

**DETERMINATION AND FINDINGS PURSUANT TO
ARTICLE 2 OF THE NEW YORK STATE
EMINENT DOMAIN PROCEDURE LAW**

I. INTRODUCTION

New York State Electric and Gas Corporation (“NYSEG”) proposes to undertake the Oneonta South Area Improvement Project (the “Project”) consisting of, among other things, the acquisition by eminent domain (the “Acquisition”) of a 9.79+/- acre electric transmission line easement across certain real property identified as Tax Parcel Numbers 191.-2-2, 169.-2-20.1 and 169.-2-20.2 and located at Hamden Hill Road, 1564 Gray Road and West Platner Brook Road, in the Town of Delhi, County of Delaware and State of New York, in furtherance of the Project. See Record of NYSEG Public Hearing, August 23, 2022 (“Record”) (attached as **Exhibit 1**).

II. BACKGROUND

A. Description of the Project

By way of background, NYSEG is updating the electric transmission system in its service areas to provide safe and reliable service to its customers. These upgrades are needed to comply with new federal electric transmission reliability requirements and to meet the community’s growing energy demands.

In 2010 the Federal Energy Regulatory Commission (FERC) established a “Brightline” threshold that redefined Bulk Electric System (BES) transmission elements as those operating at 100 kilovolt (kV) and above. In response, the North American Electric Reliability Corporation (NERC) updated its reliability standards and issued a “Brightline Order”.

To comply with more stringent reliability standards¹ issued at the federal level, NYSEG has proposed the Project that includes an expansion of the existing Fraser Substation; changes at the existing Delhi Substation; and reconfiguring, establishing and/or rebuilding supporting transmission lines. This upgrade will enhance the integrity of the entire transmission system in the area. Project fact sheets were included in the Record as Exhibit G.

Fraser Substation, located on Hamden Hill Road, is an existing 345/115 kV substation and is the strongest source into Oneonta’s 115 kV system. Delhi is a 115/46 kV substation that is a 115 kV hub in the area and supplies several 115 kV interconnected distribution substations via two radial 115 kV lines. To improve reliability and address asset condition concerns, Phase 1 of the Project involves a significant expansion of the Fraser substation along with a complete removal of

¹ **Reliability Standards** means a requirement to provide for Reliable Operation of the Bulk Power System, including without limiting the foregoing, requirements for the operation of existing Bulk Power System Facilities, including cyber security protection, and including the design of planned additions or modifications to such Facilities to the extent necessary for Reliable Operation of the Bulk Power System and cover areas such as critical infrastructure protection, transmission operations, interconnection reliability; etc.

Delhi's substation. Specifically, a new greenfield-build 115kV yard substation will be constructed north of the existing location supplementing the existing Fraser Substation. Additional reliability modifications and upgrades will be completed within the existing 345kV yard area.

Several 115kV circuits will be relocated from NYSEG's Delhi Substation to the new 115kV yard at Fraser Substation as Project Phase 2. Existing 115kV Lines 916, 917, 919, 949 and 951 are currently fed from the Delhi substation. Phase 2 of the Project will split the 919 and 949 Lines and new greenfield lines will be built into the new Fraser 115kV yard. Existing line 919 will be split into 919 to Oakdale and 917 to Andes. Existing line 949 will be split into 949 to Jennison and 916 to Axtell. Existing line 951 will be relocated from its current termination into the new 115kV yard. The total length of the new line segments is approximately 4.5 miles. In addition, a 46kV transmission line identified as line 841 will be located between the existing Fraser Substation and the Delhi Submission. Line 841 will be constructed as part of Phase 5 of the Project.

Throughout the Project NYSEG has worked closely with neighbors to ensure that all improvements are performed with minimal disruption to the environment and the communities it serves.

