

**Supplement to the Application for a Certificate of
Environmental Compatibility and
Public Need Pursuant to Article 10 of the
New York State Public Service Law**

North Side Energy Center

Towns of Massena, Brasher, and Norfolk, St. Lawrence County, New York

Case No.: 17-F-0598

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- Attachment A: Figure 3-1A. Project Component Locations
- Attachment B: Updated Design Drawing Sheets (Sheets C.603, E.650, and E.652)
- Attachment C: Copies of Consultation with NYSDHSES and Local Emergency First Responders
- Attachment D: Revised Table 19-8. Tonal Analysis & Compliance Evaluation: Modeled Sound Pressure Levels
- Attachment E: Revised Phase IB Report
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- Attachment G: Blanding's Turtle Survey Figures
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In response to the April 20, 2021 letter received from the Chair of the New York State Board on Electric Generation Siting and the Environment (Chair) regarding the Application submitted by North Side Energy Center, LLC (Applicant) pursuant to N.Y. Public Service Law (PSL) 164 for a Certificate of Environmental Compatibility and Public Need for the North Side Energy Center Project (the Project), supplemental information is provided below and attached. The organization of this document (hereafter referred to as the “Supplement to the Application”) is consistent with the Chair’s April 20, 2021 letter and presents each comment followed by the Applicant’s response to the comment.

Exhibit 3: Location of Facilities

1. 16 NYCRR §1001.3 requires “[m]aps, drawings and explanations showing the location of the proposed major electric generating facility, all interconnections, and all ancillary features not located on the facility site such as roads, railroads, switchyards, fuel or energy storage or regulation facilities, solid waste disposal areas, waste treatment and disposal facilities, and similar facilities, in relation to municipalities (county, city, town and village) and taxing jurisdictions associated with any part of the overall development proposal.” 16 NYCRR §1001.3(a) requires “New York State Department of Transportation or USGS maps (1:24,000 topographic edition)”. Municipal boundaries are not shown on Figure 3-1, Sheet 1 of the Application. Figure 3-1, Sheets 2-34 of the Application are not presented on USGS or other topographic maps. Further, Figure 3-1, Sheet 1 is excessively cluttered with indexing references to Sheets 2-34, making discernment of geographic features, such as road names, not feasible. Please provide a revised Figure 3-1, Sheet 1 showing municipal boundaries and clearly identify geographic features, such as road names. Please provide a revised Figure 3-1, Sheets 2- 34 on NYSDOT or USGS maps (1:24,000 topographic edition).

Response: A new figure, Figure 3-1A, is provided as Attachment A to this Supplement. Sheet 1 depicts municipal boundaries and clearly identify geographic features, including road names. Sheets 2-7 have been provided on USGS maps (1:24,000 topographic edition) at a larger scale to provide greater detail.

2. 16 NYCRR §1001.3(a)(5) requires NYSDOT or USGS maps (1:24,000 topographic edition), showing “[a] Study Area for the proposed facility generally related to the nature of the technology and the setting of the proposed site.” Under Stipulation 3(a)(5), “[t]he

Application will include the evaluation of a two-mile Study Area. . . ." Figure 3-1 of the Application does not show the required 2-mile Study Area on NYSDOT or USGS topographic mapping, as required. Please provide a revised Figure 3-1 to include the required 2-mile Study Area.

Response: New Figure 3-1A includes the required 2-mile study area (see Attachment A).

Exhibit 11: Preliminary Design Drawings

1. 16 NYCRR §1001.11(a) requires "[a] site plan showing all buildings, structures, driveways, parking areas, emergency access lanes, sidewalks, access ways and other improvements at the facility site, depicting the proposed site in relation to adjoining properties, and depicting the layout of onsite facilities and ancillary features. Additional drawings shall be included depicting the layout of all offsite facilities and ancillary features." A typical detail of an energy storage unit is included on Drawing C.603 of Appendix 11-1, part 2 of 6. However, there are no such units shown on the site plans. Please clarify whether energy storage facilities are proposed as part of the Project and update the drawing and site plans as necessary.

Response: Energy storage facilities are not proposed as part of the Project and the detail was erroneously included in the site plan drawings. Drawing C.603 is provided in Attachment B to this Supplement and has been updated in order to remove typical energy storage units since none are proposed.

