

ATTACHMENT A

NextEra Energy Transmission New York, Inc. (NEETNY) provides the following responses to the comments submitted by the Challengers of the Empire State Line (CESL) on the Environmental Management & Construction Plan (EM&CP) filed with the New York State Public Service Commission (Commission) on June 24, 2020, in Case 18-T-0499, *Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the Construction of a 20 Mile 345 Kilovolt Transmission Line Located in the Town of Royalton, Niagara County, and the Towns of Alden, Newstead, Lancaster, and Elma in Erie County*. By submitting responses, NEETNY does not in any way adopt CESL's purported definitions of words and phrases or its description of the Project and/or potential impacts thereof.

1. II—Certificate Conditions Compliance Matrix, Condition 33: The Response to Condition No. 33 indicates that no deviations from the location of the proposed transmission structures are proposed in the EM&CP. However, Section 21.0 of the EM&CP refers to a “slight shift to the alignment of the Proposed Line” that necessitated an updated to the EMF study. Please describe the location and extent of the “slight shift to the alignment of the Proposed Line.”

Response: The EMF study submitted with the Article VII Application filed in August 2018 assumed a 75-foot arm-to-arm offset from the existing transmission line structure. However, in accordance with the Joint Proposal approved by the Commission on June 16, 2020, NEETNY updated the design to use a 100-foot centerline-to-centerline offset from the existing transmission lines. The use of the 100-foot centerline-to-centerline offset slightly shifted the Project structures west and closer to the existing New York State Electric & Gas Corporation (NYSEG) transmission line. The EMF study for the Project was updated to reflect this slight shift to the alignment of the Project.

2. II—Terms of the Joint Proposal ¶46: The referenced Certificate Condition should be to Certificate Condition 129 instead of 128.

Response: NEETNY will make the correction.

3. Section 1.5(a)—Additional Land Rights: The width of the easement for the Proposed ROW is indicated to be 130 feet, while the Joint Proposal Figure 5-2 and the Certificate Conditions state that the width of the Project ROW will be 105 feet. Please explain the distinction.

Response: NEETNY's proposed easement with NYSEG was initially proposed to be approximately 105 feet. However, as set forth in Appendix B - Description and Location of Project to the Joint Proposal approved by the Commission on June 16, 2020, the final easement with NYSEG is 130 feet. NEETNY filed an errata notice correcting Figure 5-2 on August 31, 2020.

4. Section 2.3.3—Water Diversion Structures: This section should be clarified to indicate that the water diversion structures should be used in a way that prevents adverse impacts to adjacent

properties from surface water runoff from the ESL Project. A similar modification should be made regarding water diversion structures for temporary access roads in Section 8.2.1.

Response: Section 2.3.3, 8.2.1 and the Stormwater Pollution Prevention Plan identify water diversion structures will discharge to stabilized areas. In areas where stormwater runoff exceeds the capacity of diversion structures, outlets will be installed to minimize off-site impacts. Outlets will be located on undisturbed areas and field spacing adjusted for use of the most stable natural area. Where natural areas are not adequate for preventing stormwater impacts, stabilized outlet protection will be installed. NEETNY will clarify Sections 2.3.3 and 8.2.1 to state that water diversion structures will be installed to avoid adverse impacts on adjacent properties.

5. **Section 3.1—Description of Typical Cutting and Clearing Methods:** The first paragraph of Section 3.1 appears to indicate that the entire Proposed ROW (which is defined as the width of the 130-foot easement in Section 1.5(a) while the “Project ROW” is 105 feet in the Certificate Conditions) will be cleared of all growth as close to the ground as practicable. This is inconsistent with the remainder of Section 3.1 and the plans in Appendix A, which specify the clearing types for each of the Areas presented in Appendix A. The first paragraph should be modified to be consistent with the remainder of Section 3.1 and Appendix A.

Response: NEETNY will update Section 3.1 to clarify that clearing activities will be completed in accordance with the clearing types described in Sections 3.1.1 through 3.1.5.

6. **Section 3.1 and Appendix A—Tree Clearing Methods:** Currently, the existing NYSEG transmission lines are substantially not visible to the adjacent residential properties in the Fernott and Townline Residences because of the existing dense forest and vegetation. See the representative photographs in Exhibit A, attached. As an initial step, the most effective means of mitigating the visual impacts of the ESL Project to the Fernott and Townline Residences is to preserve, to the extent feasible and consistent with reliable operation of the ESL Project, the existing trees and vegetation between these houses and the Project ROW.

