

**MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES ARMY CORPS OF ENGINEERS
AND NATIONAL GRID**

This Memorandum of Agreement (“MOA”) is entered into this 29th day of March, 2017, between the U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742 (“Corps”) and New England Power Company, Massachusetts Electric Company, Nantucket Electric Company, Narragansett Electric Company, Boston Gas Company, Colonial Gas Company, New England Electric Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., and New England Hydro-Transmission Corporation all d/b/a National Grid, 40 Sylvan Road, Waltham, MA, 02451 (collectively, “National Grid” and together with the Corps, the “Parties”).

RECITALS

WHEREAS, the Corps has regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act of 1972 as amended (“Section 404”), and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899, as amended (“Section 10”); and

WHEREAS, Section 214 of the Water Resources Development Act of 2000, as amended and codified at 33 U.S.C. 2352 (“Section 214”), authorizes the Secretary of Army, after public notice, to accept and expend funds contributed by non-federal public entities, public-utility companies, and natural gas companies to expedite permit review for projects of that entity or company with a public purpose; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214, as amended, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated September 2, 2015, has delegated responsibility to the District and Division Engineers of the Corps to accept and expend funds contributed by public utility companies to expedite the review process for Department of Army permits, subject to certain limitations; and

WHEREAS, National Grid is comprised entirely of electric and natural gas “public utility companies” as that phrase is defined in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451) and, as such, National Grid may enter into this MOA; and

WHEREAS, National Grid owns and/or operates facilities used for the generation, transmission and distribution of electric energy for sale and also owns and/or operates facilities used for the distribution at retail of natural or manufactured gas for heat, light or power which together serve a public purpose; and

WHEREAS, National Grid's work often requires permits from the Corps under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 (collectively the "DA Permits"); and

WHEREAS, over the last couple of years, the number of National Grid projects requiring DA Permits has increased substantially and National Grid expects that these higher levels will continue for the foreseeable future; and

WHEREAS, the receipt of DA Permits can be the final permitting hurdle for National Grid projects and timely issuance by the Corps is critical to successful management of National Grid's public utility assets; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to review and expedite the evaluation of permits for National Grid related to projects for a public purpose; and

WHEREAS, the Corps issued an initial Public Notice dated December 6, 2016, regarding its intent to accept and expend funds contributed by National Grid; and

WHEREAS, in a memorandum dated March 29, 2017 the Corps determined that the acceptance and expenditure of funds received from National Grid is appropriate, and the Corps will issue an informational public notice on April 4, 2017 regarding its determination; and

WHEREAS, it is understood and acknowledged by the Parties that the Corps expedited review of National Grid's DA Permit applications will be completely impartial and in accordance with all applicable Federal laws and regulations.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. – Purpose and Authorities

A. Pursuant to Section 214, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by National Grid to expedite the DA Permit review process for National Grid projects.

B. The Corps enters into this MOA pursuant to its authority under 33 U.S.C. § 2325.

C. National Grid enters into this MOA pursuant to its corporate authority to enter into agreements of this type.

Article II. - Scope

A. Activities that the Corps may pursue under this MOA are restricted to actions taken under the Corps regulatory authority that will expedite the processing of National Grid

applications and other programmatic efforts to support efficient decision-making related to National Grid permitting. Such permit processing activities may include, but are not limited to, the following: pre-application meetings, permit area determinations, application completeness review, jurisdictional determinations, site visits, preparation and distribution of public notices, preparation of correspondence, meetings, consultation and coordination with other agencies and consulting parties, public interest review, analysis of alternatives, compensatory mitigation proposal review, preparation of environmental assessments, preparation of permit decision documents and permit compliance.

(1) The processing of National Grid DA Permit applications shall include full consideration of all relevant and applicable environmental laws and regulations. In no way shall it be construed or implied that the Parties intend to abrogate by entering into this MOA any obligations or duties to comply with applicable Federal or state laws, regulations, guidance, policies and/or procedures by entering into this MOA.