2. Stipulation 11(g)(1)(iii) requires plan and section details of underground collection lines to include separation requirements between installed circuits. Details included in Drawings E.650 & E.652 of Appendix 11-1 do not include separation distances of proposed circuits. Please provide updated drawings E.650 & E.652 that show approximate separation distances between proposed circuits.

Response: Updated Drawings E.650 and E.652, provided in Attachment B of this Supplement, depict the proposed separation distances between circuits.

Exhibit 18: Safety and Security

1. 16 NYCRR §1001.18(b)(6) requires a preliminary plan for site security during operation of the proposed facility to include "[a] description of a cyber security program for the

protection of digital computer and communication systems and networks that support the facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry, including, but not limited to, the federal Department of Commerce's National Institute of Standards and Technology, the North American Electric Reliability Corporation, or the International Organization for Standardization, and providing for periodic validation of compliance with the applicable standard by an independent auditor.” While the Application indicates that the Facility will comply with the North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) standards, no mention is made regarding the requirement for periodic validation of compliance with the applicable standard by an independent auditor. Please provide a description of plans for periodic validation of compliance with the applicable NERC CIP standards by an independent auditor.

Response: NextEra Energy Inc. (NEE) has a corporate-wide NERC Internal Compliance Program (ICP) which provides independent oversight of all NERC Reliability Standards, both Operational and CIP, applicable to NEE subsidiaries which include NextEra Energy Resources (NEER). The NEE NERC ICP is managed by NEE’s Compliance and Responsibility Organization (CRO) which is independent from the operational business units responsible for day-to-day compliance with the NERC Reliability Standards. Under the ICP, CRO performs independent periodic reviews of the applicable NERC Reliability Standards. NEE’s Internal Audit (IA) department also performs independent reviews. The NEE NERC ICP follows the three-lines of defense approach with the NEE operational Business Units self-monitoring their ongoing compliance as first-line of defense, the CRO team performing independent reviews as second-line of defense, and IA performing independent reviews as third-line of defense.

NERC and its Regional Entities, in accordance with their Compliance Monitoring and Enforcement Plan (CMEP) as approved by the Federal Energy Regulatory Commission (FERC), perform independent audits of NEER’s assets and their compliance with the NERC Reliability Standards. The CMEP includes a risk review which determines the frequency of their audits.

2. 16 NYCRR §1001.18(d) requires “[a] statement that the applicant has provided a copy of the plans required in subdivisions (a), (b), and (c) of this section to, and requested review of such plans and comment by, the New York State Division of Homeland

Security and Emergency Services.” The Application states (page 15 of Exhibit 18) “[t]he Applicant will provide a copy of the plans required in Sections 18(a), 18(b), and 18(c) of this Exhibit to the NYS DHSES and will also request that it review and provide comments on the ERP. The Applicant will provide documentation of this correspondence to the New York State Department of Public Service (NYSDPS) staff once available.” This does not satisfy the requirement indicating this has already occurred. Please confirm that the Applicant has provided a copy of the required plans to the New York State Division of Homeland Security and Emergency Services, including a request for review and comment, and specify the date this information was provided.

Response: On April 29, 2021, the Applicant sent a consultation package, including a request for review and comment, to the New York State Division of Homeland Security and Emergency Services. Copies of the Site Security Plan and Emergency Response Plan were included in this package. See Attachment C of this Supplement for a copy of this correspondence.

3. 16 NYCRR §1001.18(h) requires “[a] statement that the applicant has provided a copy of the plans required in subdivision (c) of this section to, and requested review of such plans and comment by, local emergency first responders serving the area of the facility site, and a review of any responses received.” While the Application states that the Applicant consulted with local emergency responders, the Application does not include a statement confirming that the Applicant has provided a copy of the required plans and requested review and comment on such plans by local emergency first responders serving the area of the facility site. Please provide the required statement of confirmation, including the date on which the plans and request were submitted to local emergency first responders.

Response: On May 12, 2021, the Applicant sent consultation packages, including a request for review and comment, to the following local first responders: St. Lawrence County Sheriff’s Office, Norfolk Fire Department, Massena Fire Department, Brasher-Winthrop Fire Department, and St. Lawrence County Department of Emergency Services. A copy of the Emergency Response Plan and an example First Responder Orientation Presentation was included in each package. See Attachment C of this Supplement for copies of this correspondence.