B. The Negotiation Process in Connection with the Emerald Isle Property

NYSEG is authorized and empowered by Section 11 of the Transportation Corporations Law, "to transmit and distribute electricity or thermal energy, to lay, erect and construct suitable wires or other conductors, with the necessary poles, pipes, thermal energy networks or other fixtures." See N.Y. Trans. Corp. L. § 11(3). To accomplish its stated purposes, NYSEG is authorized and empowered under the TCL "to acquire such real estate as may be necessary for its corporate purposes and the right of way through any property in the manner prescribed by the eminent domain procedure law." See N.Y. Trans. Corp. L. § 11(3-a). "The construction, use and maintenance by an electric corporation of transmission, distribution and service lines and wires . . . as may be necessary for its corporate purposes, are hereby declared to be public uses and purposes." See N.Y. Trans. Corp. L. § 11(3-b).

NYSEG has obtained all the private property rights necessary for the Project except for the property rights that are the subject of this eminent domain hearing. The remaining private property rights to be acquired consist of a permanent easement affecting certain parcels of real property located in the Town of Delhi, Delaware County, New York at Hamden Hill Road, 1564 Gray Road and West Platner Brook Road, and identified as Tax Map Parcel numbers 191.-2-2, 169.-2-20.1 and 169.-2-20.2, respectively (collectively, the "Property"), for the purpose of rerouting Lines 916 and 917 and installing Line 841. The Property is encumbered by a Conservation Easement (the "Conservation Easement") held by the Watershed Agricultural Council of The New York City Watersheds, Inc. ("WAC" or "Council").

For over a year NYSEG negotiated with Emerald Isle Properties, LLC, the owner of the Property (the "Owner"). NYSEG was able to reach an agreement with the owner, but was not able to obtain the consent of the WAC, as required by the terms of the Conservation Easement.

Section 13 of the Conservation Easement prohibits utility easements without the unanimous consent of the Council. A copy of the Conservation Easement is included in the Record as Exhibit H.

At NYSEG's request, the Owner sought approval from the WAC for NYSEG's proposed transmission easement. Negotiations then occurred between NYSEG and the WAC with respect to the terms of the transmission easement. NYSEG accepted the majority of the revisions to the terms of the transmission easement proposed by the WAC to ensure that to the extent reasonably possible, the transmission easement would be consistent with the Conservation Easement and would not diminish the agricultural, forestry, or water quality value of the Property. A copy of the revised transmission easement was included in the Record as Exhibit J.

According to its meeting minutes, WAC Staff felt that the revised transmission easement NYSEG presented conformed substantially to the requests made by WAC and agreed that the transmission easement did not diminish the agricultural, forestry, and water quality values of the Property. Four of the six WAC members concurred with Staff and voted in favor of consenting to the transmission easement. However, one member believed that the transmission easement would impact forestry water quality and would not be consistent with the Conservation Easement. Two members voted against consenting to the proposed transmission easement. Since the decision of the WAC was not unanimous, NYSEG's request was denied. A copy of WAC meeting minutes was included in the Record as Exhibit K.

As a result, NYSEG is now seeking to exercise its power of eminent domain (as set forth in Section 11(3-a) of the Transportation Corporation Law) to acquire that 9.79 +/- acre electric transmission line easement encumbering the Property.

C. Notice

Notice of the public hearing held on August 23, 2022 was published in The Reporter, a weekly newspaper, on July 28, 2022 and August 4, 2022, and in The Daily Star, a daily newspaper, from August 2, 2022 through August 6, 2022. A copy of the affidavits of publication together with the notices are attached to the Record as **Exhibits D and E**. Notice was also e-mailed and mailed via certified mail return receipt requested, overnight mail and hand delivery, to the Property's owner on August 17, 2022, a copy of which was included in the Record as **Exhibit F**. Although not required by law, NYSEG also notified the WAC.

D. EDPL Public Hearing

In accordance with Article 2 of the EDPL, NYSEG conducted a public hearing on August 23, 2022 at 6:00 p.m. at the Delhi Academy Main Building – Middle High School Auditorium, 2 Sheldon Drive, Town of Delhi, Delaware County, New York to inform the public and to review the public use to be served by the Acquisition and the impact on the environment and residents of the locality. See Exhibit 1. As mentioned above, notice of the public hearing was duly published as required under the EDPL, and all property owners and other interested parties were given advance notice of the hearings by certified mail, return receipt requested, overnight mail or

e-mail. See Record, Exhibits D, E, & F. At these hearings it was made known that copies of the tax maps of the property interests to be acquired by NYSEG were posted for viewing at the hearing itself and also readily available to the public upon request. See Exhibit 1.

