grid shall provide an assessment of the need for landscape improvements, including vegetation planting, earthwork, or installed features to screen or landscape with respect to road crossings, residential areas, and substations.

Engineering Justification

National Grid has projected thermal and load constraints in its Northeast Region as a result of expanding needs of the customer load in the area. The Lasher Road Substation is one of three area substations National Grid plans to construct to relieve those constraints. A new 230 kV / 115 kV transformer at Eastover Road Substation together with the proposed switching station at Lasher Road and at Schaghticoke will relieve those constraints. A new transformer bank at the Lasher Road Substation will provide for the continuing load growth in the area and allow for the retirement of two older substations which are long overdue for replacement; the Randall Road and Shore Road substations. The asset conditions of both stations show the need to replace them as soon as possible and the 10 miles of 34.5 kV line that has been in service since the 1920s that feeds those stations. The Lasher Road Substation would address both the transmission and the distribution needs for the area.

The Northeast Region encompasses the Greater Saratoga area and an area just south of Saratoga County that includes parts of Schenectady and Rensselaer Counties. Global Foundries, a microchip factory which operates continuously, is situated in the middle of the Northeast Region. The transmission system in the Northeast Region has been reinforced and reconfigured over the past few years, to go through the Luther Forest Substation, to address load growth and provide reliable service to the area and to Global Foundries.

National Grid was informed by Global Foundries that it was doubling its load by the summer of 2016. As a result of the increase in demand, the transmission system needs further reinforcement to provide for the continuing growth in the area and to address Global Foundries' load reliably needs. National Grid performed a study using the Company's planning criteria, which incorporates the North American Electric Reliability Corporation (NERC) planning criteria. The Company has identified several transmission contingencies that would cause thermal overloads and service problems for the area's customer base and for Global Foundries.

The switching station at the Lasher Road Substation will tap into two 115 kV transmission lines, Line 2 and Line 302, which are located adjacent to the proposed substation. This arrangement will enable National Grid to isolate transmission facilities when necessary to prevent service interruptions to their customers, allow crews to switch lines in or out for contingencies or reconfiguration, and provide a method for planned outages for maintenance work without disrupting service to the area.

The completion dates for the installation of the second 230 kV / 115 kV transformer at Eastover Road Substation, the Schaghticoke Switching Station, and the Lasher Road

Substation are anticipated for 2017, 2018, and 2019, respectively. There is the potential for thermal overloads for an N-1-1 condition on the Luther Forest-Eastover Road #308 115 kV line for summer operation within 2016, 2017, and 2018. Post contingency conditions could occur when there are low water conditions and hydro plants in the area have little or no generation available and hot dry condition occur driving up the load for that area. This would require load shedding of an estimated 58 MW within Saratoga County.

On March 15, 2017 the assigned Administrative Law Judge issued a ruling requiring National Grid to supplement the record with an evaluation of Non-Wire Alternative(s). On March 31, 2017 National Grid submitted its evaluation of the proposed Lasher Road Substation using the NWA Suitability Criteria (Criteria) set forth the November 2016 Supplemental Distributed System Implementation Plan (DSIP). The Company explains that a NWA would not be a viable alternative to the proposed Project. In its response the Company points out that the Criteria focuses primarily on three factors: project type, timeline, and cost. Specifically, whether NWAs are suitable for a project that includes: load relief and reliability, are needed in less than 60 months, and have a project cost greater than one million dollars. The company states that their evaluation demonstrates that a NWA solutions would not defer, mitigate, or resolve the reliability and thermal issues, neither could a NWA be implemented in the timeframe required to meet the projected increased load demand. The lead time for the solicitation and implementation of a NWA could take 30 to 60 months depending upon the size and complexity of the project and even if a NWA solution could resolve the reliability and thermal issues, there is not adequate time to implement a NWA solution.