Exhibit 19: Noise and Vibration

1. Stipulation 19(e)(2) states that the Application will include “[a] discussion of whether a tonal condition is possible from any noise source (e. g. substation noise sources, inverters, battery storage units, if any). The ‘prominent discrete tone’ constant level differences (Kt) in ANSI S12.9-2013/Part 3 Annex B, Section B.1, (or most recent version) will be used to evaluate tones at the nearest 10 potentially impacted and representative noise receptors using spreadsheet calculations if one-third octave band data information are available.” Exhibit 19 of the Application only provides an evaluation of tones at 5 potentially impacted and representative noise receptors instead of the 10 required by the Stipulations. Please provide an evaluation of tones at the required 10 potentially impacted and representative noise receptors.

Response: A tonal evaluation of the 10 nearest potentially impacted and representative noise receptors has been provided in the revised version of Table 19-8, included herein as Attachment D of this Supplement. As indicated in the analysis, the received sound pressure levels at all 10 nearest receptors are below the tonal limit.

Exhibit 20: Cultural Resources

1. 16 NYCRR §1001.20(a)(3) requires a Phase IB study, as determined in consultation with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP). Correspondence dated April 6, 2021 indicates that OPRHP has requested clarifications and revisions to the Applicant's Phase IB report. Please provide the revised Phase IB report.

Response: The revised Phase IB Report is included as Attachment E to this Supplement. This revised report was submitted to the OPRHP on April 22, 2021. Additional questions from the OPRHP were received on May 14, 2021. Responses to OPRHP's questions were submitted to OPRHP on May 18, 2021 and the Applicant is awaiting final acceptance of the report by OPRHP.

2. 16 NYCRR §1001.20(a)(4) requires a Phase II study, if warranted based on the Phase I study results, as determined in consultation with OPRHP and DPS Staff after the Phase IB report is deemed complete. The Application did not provide proof of consultation with OPRHP regarding its review of the revised Phase IB report and subsequent

determination on whether a Phase II survey is warranted. Furthermore, page 9 of Exhibit 20 of the Application states, “[a]ny Phase II studies, if required, will be conducted following any required Compliance Filing.” Please provide a copy of the related OPRHP correspondence and Phase II report, if determined necessary, as required pursuant to 16 NYCRR §1001.20(a)(4).

Response: Site Avoidance Plans submitted to the OPRHP and proof of consultation with OPRHP have been included as Appendix E. As noted in this documentation, Phase II studies are not proposed.

3. Stipulation 20(d) requires a discussion on the installation methods used for collection lines and potential impacts on cultural resources. Page 15 of Exhibit 20 states, “[i]nallation methods used for collection lines and potential impacts on cultural resources will be included in the Application [;]” however, no such discussion was included. Please provide the required discussion on the installation methods used for collection lines and potential impacts on cultural resources.

Response: The entire Project construction footprint was surveyed for cultural resources following updated OPRHP Phase IB testing protocols for large solar projects issued in October 2020, which state: If project design flexibility or shovel ready status is desired, the SHPO recommends 100% sampling of all highly sensitive areas irrespective of the nature and type of construction impacts. With this approach, changes in project design will not require further archaeological consultation except for changes that may impact archaeological sites or that increase the size of the project area. TRC surveyed the construction footprint following this approach and confirmed there are no archaeological resources within the construction footprint as currently designed. As such, no archaeological resources will be impacted by installation methods used for collection lines.

Exhibit 21: Geology, Seismology, and Soils

1. Stipulation 21(g)(1)(vii) requires the Application to “[e]stablish proposed setbacks of [horizontal directional drilling (HDD)] operations from stream banks, drinking water wells, and other known potential sensitive receptors and resources.” The discussion of HDD included in Exhibit 21 of the Application does not specify the Applicant's proposed setbacks. Please describe the proposed HDD setbacks from stream banks, drinking water wells, and other known potential sensitive receptors and resources.

Response: Preliminary proposed HDD setbacks for the Project are as follows: 50 feet from stream banks; 396 feet from documented drinking water wells; and 309 feet from other known potential sensitive receptors and resources.

2. Stipulation 21(j) requires “[e]valuation of reasonable mitigation measures regarding blasting impacts will include recommendations for setbacks from existing wells, including all identified water supply wells, livestock, residences and other structures, and plans for pre- and post-blasting inspections of existing structures.” The discussion of blasting operations and mitigation measures included in Exhibit 21 of the Application does not identify the proposed blasting setbacks. Please identify the proposed blasting setbacks from existing water supply wells, livestock, residences and other structures.