Currently, the Clearing Method for the Fernott and Townline Residences (Appendix A Areas 73 to 78 and 81 to 86) is Type II, which is a less selective method. CESL respectfully requests that the Type III Clearing Method be used in these areas to more selectively clear trees and shrubs so as to preserve as much of the existing screening as possible. In addition, CESL requests that otherwise trees identified as “undesirable” be retained at locations where the conductor height ensures that a mature tree will never reach the wire security zone clearance distances or be able to fall into the line as in the NYSEG Specifications for Transmission Right-of-Way Vegetation Maintenance.

In addition, clearing in the Wire Zone, as defined in the Long-Range Right-of-Way Management Plan (ROW Management Plan), should be limited to that necessary for construction of the Project so that the 30% limit of Wire Zone open or free of woody vegetation that matures at over 5 feet in height is not exceeded.

Together, these changes would be consistent with the objective of Certificate Condition Nos. 59 (tree and vegetation clearing shall be limited to the minimum necessary for Project

construction), and 129 and 130 (landscape restoration and visual mitigation), and NEETNY's Right-of-Way Management Plan objective of maintaining the environmental quality of the area through management practices that are in harmony with existing land uses (Section II.B).

Response: As stated above, NEETNY does not adopt CESL's description of the Project and/or potential impacts thereof. This notwithstanding, Clearing Type II is required for Appendix A Areas 73 to 78 and 81 to 86 because these areas fall within the area of electrical clearances required for the Project beyond the wire zone.

7. **Section 3.1.5—Danger Trees:** The EM&CP currently provides that danger trees be removed upon identification. CESL requests that drop-crotch tree topping be an available and preferred option, where feasible, for danger tree management in the areas of the Adjacent Residences. This approach would address the concern of danger trees while maintaining the screening characteristics of these trees. Section IV.E of the Right-of-Way Management Plan should also be modified consistent with this approach.

Response: NEETNY does not believe the use of drop-crotch tree topping will be an effective method of managing danger trees. Full removal of a danger tree is necessary to prevent damage to key components of the transmission lines or facilities and to provide for the safety of line clearance tree workers.

Accordingly, NEETNY declines to add drop-crotch to the ROW Management Plan as a method of managing danger trees outside of the Project ROW and has removed all reference to drop-crotch in Appendix C - Scope of Work 1.04 A.4 to align with the ROW Management Plan.

8. **Section 7.3—Residential Areas:** The distance from the Proposed ROW to the property lines of the Adjacent Residences are generally less than 160 feet and as little as 105 feet. The range of 300 feet to 1000 feet given in this section should be updated.

Response: NEETNY's statement in Section 7.3 has been updated to clarify that the distances from the Project ROW to the existing residences (e.g., homes) is generally 300 to 1,000 feet.

9. **Section 9.2—Schedules and Days:** Because the Towns are ill-equipped to alert residents on short notice of the need for Sunday or after-hours work, NEETNY should notify affected adjacent residents of this change of work schedule.

Response: NEETNY has updated the language to include notification of affected adjacent residents.

10. **Section 15.1—Qualifications and Responsibilities for Supervision Personnel, Environmental Monitor:** The responsibilities for the Environmental Monitor should include ensuring compliance with the tree clearing methods and visual mitigation and landscape restoration plans developed at the pre-construction and post-construction meetings with the Adjacent Residences as part of Certificate Conditions 129 and 130. The environmental monitor should also ensure compliance with post-construction visual mitigation and restoration plans referenced in Section 16.2.1.

Response: The Environmental Monitor is not responsible for post-construction visual mitigation and restoration plans. In accordance with Certificate Conditions 129 and 130, NEETNY will meet with owners and residents of residences adjacent to specified portions of the line, both pre- and post-construction, to address the need for landscape restoration and, in consultation with DPS Staff, prepare plans for any visual mitigation found necessary. However, any mitigation and/or restoration proposed on NYSEG property shall be subject to the prior written approval of NYSEG, which approval may be granted or withheld by NYSEG, in NYSEG’s sole discretion.