National Grid has determined that the existing system would not have the capacity to reliably meet the projected energy load demands and it would expose the system to thermal overload which could potentially damage the system, causing outages and the need to shed load. The plan the Applicant has developed will not only reinforce the system and provide the required capacity to meet the anticipated load growth, it will also accomplish all necessary work in the 18 months before Global Foundries' expansion is expected to be operational.

Agricultural Impact

Based on the December 20, 2016 Procedural Conference transcript, Ag&Mkts is satisfied with the proposed site for the substation. Ag&Mkts stated that according to their conversations with the farm operator, who is currently farming the parcel, they are satisfied the proposed substation site will have minimal impact on farming operations.

National Grid changed the site location such that the impact to the farmland is a little over an acre; approximately 9.5 acres of the 11-acre parcel can continue to be farmed.

Construction Issues

DEC filed comments October 3, 2016 to address the Company's Invasive Species Control Plan (ISCP) with regard to spoils and fills containing invasive species plant material, and staging areas and temporary facilities located in areas free of invasive species.

On September 12, 2016, National Grid filed an ISCP for this project that addresses DEC's invasive species concerns. The ISCP includes provisions for an additional invasive species plant survey prior to construction to confirm the species on the Project Site. The survey will identify type, relative abundance, and location of the invasive species on the Project Site. The Commission will not require post-construction

monitoring for the Lasher 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.[7] Where local laws and regulations have both substantive

[7] 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

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 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. "If the applicant desires the commission to refuse to apply one or more local legal provisions, it shall submit a statement justifying the request… [t]he 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."[8]

According to the Applicant, the Town of Ballston Town Code Chapter 138 – Zoning, Section 138-10 – District, Schedule of Use Regulations does not permit public utility uses in the Rural District. As noted above, while the Applicant need not comply with the procedural requirements of 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. Here, it is clear from the engineering justification, as stated above, that the location chosen by the Applicant is "reasonably necessary" for National Grid to safely and adequately provide

---

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."

[8] 16 NYCRR §86.8(b).

electric service to the area and nothing in the record indicates another location would be less disruptive of the surrounding area or the Town of Ballston's zoning plan.[9]

Nine alternative locations and several alternatives to this Project were evaluated, including non-wires alternatives in conformance with REV requirements. The Applicant is a public utility and under Commission rules has an obligation to serve. This Project is necessary for the reliability of the system and therefore the Commission will waive the use restrictions of the Town Code as being unduly restrictive in view of existing technology, cost, and the needs of consumers.[10] As the Applicant states in its Application "[t]he substation's location is a function of the overall integrated Project design and reflects the requirements of constructability, security and public safety. This request cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable." For the forgoing reasons the Commission waives the use restriction in the Rural District to allow for a public utility use for this Project.

With respect to lot size, set-back requirements, and height restrictions, the Applicant has shown that it will be able to comply with those restrictions under the Town Code. The Application lists the various restrictions with respect to Ballston Town Code Section 138-10.1 including, the dimensional requirements set forth in Attachment 6 of the Zoning Code.

---

[9] See, Niagara Mohawk Power Corp. v Fulton, 8 AD2d 523, 528 (4th Dept. 1959).

[10] It should be noted that this waiver is being granted due to the status of the Applicant as a public utility, had the Applicant been a merchant company, or the project one not necessary for the reliability of the system no such waiver would have been granted.

Table 6 provides that within the Rural District the minimum allowable lot area ranges between 40,000 and 80,000 square feet, the minimum lot width is 175 feet, the maximum building coverage is 30%, the maximum building height is 40 feet, the minimum front yard setback is 60 feet, and the minimum side and rear yard setback is the greater of 15 feet or height of the principal building. Figure 7-2 of the Amendment Application illustrates the various Zoning Ordinance dimensional requirements and the Project's compliance with same. Therefore, the Commission will not waive these local requirements.