Response: Based upon the geotechnical investigation conducted at the Project Area, blasting is not anticipated. If during construction it is determined that blasting is required, prior to the initiation of any blasting activities, a Final Blasting Plan will be prepared and filed as an Information Report with the Secretary that describes procedures and timeframes for blasting operations, emergency and safety protocols, and notifications for host communities and property owners (or those living on the property, if different). This Final Blasting Plan will also identify proposed minimum setbacks from surrounding structures (including residences), existing water supply wells and livestock, and appropriate mitigation measures for the safety of construction personnel, the public, and identified structures..

Blasting will be designed and controlled to meet the limits for ground vibration set forth in United States Bureau of Mines Report of Investigation 8507 Figure B-1 and air overpressure shall be under the limits set forth in the Conclusion section in United States Bureau of Mines Report of Investigation 8485 (USBM RI 8507 and USBM RI 8485) to protect structures from damage. Additionally, according to 29 C.F.R. Parts 1910.109 (Explosives and Blasting Agents) and 1910.119 (Process Safety Management); USDO I Rules 816.61–68 and 817.61–68; and the Office of Surface Mining, Reclamation and Enforcement’s Blasting Guidance Manual, pre-blasting surveys are required if blasting is to be performed within a ½ mile of structures or residences. A blast design is required to be submitted to the regulatory authority if blasting is proposed within 1,000 feet of any structure used as a dwelling or gathering place outside of the permit area. These regulations will be adhered to for Project blasting, if it is required.

Exhibit 22: Terrestrial Ecology and Wetlands

1. 16 NYCRR §1001.22(f) requires “[a] detailed assessment of direct and indirect impacts and identification and evaluation of the expected environmental impacts of the facility on declining species, Species of Greatest Conservation Need (SGCN), and species protected by State and Federal law and the habitats of such species.” Additionally, Stipulation 22(d)(3)(i) requires “[t]he Applicant [to] provide an assessment of the suitability of habitat in the Project Area for Blanding’s turtle (*Emydoidea blandingii*) and potential impacts the Project may have on this species.” NYSDEC advises that threatened and endangered species are present in the Project Area as mapped Blanding’s turtle occupied habitat overlaps the Project Area. However, the Application does not include the required detailed habitat assessment for Blanding’s turtles that should be included as part of the Application in accordance with Stipulation 22(d)(3)(i). Please provide the required information.

Response: The last sentence does not quote the stipulation accurately as the word “detailed” does not appear to precede the word “assessment”. Nevertheless, sections 22(d)(2), 22(d)(3), and Table 22-5 (Mapped Soil Units Conducive to Blanding’s Turtle Nesting) of Exhibit 22 of the Application provide detailed information on Blanding’s turtle habitat and assessment within the Project Area. Section 22(d)(3), page 24, discusses the desktop analysis of Blanding’s turtle habitat performed within the Project Area. Section 22(d)(2), page 19, states the following: “A formal habitat assessment of potential Blanding’s turtle habitat was not conducted in 2020. Though not required by Article 10 regulations nor the executed stipulations, and therefore not a compliance issue with respect to PSL 164 filing requirements, the Applicant is planning to conduct a formal habitat assessment for potential Blanding’s turtle habitat in spring of 2021”. In a call with NYSDEC staff, they did not indicate that a field survey was required for the compliance determination, as the Applicant informed them that it would do the field survey in the appropriate season. The Applicant submitted a Blanding’s turtle study plan to NYSDEC on April 6, 2021 and performed an onsite field habitat assessment between April 26 and April 29, 2021, in accordance with information in Exhibit 22 of the Application.

The objective of the onsite habitat assessment was to determine the presence/absence of potentially suitable Blanding’s turtle habitat within the Project Area. Survey methodology followed the habitat criteria outlined in the *Conservation Plan for Populations of the Blanding’s Turtle* (Ross and Johnson 2018) and the *Guidelines for Reviewing Projects for*

Potential Impacts to the Blanding's Turtle (NYSDEC 2010). For the purpose of this habitat assessment, wetlands were defined as areas that met the criteria of the 1987 Corps of Engineers Wetland Delineation Manual (USACE 1987), the 2012 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, Version 2.0 (USACE 2012), and/or the 1995 DEC Freshwater Wetlands Delineation Manual (DEC 1995). Wetlands delineated within the Project Area were assessed and categorized as potential core wetlands, associated wetlands, or non-suitable wetlands for Blanding's turtles, as defined below:

Potential core wetland refers to a wetland with high suitability for Blanding's turtles to use and can exhibit the following characteristics:

- Open or absent tree canopy
- Dense shrub cover
- Fine organic and coarse debris
- Forested wetland perimeter
- Shallow (≥ 30 cm) and deep (≥ 120 cm) pools connected by channels

An associated wetland refers to a wetland with moderate potential suitability for Blanding's turtle use and is within 1,000 meters of a core wetland area (NYSDEC 2010).