Representatives of NYSEG were present at the public hearing, which was conducted by Kathleen M. Bennett, Esq. with Bond, Schoeneck & King, PLLC, outside counsel to NYSEG. Representing NYSEG were Olivia Guevara and Todd Martin. Three (3) persons, all affiliated with the WAC, spoke against the Acquisition at the public hearing and one of the WAC speakers also submitted written comments in opposition to the Acquisition. See Exhibit 1.

The minutes of the hearing have been made part of the Record and given due consideration. A copy of the minutes and all written submissions are attached hereto as part of **Exhibit 1.** The Record will be duly filed in the Delaware County Clerk’s office and is available at the Cannon Free Library, 40 Elm Street, Delhi, NY 13753.

E. Location of Property

The proposed Property Acquisition involves the exercise by NYSEG of its power of eminent domain, to acquire a 9.79 +/- acre electric transmission line easement encumbering the Property, which is located in the Town of Delhi, County of Delaware, and identified as follows:

Reputed Owner	Address	County Tax Map No.
Emerald Isle, LLC	Hamden Hill Road	191.-2-2
Emerald Isle, LLC	1564 Gray Road	169.-2-20.1
Emerald Isle, LLC	West Platner Brook Road	169.-2-20.2

III. FINDINGS

A. Public Need, Use, and Purpose

NYSEG has determined that the Acquisition of the transmission line easement encumbering the Property is necessary to further the Project. The Project has multiple public purposes and serves an important public use, benefit or purpose by improving the reliability and resiliency of the transmission system in the Fraser/Delhi region, ensuring that safe and reliable distribution of power is maintained. In addition, the energy reliably improvements generated by the Project can support expanded economic development. The Acquisition is essential to the success and development of the Project. Thus, the Project and, therefore, the Acquisition of the transmission line easement encumbering the Property in furtherance of the Project, clearly provides a public use, benefit and purpose by improving the reliable and safe distribution of power. See Exhibits ____.

B. Location and Reasons for Selection

NYSEG considered alternative sites in connection with the condemnation of the transmission line easement encumbering the Property. The proposed transmission lines must be

routed from the existing Fraser Substation. The proposed route for the transmission lines is the most logical and efficient path with the least potential impacts.

NYSEG considered three (3) alternatives to the proposed route. Alternative 1 was not selected because it would be approximately 0.9 miles longer resulting in additional costs for rate payers. Although that route would follow the route of New York Power Authority (“NYPA”) lines and other NYSEG lines, adding a third line would sandwich the NYPA lines making them difficult to maintain. Alternative 2 was not selected because the terrain was more difficult which would require larger custom structures and add costs to be paid by NYSEG’s customers. The route proposed in alternative 2 would also still cross the Property covered by the Conservation Easement and so condemnation would still be necessary. Alternative 3 was not selected because it would be approximately 1.2 miles longer than the proposed route resulting in significant additional cost for rate payers. This route was also much closer to residences near the Route 16 crossing.

Moreover, because NYSEG had also obtained all other necessary private property rights along the selected routes, including the consent of the Owner of the Emerald Isle Properties, further consideration of alternative routes is not practical at this point in time. Accordingly, there is no alternative site/route that could satisfy NYSEG’s purposes. Therefore, NYSEG has complied with this element of the EDPL with regard to the determination and findings it must issue.

C. Environmental and Locality Effects

NYSEG thoroughly evaluated the environmental impacts associated with the Acquisition of the transmission line easement encumbering the Property. Moreover, the environmental impacts associated with the transmission line route and the Project have been considered by both the Town of Delhi Planning Board (the “Planning Board”) and NYSEG in connection with necessary prior approvals.

NYSEG submitted a short Environmental Assessment Form (“EAF”) to the Town of Delhi Planning Board with respect to the Project in 2020. Based on the representations in the short EAF, the Planning Board adopted a resolution determining that the Project was an unlisted action, that the Project will not have a “significant effect” on the environment and that a SEQRA Environmental Impact Statement will not be prepared. A copy of the SEQRA Resolution is attached to the Record as Exhibit N.