With respect to noise, existing ambient noise levels were measured by the Applicant continuously over a ten day period at four different locations. Ambient sound levels were lower during the nighttime, typically as low as 20 to 23 dBA L_{90}[11] (dBA is decibels on the A-weighted scale) at midnight, at most evaluated locations. Noise levels from the proposed transformer were forecasted at different locations and noise contours were rendered by using a three-dimensional computer noise model by using two different transformers: a 66/68/69 dBA "low noise transformer" with a National Electrical Manufacturers Association (NEMA) sound rating of 69 dBA under second stage auxiliary cooling with oil natural air forced stage 2 (ONAF2) and a 60/62/63 dBA "very low noise" transformer with a NEMA sound rating of 63 dBA at the same operational conditions

[11] L90 is the sound pressure level that was exceeded 90% of the measurement time period. Leq is the equivalent-continuous sound pressure level of a noise source. It is the single sound pressure level that, if constant over a specified time period, would contain the same sound energy as the actual monitored sound that varies in level over the measurement period. All definitions in this footnote were taken from Cowan, James P., Handbook *of Environmental Acoustics*, J. Wiley, (1994).

(ONAF2). Noise studies forecasted noise levels from the NEMA 63 dBA ONAF2 transformer to be about 36 dBA at the closest adjacent property boundary and 28 dBA at the closest residence.

For the purposes of evaluating compliance with requirements of Ballston Town Law Section 138-49(1)(E)(3), the Applicant's acoustical consultant compared forecasted noise levels of 36 dBA at the closest property line north of Randal Road against a 37 dBA $L_{eq}6$ nighttime noise level to conclude no increase in sound levels (L_{eq}). Almost 30 years ago[12] and recently[13],[14],[15] the Commission expressed a preference for the use of the L_{90} statistical descriptor, rather than the L_{eq} noise descriptor for determining existing ambient noise levels. Although Ballston Town Code Section 138-49(1)(E)(2) explicitly states where and for how long operational noise levels from a

[12] Case 29419, Proceeding on Motion of the Commission to Establish Appropriate Conditions for Certificates of Environmental Compatibility and Public Need, Proposed Statement of Policy Regarding the Noise Guidelines for Gas Compressor Stations, Notice (issued October 28, 1986) pp. 6-7.

[13] Case 13-T-0586, Consolidated Edison Company of New York, Inc., Order Approving Environmental Management and Construction Plan Segment II (issued October 27, 2014), p. 13.

[14] Case 13-T-0538, Application of Williams Field Services Company, LLC and DMP New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII to Construct an Approximately 9.5 Mile Natural Gas Gathering Pipeline in the Town of Windsor, Broome County. Order Regarding Certificates of Environmental Compatibility and Public Need (issued October 16, 2015).

[15] Case 10-T-0350, Application of DMP New York, Inc. and Laser Northeast Gathering Company, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII to Construct a 16 Inch Natural Gas Gathering Pipeline to the Existing Millennium Pipeline in the Town of Windsor, Broome County Approximately 51,857 of Steel Coated Pipeline and a Gas Compressor Station, Order Regarding Certificates of Environmental Compatibility and Public Need (issued October 16, 2015).

noise source should be measured (and implicitly states the noise descriptor to be used (L_{25}),[16] Ballston Town Code Section 138-49(1)(E)(3) does not specify the noise descriptor to use or the duration of measurement making it difficult to ascertain compliance.

If the ambient sound levels were measured by using the L_{90} statistical noise descriptor, and according to the Applicant's ambient noise survey results, operational sound levels of 36 dBA at the closest property line may exceed pre-construction nighttime ambient noise levels by around 20 dBA L_{90} and approximately 16 dBA. In addition, operational sound levels of 28 dBA at the closest residence may exceed pre-construction nighttime ambient noise levels in the area of about 20 dBA L_{90}, by approximately 8 dBA. In both cases, future noise levels may be more than 5 dBA above existing ambient noise levels (L_{90}) potentially exceeding the limits set forth in the Ballston Town Code Section 138-49(1)(E)(3). However, those levels would not exceed 40 dBA at the residence, a level that the Commission has approved in several other cases related to the installation and operation of substation designs.[17]

Since sound levels of 36 dBA at the closest property line and 28 dBA at the closest residence are determined by forecasting the use of a "very low noise" transformer (NEMA

---

[16] Section 138-49(1)(E)(2) requires the sound limits not to be exceeded for more than 15 minutes in any 60 minute time period, which is equivalent to 25% of the time in any hour. The description corresponds to the L25 in noise control designation.

