

Attachment 7.2
GridAmerica – Permitting Details

Federal Permitting

The Project will require Department of Army permits, issued by the U.S. Army Corps of Engineers (USACE), to authorize fill in wetlands and other federal waters under Section 404 of the federal Clean Water Act and crossings of certain navigable rivers and waterways under Section 10 of the Rivers and Harbors Act (Section 404/10 Permit). The USACE will likely be the lead federal agency for purposes of consultation with other federal agencies under Section 7 of the Endangered Species Act (U.S. Fish and Wildlife Service) and Section 106 of the National Historic Preservation Act (State Historic Preservation Offices and Tribal Historic Preservation Offices). The USACE may issue individual permits, but certain activities, depending on their relative level of impacts, may be covered by the Nationwide Permit(s), adopted by the USACE New York District for projects in New York, or the General Permit(s) for Massachusetts, adopted by the USACE New England District for projects in Massachusetts. Consultation with USACE will determine whether the NERL project will meet the threshold requirements for pre-construction notification under the Nationwide Permits or General Permits or will require an individual permit. Each District has guidelines for the applicability of these permits, which must be evaluated based on project-specific details.

If an individual permit is required, we anticipate the New England District will take the lead, based on relative impacts and initial discussions with the USACE. GridAmerica anticipates filing the appropriate Section 404/Section 10 Permit application(s) in Q2 2018. GridAmerica anticipates extensive pre-application consultations in order to expedite the processing time at the USACE. The USACE target for processing individual permits is 120 days, and for general permits 60 days. However, based on experience with other transmission line projects, we are allocating 15-18 months to leave time to address any issues that may arise. Based on this conservative assessment, we expect to complete USACE permitting by the end of 2019.

If the NERL project requires an individual permit, National Environmental Protection Act (NEPA) compliance will be required. Based on similar projects, we do not anticipate that the NERL project will require a full Environmental Impact Statement and that the Corps will be able to meet its NEPA requirements within the time allotted in the schedule. Similarly, we expect that Section 106 and Section 7 consultations will begin as early as possible so that any issues are identified and addressed early in the pre-application process, and can be completed within the timeframes in Table 7.2.1. Additionally, before the USACE can issue a Section 404 permit, the States must issue the Section 401 Water Quality Certificates, which we expect will proceed on schedule.

Finally, we anticipate the NERL project will require a Determination of No Hazard by the Federal Aviation Administration and coverage under the NPDES Construction General Permit for the portion of the line in Massachusetts. We expect to file for and receive both of these permits by the end of 2019.

New York Permitting

The New York Public Service Commission (PSC) will serve as the permitting agency for the review of the Article VII Application and issuance of a Certificate of Environmental Compatibility and Public Need. Following issuance of the Certificate, an Environmental Management and Construction Plan (EM&CP) must be approved prior to the start of construction. The timeline for the PSC permitting process is expected to last approximately 12 months following determination that the application is complete. In conjunction with the Article VII process, the Public Service Commission reviews the applicant's request for a Water Quality Certificate under Clean Water Act Section 401; this is typically issued by PSC immediately after it approves the EM&CP. The PSC also will need to issue a Certificate of Public Convenience and Necessity under PSL Section 68 approving exercise of municipal consents;

the timeline for this approval is approximately 5 months, and it can run concurrently with the Article VII process.

Also concurrently with the filing of the Article VII application, GridAmerica will consult and engage with New York State Department of Environmental Conservation and New York State Office of Parks, Recreation, and Historic Preservation (NYOPRHP) to obtain all the applicable permits and conduct all required consultations by the end of 2019, as listed in Table 7.1.1. The Project must demonstrate conformance with state and local laws, except that the PSC may refuse to apply local laws determined to be unreasonably restrictive in view of the existing technology, cost, economics or needs of the consumers. A consistency evaluation of local requirements is underway (see Section 6.3) and is part of the overall project outreach activities with the municipalities. The following is a summary of the New York state permits:

Certificate of Environmental Compatibility and Public Need (PSL Article VII) and Environmental Management and Construction Plan

Article VII comprehensively regulates the siting and permitting of “major utility transmission facilities,” which includes the project and most other electric transmission lines. Article VII requires a full need and environmental and impact review of the siting, design, construction and operation of major utility transmission facilities. Article VII subsumes all other state and local consents, permits, certificates or other conditions for the construction or operation of the project, but does not affect state agencies exercising permit authority delegated by federal law. This includes the PSC issuing a Clean Water Act Section 401 Water Quality Certification, which it does in parallel with the Article VII process (see below). In addition, the Article VII process addresses impacts to New York State wetlands, streams, and sensitive species.

An EM&CP must be submitted for approval. The EM&CP includes text describing construction methods and environmental protection and mitigation measures along with plan and profile drawings that represent final design. The EM&CP may be filed once the route of a project is settled. This typically occurs towards the end of the Article VII, which will allow for some overlap between the two processes.