As indicated in the Planning Board’s SEQRA Resolution, the Project consists of installing new utility structures within a mixture of existing and proposed electrical transmission right-of-way located within the Town of Delhi and the Town of Hamden. The Project will disturb approximately 38.1 acres related to construction/development of work pads, stabilized constructions entrances, access roads, and tree clearing. The construction work will be phased, and NYSEG’s contractor shall temporarily or permanently restore disturbances as the Project proceeds. The Project has been located to avoid preexisting utilities and minimize impacts to

environmental resources and traffic. Where reasonably practical, the new lines will be located adjacent to existing NYPA utilities.

The Project will require construction of temporary access roads, which will generally be gravel access roadways from existing NYPA access roads, through the electric transmission easement area, to the work pad areas. These areas will require grading for temporary access. In any delineated wetland area, the access roads will consist of timber matting where slopes allow. Access roads and work pads that will utilize timber mats are not included in the disturbance area calculation. Timber matting will be installed in delineated wetland areas as shown on the *Civil Construction Plans* to avoid compaction, rutting, and damage to wetlands. Where possible, timber mats will be laid directly on top of wetland topsoil and lifted out once work is complete. In other areas, grading will be performed with temporary fill placed within wetland for placement of timber mats.

On July 6, 2020, the Planning Board, as lead agency, determined that the Project would not have a significant adverse environmental impact and issued a negative declaration. The findings in the negative declaration included the following:

- While grading, excavation, and construction activities will likely occur on steep, rocky ground and in some sensitive areas, NYSEG has indicated that potential impacts will be mitigated via Project phasing and stormwater control features.
- Appropriate implementation of stormwater controls (during and after construction) and limiting the extent of disturbed areas at any given time will significantly reduce potential for erosion and any resultant impacts.
- Conversion from current land use (including agriculture, forests, and grasslands) to maintained utility rights-of-way, but the width of the strip of conversion is relatively narrow.
- Limited portions of transmission work may impact the cultivation of or access to existing farmland, but NYSEG is working with each potentially affected landowner to alter the design / layout of lines in these areas.
- NYSEG and the Town of Delhi formalized NYSEG's financial responsibility for the repair of road damage associated with Project construction.
- Specific environmental controls under the SWPPP include increasing the size of the timber mat bridge to span the sides of the stream thereby increasing safety conditions and reducing amount of temporary workspace needed on either side of the stream.

NYSEG has obtained a State Pollutant Discharge Elimination System Permit from the NYSDEC for discharges from stormwater runoff associated with the Project. Likewise, the New York City Department of Environmental Protection approved NYSEG's application to engage in

Regulated Activity Stormwater (SWPPP). These approvals ensure that impacts from stormwater runoff will be mitigated.

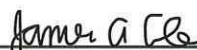
In addition to the findings by the Planning Board, WAC Staff and four of the six WAC members concluded that the transmission easement does not diminish the agricultural, forestry, and water quality values of the Property.

Thus, NYSEG made a reasoned determination that the Acquisition of the transmission line easement encumbering the Property to facilitate the Project would not have any significant adverse environmental impacts. NYSEG's consideration of environmental impacts satisfies the requirements of the EDPL that the condemnor specify the general effect of the proposed project on the environment and residents of the locality.

IV. CONCLUSION

The foregoing represents NYSEG's Determination and Findings under Section 204(B) of the EDPL. The acquisition of the transmission line easement encumbering the Property is needed to improve reliability and resiliency as part of the Project. Therefore, NYSEG is satisfied that, as required under Section 204(B) of the EDPL (1) the public use, benefit, or purpose of the Acquisition of the transmission line easement encumbering the Property in further support of the Project has been established in the record; (2) the approximate location of the transmission line easement has been established and an explanation of the reasons for the selection of that location has been provided; and (3) the general effect of the acquisition of the transmission line easement encumbering the Property on the environment and the residents of the localities in which the Project will be located has been comprehensively examined. Accordingly, NYSEG finds that the necessary justification exists to proceed to condemn the easement encumbering the Property.

As Authorized by NYSEG



James A Cole (Nov 17, 2022 17:11 EST)

James A Cole

Vice President, Projects

Nov 17, 2022