(2) Use of funds will not affect the impartial decision-making of the Corps either substantively or procedurally.

B. As further specified in Section III.A and Article IV, National Grid will provide funds to the Corps to expedite the DA Permit review process for National Grid projects.

(1) The Corps regulatory program is funded as a Congressionally appropriated line item in the annual Federal budget. Funds received from National Grid will be added to the Corps budget, in accordance with the provisions of Section 214.

(2) National Grid shall fund one (1) full-time employee (the "Corps Reviewer"). The Corps Reviewer will possess sufficient education and experience to perform the work as outlined in this MOA, including but not limited to, a working knowledge of Section 404, Section 10, Section 408, the National Environmental Policy Act, the (Federal) Endangered Species Act, the National Historic Preservation Act ("NHPA"), the consultation requirements under Section 106 of the NHPA ("Section 106"), the identification and delineation of Federal Wetlands and familiarity with the structure of state wetland regulations. The Corps, in its sole judgment and discretion, will determine whether the applicants for the Corps Reviewer position meet these criteria.

(3) Funds contributed by National Grid under this MOA will be expended by the Corps to defray the costs of the Corps Reviewer (including salary, associated benefits, overhead and travel expenses) in order to expedite the review of National Grid's applications for DA permits. The Corps may make staff substitutions provided that they possess comparable project manager experience; including experience processing utility line projects.

(4) The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of National Grid DA Permit applications. The Corps Reviewer will charge his or her time and expenses against the account when performing work on National Grid DA Permit applications or undertaking other programmatic efforts to support efficient decision-making related to National Grid's permitting needs.

(5) If the funds provided by National Grid are expended and not replenished, any remaining National Grid DA Permit applications will be handled like those of any permit applicant.

Article III. – Responsibilities of the Parties

A. National Grid's Responsibilities. National Grid shall:

(1) Provide two hundred nineteen thousand five hundred and twenty-four dollars (\$219,524), as further specified in Article IV, to fund the Corps Reviewer position for the purpose of expediting the processing of National Grid applications for DA Permits;

(2) Provide to the Corps an initial list of planned National Grid projects, attached as **Attachment A** to this MOA, that are likely to require review by Corps, including the specific geographic locations of such projects with a projected schedule for planning and construction of each project. National Grid shall be responsible for updating and/or revising the list to reprioritize the Corps review of its priority projects as necessary. Any such updates or revisions shall not require a formal amendment of this MOA;

(3) Provide a point person (“National Grid Principal Representative”) to coordinate the review of DA Permit applications, communicate priorities to the Corps Reviewer, and to act as the first point of contact with the Corps for the purposes of this MOA. The National Grid Principal Representative will serve as the primary contact for new permit requests, permit modifications and issues of non-compliance;

(4) Actively engage with the Corps in scoping, planning and project development through various means, including, but not limited to, meetings, field visits, conference calls, video conferencing and email.

(5) Provide all required information regarding projects and other specific activities. For projects requiring individual permits, National Grid shall provide sufficient information to the Corps for the timely determination of project purpose statements and range of alternatives, analysis of project effects, determination of the least environmentally damaging practicable alternative, and development of appropriate mitigation measures. Upon request, National Grid shall provide supplemental information necessary to assure that the Corps can effectively and timely accomplish the permit review.

(6) In consultation with the Corps, recommend realistic timelines for the Corps involvement.

(7) In a timely manner, resolve potential non-compliance issues to the satisfaction of the Corps. Failure to resolve non-compliance issues may interfere with the success of the performance measures as outlined in **Attachment B** and shall not be the responsibility of the Corps.

B. The Corps Responsibilities. The Corps shall:

(1) Expedite review and decision making for National Grid's DA Permit applications in accordance with the purpose, terms and conditions of this MOA.

(2) Actively participate in scoping, planning and project development meetings and field reviews, when requested, to identify critical issues, key decision points, and potential conflicts as early as possible. The level of participation will be determined by the project's relative priority, as identified by National Grid, as well as the Corps current and projected workload of National Grid DA Permit applications.