11. **Section 16.2.2—Restoration in Residential Areas:** In the fourth paragraph, the EM&CP again recites that NEETNY will be conducting pre- and post-construction meetings with the Adjacent Residences, but fails to “describe below” the process for how “the need for landscape restoration” is proposed to be conducted. Please provide a proposed pre-construction and post-construction methodology and disciplines involved for assessing the need for landscape restoration and visual mitigation at the Adjacent Residences. The plan should include: an assessment of pre- construction conditions; measures to be taken to minimize the loss of existing visual screening; plantings that can be installed during the construction phase to accelerate the visual mitigation benefits of the plantings; the process for post-construction review and assessment of the impact of the pre-construction plan; NYSEG engagement plan for approving plantings on the NYSEG right-of-way; and post-implementation monitoring and remediation for a period of no less than two growing seasons following completion of Project restoration and visual mitigation measures.

Response: In accordance with Certificate Conditions 129 and 130, NEETNY will meet with owners and residents of residences adjacent to specified portions of the line, both pre- and post-construction, to address the need for landscape restoration and, in consultation with Department of Public Service (DPS) Staff, prepare plans for any visual mitigation found necessary. However, any mitigation and/or restoration proposed on NYSEG property shall be subject to the prior written approval of NYSEG; approval may be granted or withheld by NYSEG, in NYSEG’s sole discretion.

12. **Section 17.0—Visual Impact Mitigation:**

- a. This section should acknowledge the visual impacts to the Adjacent Residences, which is basis for the inclusion of the pre- and post-construction meetings in Certificate Conditions 129 and 130 to assess visual mitigation and landscape restoration measures for the Adjacent Properties. Generally, the Fernott and Townline Residences currently have little to no visual impact from the existing transmission lines. See Exhibit A. Without mitigation and restoration plans, the viewshed and quality of life from the properties will be substantially and negatively altered. For the Westwood and Downey Residences, while the existing transmission lines are largely in the viewshed, they are relatively low wooden structures that blend into the landscape and are set back 300 feet. The ESL Project adds massive transmission structures that will be substantially closer to the residences, significantly altering the viewshed for these residences.

- b. In the last paragraph, the landscape restoration plans of Section 16.2.2 for residential areas should be referenced in addition to Section 16.2.1. Refer to the comments on Section 16.2.2 above.
- c. As noted in the comments to Section 16.2.2 above, please provide the proposed pre-construction and post-construction methodology for assessing the need for landscape restoration and visual mitigation at the Adjacent Residences.

Response: NEETNY disagrees with CESL’s description of the visual impact of the Project. As set forth in the Joint Proposal, which CESL is a signatory, the proposed transmission structures will be highly compatible with the uses within the existing NYSEG Utility Corridor. (JP ¶ 41.) As paragraphs 44 and 45 of the Joint Proposal state, the results of visual impact analysis demonstrate that views from many locations are generally limited to a few proposed structures in a particular view. Where visibility of the Project is found throughout the study area, there are often views of the existing transmission structures within the utility corridor and views of other electric distribution poles scattered along roadways within the landscape.

In general, if there is visibility of the Project, there is also visibility of at least one of the existing transmission lines within the existing NYSEG Utility Corridor. Additionally, due to the structures’ slender profile, visibility of the Project will decrease as distance from the Project increases, reducing the perceived scale and visual contrast of the proposed new structures.

Moreover, while certain residences and commercial properties along the Project ROW will likely have visual impacts from the Project, most of these residences and commercial properties are already in the viewshed of the existing transmission lines, so overall additional impacts will be minimal.

In accordance with Certificate Conditions 129 and 130, NEETNY will meet with owners and residents of residences adjacent to specified portions of the line, both pre- and post-construction, to address the need for landscape restoration and, in consultation with DPS Staff, prepare plans for any visual mitigation found necessary. However, any mitigation and/or restoration proposed on NYSEG property shall be subject to the prior written approval of NYSEG, which approval may be granted or withheld by NYSEG, in NYSEG’s sole discretion.