Wetlands deemed as non-suitable wetlands are wetlands that do not:

- Display any of the criteria of a core wetland
- Occur within 1,000 meters of a core wetland
- Support standing water during any part of the year

Nesting habitat assessments took place in all upland areas within 1,400 meters of potential core and associated wetland habitat patches identified in the field within the Project Area. Potential nesting habitat are upland areas consisting of loose, dry, sandy/gravelly soils in open areas and/or actively cultivated crops in any soil type (Ross and Johnson 2018). Pastures and hayfields in non-sandy/gravelly soils were not considered suitable nesting habitat because these fields are not typically tilled and replanted each year. No surveys were conducted outside the Project Area where the Applicant does not have land access rights.

No Blanding's turtles were observed onsite during the habitat assessment conducted between April 26 and April 29, 2021. Results from the habitat assessment identified a

total of 4 separate potential core wetland habitats, 9 separate associated wetland habitats, and 3 separate potential nesting habitats in the defined Project Area. Table 1 lists acreages of potential habitat and Figures 1 and 2, provided in Attachment G of this Supplement, depict detailed locations of each potential habitat type identified within the Project Area as well as the limits of disturbance and the proposed solar array.

Table 1. Blanding's Turtle Habitat Assessment Results		
Habitat Type	Acres Observed Onsite	Acres of Potential Temporary and/or Permanent Disturbance
Wetland - Core Habitat	13.99 acres	0 acres
Wetland - Associated Habitat	88.87 acres	6.78 acres
Upland Nesting Habitat	0.82 acres	0.44 acres
Total	103.68 acres	7.22 acres

The Project is avoiding all impacts to core wetland habitat and has limited potential disturbance to associated wetland habitat and upland nesting habitat to 7.22 acres (Table 1). The less than half acre of potential disturbance to upland nesting habitat is primarily associated with installation of solar panel arrays. Potential impacts include the overlap of a permanent access road turnaround, installation of metal posts for supporting the panel racking, installation of chain-linked security fencing, and Type I tree clearing (Type B disposal). The bulk of potential impacts to the 6.78 acres of associated wetland habitat relate to Type I tree clearing (Type B disposal), with the installation of metal support posts and chain linked security fencing accounting for a minor portion of this acreage. An additional potential impact is road mortality resulting from increased traffic flow during construction.

The Applicant will avoid impacts to the maximum extent practicable by implementing avoidance and minimization measures. These measures could include avoiding construction in Blanding's turtle habitat to beyond the active season, erecting exclusion fencing, having a Blanding's turtle monitor(s) onsite for specific construction activities, turtle crossing signage, trap/road hazard protection, educational pamphlets for construction staff, and onsite training for new staff.

2. Stipulation 22(f)(1) requires “[f]inal reports for [Breeding Bird and Winter Raptor] surveys, incorporating any comments provided by NYSDEC, (if practicable, upon notice to NYSDEC as to the estimated filing date of the Application) will be provided in the Application, and will include an assessment of any potential direct and indirect impacts to grassland bird species habitat as a result of the Project. GIS shapefiles showing all breeding and winter bird survey locations will be provided to NYSDEC, with the final reports under applicable confidentiality protections.” The Application does not contain final reports for both wintering and breeding grassland birds, as required. The Application only contains draft reports dated January 2021 and these reports do not incorporate any comments from NYSDEC. Please provide final reports for both wintering and breeding grassland birds and incorporate any comments provided by NYSDEC.

Response: The reports for both wintering and breeding grassland birds, as provided in the Application, and dated January 2021, are final versions. These reports were submitted to NYSDEC on January 21, 2021, prior to the filing of the Article 10 Application. As of the writing of this response, no comments have been received from NYSDEC on these final reports.