(3) Participate with other federal, state and local agencies in the concurrent and proactive review of National Grid projects and provide any concurrences or recommendations, as required. The level of participation will be determined by the project's relative priority, as identified by National Grid, as well as the Corps current and projected workload of National Grid DA Permit applications.

(4) Provide advice and guidance on ways to avoid and minimize project impacts to achieve better environmental outcomes and to reduce permit processing timeframes and potential delays; this includes suggestions to qualify for more streamlined permits, such as General Permits.

(5) As appropriate, use a coordinated process to review draft and final Environmental Impact Statements, Environmental Assessments and other environmental documents, and provide timely agency comments to National Grid.

(6) Use the coordinated process for Section 106 consultation developed cooperatively with National Grid to achieve timely agency comments and determinations.

(7) Participate in site visits which include pre-application meetings, pre-application site visits, permit area site visits, pre-construction meetings, and compliance inspections.

(8) Review application packages for completeness and notify National Grid within fifteen (15) calendar days of receipt if the application is incomplete.

(9) Provide periodic training, when requested, based on the Corps current and projected workload of priority projects, on Section 404, Section 10, Section 408 and other aspects of the Corps Regulatory program for National Grid employees.

(10) In order to satisfy National Grid's reimbursement requirements, the Corps shall submit timesheets directly to the National Grid Principal Representative on a monthly basis, for the prior calendar month, for actual costs incurred on behalf of this MOA. The timesheets shall: (1) identify the time period covered, (2) identify the employee, hourly employee rate, National Grid work task name, Project Number/Corps File No., and number of hours spent on the respective work tasks; and (3) explain all expenses for which reimbursement is claimed.

(11) Process deliverables in a timely manner by meeting the target process times listed in Attachment B. However, Corps permit decisions pending decisions from other agencies

and consulting parties may exceed these targets even with timely Corps follow-ups with coordinating agencies.

(12) Meet with National Grid on a quarterly basis, or more frequently if requested by either Party, to establish priorities and to evaluate the activities performed under this MOA.

(13) Provide issued permits and other decisions to National Grid.

(14) Annually, or upon request by the National Grid Principal Representative, obtain Corps feedback about: (1) the quality of work submitted by National Grid to the Corps for review and approval; (2) National Grid staff knowledge of Corps regulations, rules, and permit requirements; (3) National Grid's efforts to resolve non-compliance issues; and (4) National Grid's professional conduct related to communication and coordination. The feedback should also include Corps recommendations for improving working relationships with and performance of National Grid staff.

Article IV. – Funding

A. This MOA shall be for a term of three (3) years expiring on March 29, 2020. National Grid shall provide funding for services rendered under this MOA, in advance, on an annual basis based on the Federal fiscal year ("FY"). The funding for FY 2017 is two hundred nineteen thousand five hundred and twenty-four dollars (\$219,524) and payment in full shall be due to the Corps within thirty (30) days of the Effective Date. The Corps will carry over any unexpended and/or unobligated funds from year to year.

B. No later than July 31 of each subsequent year that this MOA remains in effect, the Corps and National Grid shall discuss the Corps anticipated costs to be incurred for the next Federal fiscal year, including the Federal Government's General Schedule increases (step-increases), locality adjustments and any carry over from the prior year and determine whether to increase the funding amount for the next FY. Revisions agreed to by the Parties will be incorporated into a revised budget estimate for the next FY, without necessitating a formal revision or amendment to this agreement.

C. If the Corps actual costs for providing the agreed upon level of service will at any time during the term of the MOA exceed the amount of funds available, the Corps will notify National Grid at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. National Grid will either increase the total funding amount through an amendment to this MOA or agree, in writing, to a reduced level of service.