[17] Case 13-T-0538, Application of Williams Field Services Company, LLC and DMP New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII to Construct an Approximately 9.5 Mile Natural Gas Gathering Pipeline in the Town of Windsor, Broome County. Order Regarding Certificates of Environmental Compatibility and Public Need (issued October 16, 2015).

rating of 63 at ONAF2 conditions), requiring the use of a much quieter transformer so that noise levels are at most 5 dBA above the L_{90} would be in this case unduly restrictive in view of the existing technology. The Commission will therefore refuse to apply the substantive requirements of the Town of Ballston regarding noise emissions from the operation of the substation as unreasonably restrictive in view of the existing technology, costs and the needs of New York consumers. In granting this relief, however, we will require the Applicant to provide at a minimum the mitigation measures they have proposed to minimize the environmental noise impact from the Lasher Road Substation at the property lines and existing residential receptors consistent with the use of a transformer with NEMA ratings equal to or lower than 60/62/63 dBA.

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 Lasher Road Substation is needed to address thermal and load constraints in the Northeast Region as a result of the expanding needs of the customer load in the area. The Lasher Road Substation is one of three area substations the Company plans to construct to relieve those constraints. A new 230 kV / 115 kV transformer at Eastover Road Substation together with the proposed switching station at

Lasher Road and at Schaghticoke will relieve those constraints. A new transformer bank at the Lasher Road Substation will provide for the continuing load growth in the area and allow for the retirement of two older substations which are long overdue for replacement, the Randall Road and Shore Road substations.

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 Lasher Road Substation and the associated 115 kV tap lines connecting the Lasher Road Substation 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 Lasher Road Substation, and the 115 kV tap lines, filed on August 5, 2016, 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) 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;
f) After final designs are submitted and buildings are 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;
g) Certificate Holder shall provide a transformer with a NEMA rating equal to or lower than 60/62/63 dBA. Noise levels and NEMA ratings will be certified with information from the manufacturer and submitted to the Secretary to the Commission prior to the order of purchase and with sound test

results from the manufacturer submitted to the Secretary to the Commission prior to the delivery and installation of the transformer; and

h) (a) With respect to the substation site and its associated easements held by the Certificate Holder, the Certificate Holder shall, on completion of Project construction:

(i) provide an assessment of the need for landscape improvements, including vegetation planting, earthwork, or installed features to screen or landscape with respect to road crossings, residential areas, and substations;

(ii) prepare plans for any visual mitigation found necessary, considering removal, rearrangement, and supplementation of existing landscape improvements or plantings;

(iii) consult with DPS Staff on the content and execution of its assessment, resultant landscaping plan specifications, and materials list; details shall include measures for controlling maintenance and third party or wildlife damage to any landscape or vegetation plantings; and

(iv) assessments and plans shall be presented for DPS Staff review acceptance within one year of the date the Project is placed in service.

(b) With respect to vegetation management easement areas, the Certificate Holder shall follow general guidelines for post-construction landscape improvements as expressed in its Environmental Management and Construction Plan (EM&CP). The EM&CP must include a plan that will enable work on re-vegetation of a cleared easement area to commence

within a year after clearing of that area, with due regard for the growing cycle of the substitute planting. The Certificate Holder may reach different arrangements with particular property owners through their informed consent, so long as such agreements do not conflict with the Certificate Holder's transmission right-of-way management plan or the environmental protections of this Certificate.

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 Secretary to 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