13. Long-Range Right-of-Way Management Plan (“ROW Management Plan”), Section III.D—Goals of the ROW Management Plan: The description of the goals associated with “Manage Rights-of-Way in Harmony with Existing Land Uses” should include as a goal that the Rights-of-Way should minimize the impacts of the transmission facility on the character of adjacent residential properties. These goals should also be referenced in Section IX.A.4

Response: NEETNY’s ROW Management Plan is developed to manage all transmission ROW’s under NEETNY’s jurisdiction. Project or site-specific items are addressed in the Certificate and the details will not be included in the ROW Management Plan.

14. ROW Management Plan, Section IV.A.2: This section refers to management of the ROW within the Buffer Zone to retain herbaceous vegetation and species on the list of woody shrubs,

referencing Item 5, and tall shrubs and small trees, referencing Item 4. Section IV.A lists woody shrubs in Item 4 and presents no Item 5, or list of tall shrubs and small trees anywhere else in the main document (though a list is included in Appendix J). The references should be corrected and the list of acceptable tall shrubs and small trees added.

Response: NEETNY will add the references to the ROW Management Plan for tall shrubs and small trees to Item 4 as referenced in Section IV.A

15. ROW Management Plan, Section IV.A.3: As noted in the comments to Section 3.1, CESL requests that tall growing tree species deemed “undesirable” be retained at locations where the conductor height and location ensures that a mature tree will never reach the wire security zone clearance distances or be able to fall into the line as in the NYSEG Specifications for Transmission Right-of-Way Vegetation Maintenance.

Response: See NEETNY’s Response to CESL Comment No. 6 above. “Undesirable Trees” cannot be located within the Project ROW. These tree types will exceed conductor height at maturity and unnecessarily increase risk of danger tree interruptions.

16. ROW Management Plan, Section IV.B: A site specific condition that should be considered in selecting a vegetation management technique should be Project visibility to adjacent residential properties.

Response: NEETNY’s ROW Management Plan is developed to manage all transmission ROW’s under NEETNY’s jurisdiction. Project or site-specific items are addressed in the certificate and the details will not be included in the ROW Management Plan.

17. ROW Management Plan, Section IV.E.2—Danger Tree Identification: This section does not describe how danger trees will be identified other than to say it is difficult and that the wider the ROW is cleared, the lower the probability that a tree will fall into the ROW (which is self-evident). This section should include the planned danger tree identification methodology with consideration of the visual mitigation objective for the Adjacent Residences.

Response: In its “Order Requiring Enhanced Transmission Right-of-Way Management Practices by Electric Utilities” issued on June 20, 2005 in Case 04-E-0822, the Commission defined a “danger tree” as any tree rooted outside of a ROW that due to its proximity and physical condition (i.e., mortality, lean, decay, cavities, cracks, weak branching, root lifting, or other instability), poses a particular danger to a conductor or other key component of a transmission facility. (June 20, 2005 Order at 13-14.) The Commission has ordered electric utilities to establish programs to track and remove such danger trees. (*Id.*)

The Commission clarified that “within a ROW, there is no need to designate and track particular undesirable vegetation as ‘danger trees’ [because] all undesirable vegetation within a ROW should be tracked and removed in accordance with the degree of threat it poses to the transmission facilities. (*Id.* at 13.)”

NEETNY will update the ROW Management Plan to include the Commission’s definition.

18. ROW Management Plan, Section IV.E.2: As noted in the comment to Section 3.1.5, CESL requests that drop-crotch tree topping be an available and preferred option, where feasible, for danger tree management in the areas of the Adjacent Residences. This approach would address the concern of danger trees while maintaining the screening characteristics of these trees.

Response: See NEETNY’s Response to CESL Comment No. 7.

19. ROW Management Plan, Section V.D: The reference to Article VII Certificate Conditions should include reference to vegetation management necessary to maintain visual mitigation measures.

Response: Section VII.C of NEETNY’s ROW Management Plan states: “NEETNY has completed at least one maintenance treatment on all electric transmission lines that were licensed under Article VII of the Public Service Law. Vegetation management activities on these facilities have been subsumed into this Plan. Any specific restrictions or requirements that apply to vegetation management on these ROWs appear on the Plan and Profile Drawings and will be complied with during maintenance activities.” NEETNY’s ROW Management Plan is developed to manage all transmission ROWs under NEETNY’s jurisdiction. Project or site-specific items are addressed in the Certificate and the details will not be included in the ROW Management Plan.