3. Stipulation 22(f)(10) requires “[a] cumulative impact analysis [to] be done to evaluate the actual and expected impacts from the construction, operation, and maintenance of the Project on federally and state-listed threatened or endangered species. . . .” Stipulation 22(f)(10)(ii) further requires [e]stimated take of state-listed [threatened and endangered] bird species and their habitats at the Facility, if any, and a description of methods used, and sources consulted to estimate take.” The Application does not contain a final and/or estimate of take of all state listed threatened and endangered species. In addition, the Application contains inconsistent information as it states both that there will be no take of any state listed threatened and endangered species (Exhibit 22, page 64) and that mitigation for impacts to occupied habitat of state listed grassland birds will be necessary (Exhibit 22, page 66 and Appendix 22-9, page 16). Furthermore, the estimated take of occupied habitat is not adequately described in the Application, particularly in Appendix 22-9 (page 16) where the Applicant refers to general parameters used in other Article 10 projects but does not describe the methods used to establish the Applicant’s estimates of occupied habitat for this Project. Please provide the required information and resolve the indicated inconsistencies.

Response: Page 64 of Exhibit 22 of the Application should be revised to read “No direct take of any state-listed species is expected to occur. However, the Project will result in adverse modification of habitat for state-listed grassland birds”. The language on Page 66 of the exhibit is correct as written.

The estimated take of occupied habitat was derived using the following methodology:

- (a) The Applicant reviewed observations of state-listed species recorded during surveys conducted on-site to determine the extent of occupied habitat. The area of occupied habitat was determined using the full extent of unobstructed grassland habitat greater than 25 acres where observations of listed species were recorded during either grassland breeding bird or wintering grassland raptor surveys conducted within the Project Area. Tables 2 and 3 of Appendix 22-9 provide the number of acres of occupied habitat for each state-listed species observed.
 - (b) The Applicant assumed that the entirety of the occupied habitat identified within the Project Area would be impacted by the Project and would therefore be considered a take for the state-listed species observed. Where multiple species were observed occupying the same field, the total number of acres was considered only once in the determination of take. Where both occupied breeding habitat and wintering habitat overlapped, take was estimated as a take of breeding habitat. The total number of acres of take of occupied habitat for state-listed species was estimated at 383 acres of breeding habitat and 112 acres of wintering habitat. The areas of occupied habitat and total acres of each occupied habitat area are shown on Figure 1 of Appendix 22-9.
 - (c) To determine the number of acres proposed for mitigation of take of occupied habitat for state-listed species, that Applicant proposed mitigation would be implemented at a ratio of 0.4 acre for every acre of occupied breeding habitat and 0.2 acre for every acre of occupied wintering habitat for the four listed species with occupied habitat in the Project Area. The resulting proposed acres for mitigation to achieve a net conservation benefit to state-listed species impacted by Project development is provided on page 16 of Appendix 22-9.
4. Stipulation 22(d)(6) requires “[i]dentification and delineation of vernal pools, including surrounding upland habitat, within 100 feet of all proposed areas of disturbance. If vernal pools are identified, the Application will include: i) Ecological characterization data; ii)

Detailed location maps; iii) Results of site-specific surveys for amphibians, reptile and turtle species conducted under appropriate seasonal conditions and developed and presented in consultation with NYSDEC staff; and iv) Potential impacts that may occur to vernal pools and the species that utilize them. If vernal pool identification must occur outside the ideal survey season, appropriate protocols shall be developed in coordination with NYSDEC to align with Project Site conditions.” Stipulation 22(k)(1) further states, “[v]ernal pools will be inventoried. The Application will identify actual or potential vernal pools that could be disturbed by construction and operation of the Facility. A discussion will be included that evaluates the use of the identified vernal pools by amphibians and the potential impacts to those species. Such evaluation of impacts may require, in consultation with NYSDEC and DPS, the development and implementation of site-specific surveys for amphibian and reptile species under appropriate seasonal conditions in order to fully quantify the level of impact from the Project and measures to avoid impacts to these species during construction, operation and maintenance of the Project.” According to Application Exhibit 22(k)(1), “[s]urvey efforts planned to occur during the 2020 amphibian breeding season (approximately March to May) could not be conducted. A survey effort for potential vernal pools was conducted from June 2 – 3, 2020. While egg masses would likely not be observable during the time this survey was conducted, significant signs of vernal pool hydrology would still be present and observable. No potential vernal pools were observed during these surveys.”