Certificate of Public Convenience and Necessity (PSL Section 68)

Under PSL Section 68, the PSC determines that the exercise of a consent allowing the use of municipal property in conjunction with the construction of electric plant is necessary and convenient for the public service. The petition must include a description of the proposed manner for financing the costs of the project, evidence that the proposed enterprise is in the public interest and is economically feasible, and proof that the applicant is able to finance the project and render adequate service.

Water Quality Certification (WQC)

Section 401 WQC is required under the federal Clean Water Act for certain activities in wetlands and other waters of the United States. Authority to issue the certification is delegated to the states. Generally, the request for the WQC accompanies the Article VII application and is approved with the EM&CP.

State Pollutant Discharge Elimination System Construction Stormwater Permit

The permit application will include a Notice of Intent (NOI) to request for coverage under State Pollutant Discharge Elimination System (SPDES) General Permit and Stormwater Pollution Prevention Plan (SWPPP). Technical requirements of the NOI and SWPPP include final grading and drainage plans. The Project must not adversely affect threatened or endangered species or their critical habitat to be eligible for coverage under the General Permit. NYSDEC may require a project-specific SWPPP separate from the EM&CP.

Project Review for Endangered, Threatened and Special Concern Species

An incidental take permit is required for any activity that is likely to result in the take or a taking of any species listed as endangered or threatened. Project impacts on protected species will be addressed in the Article VII application. Species-specific surveys may be required and conducted as necessary.

Project Review for Historic and Cultural Significance

Under the federal and state historic preservation statutes, consultation with the State Historic Preservation Officer (SHPO) and appropriate Tribal Historic Preservation Officer (THPOs) will be required as part of the federal and state reviews of the NERL project to evaluate the potential to affect properties listed on or eligible for listing on the National Register of Historic Places (NRHP) and to tribal interests. Evaluation of potential impacts to cultural resources will be provided as part of the Article VII application.

Massachusetts Permitting

Environmental permitting in Massachusetts begins with project review under the Massachusetts Environmental Protection Act (MEPA). We have assumed, for the purposes of estimating a conservative and achievable timetable, that the NERL project will require an Environmental Impact Report (EIR). However, if the NERL project impacts do not trigger EIR review thresholds and MEPA review is limited to filing an Environmental Notification Form (ENF), then the timing of MEPA review will be substantially shortened. Depending on the environmental surveys and potential impacts and the likelihood of an EIR, GridAmerica may file the ENF as early as Q4 2017. If the ENF is filed in Q2 2018 after the completion of the environmental surveys, GridAmerica will seek to expedite review by filing an expanded ENF and requesting a single EIR.

Concurrently with MEPA review, and as described in more detail below, GridAmerica will file petitions for approval to construct with the Energy Facilities Siting Board (EFSB) and the Department of Public Utilities (DPU). The EFSB determination cannot be completed until the MEPA Certificate is issued, which is expected to be within 15-18 months based on recent experience with transmission line projects. The timeline for obtaining the MEPA Certificate and EFSB and DPU determinations, including concurrent filing, is expected to be approximately 22-26 months.

Concurrently with the MEPA and the EFSB filing, GridAmerica will also consult, engage with and to the extent allowed, file for permits with the Massachusetts Department of Environmental Protection, Massachusetts Department of Transportation, Massachusetts Department of Conservation and Recreation, Massachusetts Division of Fisheries and Wildlife, the Natural Heritage and Endangered Species Program and Massachusetts Historic Commission to obtain the various state permits, as well as local conservation commissions to obtain Orders of Conditions, as listed in Table 7.1.1. The state permits cannot be issued by the various state agencies until the MEPA process is completed and until the EFSB has approved the NERL project. The following is a summary of the Massachusetts state and local

permits:

Siting Approval and Zoning Exemption

The Project will require approval to construct from the EFSB under M.G.L. c. 164, s. 69J and from the Department of Public Utilities under M.G.L. c. 164, s. 72. GridAmerica will also file with the DPU a petition under M.G.L. c. 40A, s. 3 to exempt the NERL project from local zoning regulation. GridAmerica will request that these three dockets be consolidated and heard by the EFSB in a single proceeding, which is common practice for the EFSB and DPU. The EFSB will determine whether the NERL project is needed, superior to alternatives in terms of cost, environmental impacts, reliability and routing, and is consistent with Massachusetts's health, environmental protection and resource use and development policies. GridAmerica anticipates the EFSB to issue its final decision in approximately 18 months. With a zoning exemption issued by the EFSB or DPU, the NERL project could be constructed and operated without being subject to any local zoning regulation. Otherwise, GridAmerica will obtain the local permits and approvals set forth in Section 6.3, if required.