20. ROW Management Plan, Appendix C—Detailed Specifications for Transmission Right-of-Way Vegetation Maintenance: Generally, a number of definitions, terminology, and practices are inconsistent with those in the ROW Management Plan (e.g., buffer zone, danger tree, minimum approach distances, danger tree management). This document should be reviewed for consistency with the ROW Management Plan.

Response: Appendix C is a working specification document intended to define the scope of work for vegetation maintenance. The definitions and references in Appendix C are specific to that appendix and do not replace any part of the ROW Management Plan.

21. ROW Management Plan, Appendix C, Section 1.3: Residential properties should be included in the list of adjacent areas constituting the buffer zone.

Response: NEETNY’s ROW Management Plan is developed to manage all transmission ROW’s under NEETNY’s jurisdiction. Project or site-specific items are addressed in the Certificate and the details will not be included in the ROW Management Plan.

22. ROW Management Plan, Appendix C, Section 1.4.B.5: The ROW map should include special considerations such as location of tree buffer visual mitigation plantings.

Response: NEETNY’s ROW Management Plan is developed to manage all transmission ROWs under NEETNY’s jurisdiction. Project or site-specific items are addressed in the Certificate and the details will not be included in the ROW Management Plan.

23. ROW Management Plan, Appendix C, Section 3, Slash Disposal: Slash disposal should be conducted in the same manner as done for the Project construction as referenced in Appendix A of the EM&CP.

Response: NEETNY's ROW Management Plan is developed as a plan to manage all transmission ROWs under NEETNY's jurisdiction post-construction. Methods of slash disposal during construction of the Project are addressed in the EM&CP.

24. ROW Management Plan, Appendix I: The list of "tall" trees appears to be defined as those that can grow to greater than 15 feet. This height limit appears arbitrary given that the lowest height of the lowest conductor above grade appears to be about 65 feet, which would mean, with the 25 wire clearance zone, that 40 foot high trees could be safely tolerated in the wire zone and buffer zones. Please clarify the definitions and identity of "undesirable" tall trees in the context of the ESL Project conditions.

Response: NEETNY has designed the project to have at minimum 28-foot conductor clearance above grade. The comment fails to address conductor condition at maximum sag. Allowing 40-foot-high trees within the wire zone, as suggested by CESL, is inconsistent with both North American Electric Reliability Corporation (NERC) FAC 003-4 and 16 NYCRR Part 84. As the Commission has held, long-range vegetation management requires vegetation management planning in right-of-way corridors for transmission facilities comprised of 34 kV and above, except where located entirely on public streets or roads in right-of-way corridors.

Pursuant to the "Order Requiring Enhanced Transmission Right-of-Way Management Practices by Electric Utilities" issued by the Commission on June 20, 2005 in Case 04-E-0822, consistent with the Commission's longstanding policies on appropriate right-of-way management, electric utilities are required to maintain comprehensive and routine treatment of each right-of-way corridor, including the establishment of treatment cycles that ensure each right-of-way is revisited on a periodic basis. Pursuant to the Order, the Commission held that "[a]s a general rule, for clarification, any undesirable vegetation rooted within the ROW that in any way encroaches into a priority zone is to be completely removed to the floor or ground-level of the ROW. Mere trimming of such undesirable vegetation rooted within the ROW so that it no longer encroaches into a priority zone is not an acceptable or cost-effective practice. Any undesirable vegetation rooted outside of the ROW that in any way encroaches into a priority zone is to be trimmed to the edge of the ROW consistent with industry standards in effect at the time of trimming." (Order at 21.) The Commission further held that "[i]t is untenable for a utility to have only minimally adequate ROW widths or tree removal rights, particularly on bulk and other critical transmission ROW." (Order at 23.)

As falling trees or limbs into transmission lines are a primary source of tree-caused power failures, the Commission has set the below guidelines for tree planting and height clearances from the center of the utility rights-of-way:

- Trees planted 30 feet to 60 feet from transmission line rights-of-way should not exceed 15 feet in height;
- Trees planted 60 feet to 90 feet away from transmission line rights-of-way should not exceed 25 feet in height; and
- Trees planted 90 feet to 120 feet away from transmission line rights-of-way should not exceed 60 feet in height.