Stipulation 22(d)(6) requires the Applicant to coordinate with NYSDEC in conducting the vernal pool survey if done out of season; however, Exhibit 22 does not indicate that such coordination initiated. Further, NYSDEC advises that no such coordination occurred. Please amend the Application to include the required information regarding vernal pools with the required vernal pool study being conducted during the appropriate time of year or, if the required vernal pool study is done out of season, the Applicant must coordinate with NYSDEC.

Response: On April 15, 2021, the Applicant notified the NYSDEC via email to Michael Higgins that it intended to conduct a vernal pool survey during the week of April 26th. A vernal pool survey was conducted within the Project Area from April 26 through April 29, 2021. Since the Applicant conducted the survey during the amphibian breeding season, the Applicant did not coordinate with NYSDEC. For the purpose of this survey, vernal

pools are defined as any woodland or non-manmade water filled depression that hosts egg masses of indicator species. Indicator species in the Project Area and surrounding region include the following obligate vernal pool breeding amphibians: spotted salamander (*Ambystoma maculatum*), blue spotted salamander (*Ambystoma laterale*), Jefferson salamander (*Ambystoma jeffersonianum*), and wood frog (*Lithobates sylvaticus*). A single vernal pool feature was identified and mapped within the Project Area during the survey. This feature is a natural depression within a larger forested wetland complex in the southwestern portion of the Project Area, containing wood frog egg masses. See Attachment H for a Figure depicting this area, as well as the data form associated with this survey. This feature lies in an area that is outside the limits of disturbance. Therefore, the feature will not be impacted by Project development.

5. 16 NYCRR 1001.22(i) requires “[a] map showing delineated [wetland] boundaries based on on-site identification of all Federal, State and locally regulated wetlands present on the facility site and within 100 feet of areas to be disturbed by construction. . . and predicted presence and extent of wetlands on the remainder of site properties and adjacent properties within 100 feet of areas to be disturbed by construction.” NYSDEC advises that the Application should be amended to include the required map, as the maps included as part of the Application only contain a small portion of the State-regulated wetlands within 100 feet of areas proposed for construction. As stated in the stipulation, the boundary of State-regulated wetlands must be based on on-site identification. The map depicting delineated wetlands included in the Application transposed the approximate boundaries of wetlands contained on regulatory maps to the maps included in the Application rather than indicating wetlands based on on-site identification. Please provide revised maps reflecting the results of on-site field delineations.

Stipulation 22(i)(3) states that “[t]he Applicant will coordinate with the DPS, USACE, and NYSDEC to schedule an on-site field verification meeting to determine jurisdiction early in the Application process during the growing season.” DPS Staff and NYSDEC advise that the Applicant has not coordinated or scheduled the required on-site field verification meeting with DPS Staff, USACE, and NYSDEC to determine jurisdiction during the growing season. To meet the growing season requirement, it is recommended that the meeting is held in early June. Please coordinate with DPS Staff, USACE, and NYSDEC to schedule the on-site field verification meeting to determine jurisdiction.

Response: An additional figure (Figure 22-3A. Delineated Wetlands and Streams in Attachment I) has been created to depict field-delineated, non-mapped wetlands claimed to be Article 24-jurisdictional by the NYSDEC, as well as field-delineated wetlands not claimed jurisdictional by the NYSDEC. Figure 22-3A in Attachment I of this Supplement is based on the February 4, 2021 correspondence from Michael Higgins (NYSDEC – Bureau of Energy Project Management) to Attorney Sam Laniado of Read and Laniado, LLP, and William Boer of NextEra, which included a map, titled “Preliminary NYS Wetland Assessment”.

Figure 22-3A depicts the 100-foot adjacent area around non-mapped, field-delineated wetlands claimed jurisdictional by the NYSDEC within the Project Area as shown on the figure. The 100-foot adjacent area is not depicted on Figure 22-3A outside of the Project Area boundary due to the uncertainty of how far off site these unmapped wetlands extend, and thus where the 100-foot adjacent area ends.

The Applicant conducted an onsite field verification on May 19, 2021 with USACE, DPS, and NYSDEC.