Section 401 Water Quality Certification

In Massachusetts, the Department of Environmental Protection (MADEP) issues the state's Water Quality Certification. The purpose of the Massachusetts' Section 401 review is to ensure that a project will comply with state water quality standards and other appropriate requirements of state law. It is anticipated that the 401 application will be filed in Q2 2018 and the certification received in Q4 2019, which is well within the typical timeframe.

Chapter 91 Waterways License or Notice of Minor Project Modification

Massachusetts General Laws Chapter 91 (Chapter 91) requires a license or permit for work and structures in, under, and above navigable waters, including inland rivers and streams, as well as flowed and filled tidelands. Chapter 91 licenses and permits are issued by MADEP. Work in Chapter 91 jurisdictional areas that are previously licensed may be exempt from additional licensing if the work constitutes a minor modification from the existing license. GridAmerica will coordinate with MADEP concerning any jurisdictional work or structures to determine the appropriate Chapter 91 approval. If a license is required, it would likely be a water-dependent infrastructure crossing facility and we would normally expect a license within 6-12 months. The Chapter 91 licensing process cannot start until the MEPA Certificate is issued. To ensure timely issuance of MADEP permits, GridAmerica will seek to enter into a "Fast Track" agreement with MADEP and negotiate an expedited permitting schedule for both Chapter 91 and the 401 Water Quality Certification.

Project review for Endangered, Threatened and Special Concern Species

The Massachusetts Endangered Species Act (MESA) protects rare species and their habitats by prohibiting the illegal take of any plant or animal species listed as Endangered, Threatened, or Special Concern. MESA, through its implementing regulations, establishes procedures for the review of projects that are located within "Priority Habitat" of protected species. The Project will likely require review by the Natural Heritage and Endangered Species Program (NHESP), the state agency that oversees MESA and may require a Conservation and Management Permit if NHESP determines that a take will occur. GridAmerica has initiated the review process with NHESP and, if any permit is required, expects to obtain the permit shortly after the completion of the EFSB process.

Project review for Historic and Cultural Significance

The Project is subject to review under Section 106 of the National Historic Preservation Act, as it requires a permit from the USACE. As part of Section 106 consultation, the USACE will also consult with the Massachusetts Historical Commission (MHC), Native American tribes and potentially other parties that express an interest in historic resources that may be affected by portions of the NERL project within USACE jurisdiction. The Project is also subject to review by the MHC under G.L. c. 9 §§ 26–27C and the MHC’s implementing regulations at 950 CMR 71.00 et seq. State review will be conducted concurrently through the MEPA and Section 106 processes. GridAmerica will coordinate with both the USACE and MHC to begin these reviews early in the permitting process so that the reviews will be completed within the timeframes estimated for the MEPA process and USACE permits.

Article 97 Approvals

Under Article 97 of the Massachusetts Constitution, the people are deemed to have the right to clean air and water, and the protection of these rights is a public purpose. Land may be taken or purchased by the government to protect this public purpose in the environment, and such land cannot be disposed of except by a two-thirds vote of both branches of the Legislature. Article 97 applies to land taken or purchased by state and local governments. GridAmerica expects to begin the outreach necessary for Article 97 process in Q1 2018 and obtain necessary legislative approvals by Q4 2019.

Construction and Access Permit, Division of Fisheries & Wildlife Authorization and Land Disposition Request

A Construction and Access Permit is required by the Department of Conservation and Recreation (DCR) for all work on DCR-owned lands and roadways and authorization is required for the use of lands owned by the Division of Fisheries and Wildlife. The extent that Article 97 is triggered, the NERL project may also require the submission and approval of a Land Disposition Request to the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) in conformance with the EEA’s Article 97 Land Disposition Policy. GridAmerica expects these permits and approvals will run concurrently with the Article 97 process.

State Highway Construction/Access Permit

A Construction/Access Permit, or a determination of need, may be required by Massachusetts Department of Transportation (DOT) for all work on state highways including vehicular and non-vehicular access. A determination of need may be requested from the District Highway Director and is issued within ten business days of receipt. This permit review will be coordinated with the MEPA process. Temporary Access Permits for Site Construction and Related Activities (such as survey) may also be issued by DOT.

Orders of Condition

The Project will require approvals under the Massachusetts Wetlands Protection Act and the implementing regulations at 310 CMR 10.00. This regulatory statute asserts jurisdiction over state-wetland resource areas. Project-related impacts to these resource areas require an official finding of approval by local Conservation Commissions in the form of an Order of Conditions or Determination of Applicability. A permit application will be filed with each Conservation Commission detailing the proposed work, the short-term and long-term impacts, and the proposed mitigation for those impacts.

Franchise Rights for Street Crossings

In Massachusetts, under M.G.L. c. 166, section 22, the Project will require franchise rights from town Selectboards where the line crosses public ways. These applications will be filed closer to construction and will be decided after a public hearing.