6. 16 NYCRR §1001.22(q) requires “[a]n analysis of the temporary and permanent impacts of the construction and operation of the facility and the interconnections on agricultural resources, including the acres of agricultural land temporarily impacted, the number of acres of agricultural land that will be permanently converted to nonagricultural use, and mitigation measures to minimize the impact to agricultural resources.” NYSDEC advises that throughout Sections 22(a), 22(b), 22(c), and 22(q) it is unclear how much of each habitat will be impacted by the Project because there are inconsistencies in the text and tables describing expected acres of impacts to agricultural lands (which includes areas suitable for use by grassland birds) and forest habitat. There are also inconsistencies with regard to temporary, permanent, and “conversion” impacts. Please provide revised Sections 22(a), 22(b), 22(c), and 22(q) to address and resolve the inconsistencies.

Response: While categories of inconsistencies are identified in the comment above, specific inconsistencies are not stated. However, in Section 22(a) of Exhibit 22 “Disturbed/Developed Land” on page 8, the approximation of 10.07 acres (0.4%) of the Project Area should be corrected to “Disturbed/developed land covers approximately

10.39 acres (0.5%) of the Project Area”. Table 22-1 on page 6 of Exhibit 22 listed “Paved road/path” as 0.32 acres but that total was not added to the original approximation of 10.07 acres within the exhibit submission.

In response to the inconsistency regarding agricultural land used for Project Components on Page 12 of Exhibit 22 of the Application, the following should be corrected: “A total of approximately ~~526.19~~ **373** acres of agricultural land will be employed for Project Components for the useful life of the Project.” On Page 6, the second sentence under the header “Agricultural Land” should be corrected to the following for consistency: “Approximately ~~443.92~~ **373** acres of agricultural land will be used for Project Components and then restored following the decommissioning of the Project.”

As shown in Table 22-4. Summary Vegetation Cover Type Impact Table on page 17 of Exhibit 22, the footnote “¹Interior Forest communities overlap Forestland communities” may have led to certain areas of the Project Area being counted more than once within the data presentation.

As described in Section 22(a) of the Application, data utilized in Sections 22(a), 22(b), 22(c) and 22(q) was obtained from numerous sources, including data collected during on-site field survey work, roadside observation, desktop analysis and interpretation of aerial imagery. The land uses that the Project comprise are ever changing due to the property owners ongoing deployment of their land for various uses as compared to the National Land Cover Data (NLCD) and aerial imagery used for desktop data interpretation.

See Attachment J that shows the red line edits as described above (Exhibit 22 -Terrestrial Ecology and Wetlands).

Exhibit 23: Water Resources and Aquatic Ecology

1. Stipulation 23(a)(2)(iii) requires “[t]he Applicant will utilize parcel-based mapping for groundwater well mapping and distinguish participating and non-participating parcels. Associated shapefiles will be provided to the DPS.” No such shapefiles have been provided. Please provide DPS Staff with the parcel-based groundwater well shapefiles.

Response: Parcel-based groundwater well shapefiles have been submitted to DPS.

2. Stipulation 23(b)(1)(i) requires “[o]n-site survey data for surface waters will be provided to NYSDEC and DPS as shapefiles and in tabular format that can be cross-referenced to the

maps.” No such shapefiles were provided. Please provide shapefiles for on-site survey data for surface waters to NYSDEC and DPS Staff.

Response: All surface waters (i.e., delineated streams, predicted streams, and PUB wetlands) are denoted on Figure 22-3. Further, the shapefile provided to NYSDEC and DPS staff shows these surface waters (i.e., delineated streams, predicted streams, and PUB wetlands) with their ID labels denoted. The legend on Figure 22-3 specifically calls out Delineated Streams and Predicted Streams. Shapefiles have been included with this submission.

Exhibit 31: Local Laws and Ordinances

1. 16 NYCRR §1001.31(e) requires “[a] list of all local substantive requirements required to be identified pursuant to subdivision (d) of this section for which the Applicant requests that the Board elect to not apply them by finding that, as applied to the proposed facility such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.” Application Exhibit 31, Table 31-2, identifies the minimum above ground transmission line ground clearance for the Town of Brasher, but does not indicate project design clearance. Accordingly, it is unclear whether the Project design complies with the substantive local law. Please provide the project design clearance for minimum above ground transmission line ground clearance, and, if requesting a waiver of the local law, please provide the required information.

Response: The Project has been designed with a minimum above ground transmission line ground clearance of approximately 60 feet. Therefore, the Project will comply with the minimum above ground transmission line ground clearance of 18 feet in the Town of Brasher, and no waiver is required.