ARTICLE V. – Performance Measures

A. Performance measures are indicators of performance pertaining to achievement of National Grid and Corps goals for this MOA. Performance measures, results and subsequent evaluation methods can be used to determine the effectiveness of the MOA, which will help the Parties understand, manage, and allow for modification of the MOA, as necessary, to ensure that the MOA will result in the expedited review of National Grid DA Permit Applications and

compliance with the requirements of Section 214. Detailed performance measures are described in **Attachment B**.

B. The performance measures listed in **Attachment B** (along with specific performance targets) may be revised based on collaborative evaluation between National Grid and the Corps. The focus is on quantitative measures where data are readily available, such as permit process times and completeness of National Grid's DA Permit applications.

C. If either National Grid or the Corps believes that the respective responsibilities of the Parties are not being implemented in a satisfactory manner, then the Parties shall utilize their best efforts to attempt to resolve this issue in a cooperative fashion.

Article VI. – General Terms

A. **Duration.** The duration of this MOA is from the Effective Date through March 29, 2020 unless extended or terminated as provided below. This MOA may be extended in yearly increments by the mutual written agreement of the Parties; provided, however, that the Corps will neither accept nor expend funds under this MOA after June 10, 2024, unless Federal law extends the Corps authority under Section 214, to accept and expend funds contributed by public-utility and natural gas companies to expedite the processing of permits.

B. **Impartial Decision Making.** It is understood and agreed that in order to ensure that the acceptance and expenditure of funds will not impact impartial decision making with respect to permit review and final permit decision, either substantively or procedurally, the Corps will comply with the following standards, as mandated by Headquarters, U.S. Army Corps of Engineers:

(1) In cases where National Grid funds are used, all final permit decisions, including all reporting general permit verifications, must be reviewed and signed by at least one level above the decision maker. For example, if the decision maker is the Chief, Massachusetts Permits & Enforcement Branch, then the reviewer would be the Chief, Regulatory Division.

(2) All jurisdictional determinations made on projects where National Grid funds are used must have documentation that a Corps regulator, not funded by National Grid, reviewed and agreed with the determination (e.g., peer review).

(3) All final permit decisions, including all reporting general permit verifications, for cases where National Grid funds are used will be made available and updated monthly on the Corps web page in an area separate from any other final actions, clearly identifiable as being for projects funded by and through this authority.

(4) National Grid funds will not be expended for costs associated with the review of the Corps work undertaken by supervisors or others within the Corps decision making chain of command. However, funds may be used for additional staff if found to be necessary to accomplish the work load. The Corps, after consultation with and approval by National Grid, may expend funds provided by National Grid to hire contractors to perform select duties, including but not limited to, site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purposes

of augmenting the resources available to the Corps for expediting its review of National Grid's DA Permits priority projects. If such expenditures, when combined with the costs of the Corps Reviewer, require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractor until and unless the Parties execute a written amendment to this MOA that provides for the payment of funds by National Grid.

(5) National Grid funds will not be used for enforcement activities but may be used for permit compliance monitoring.

Article VII. - Notices

A. To provide for consistent and effective communication between National Grid and the Corps, each Party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA.

For the purposes of this MOA, National Grid's Principal Representative shall be:

Peter E. Harley
Manager – Environmental, New England
National Grid
40 Sylvan Road
Waltham, MA 02451
Tel: (781) 907-3701
Email: peter.harley@nationalgrid.com

For the purposes of this MOA, the Principal Representative for the Corps shall be:

Barbara Newman
Chief, Massachusetts Permits and Enforcement Branch
Regulatory Division
U.S. Army Corps of Engineers, New England District
696 Virginia Road, Concord, MA 01742-2751
Tel: (978) 318-8515
E-mail: barbara.h.newman@usace.army.mil

B. Any notice required by the MOA to or between the Parties shall be in writing and sent to the Principal Representatives by certified mail or recognized overnight courier with proof of delivery.

Article VIII. – Applicable Laws

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by the Corps regulations, guidance, policies and procedures.

Article IX. – Dispute Resolution

The Parties agree that, in the event of a dispute between the Parties regarding implementation of this MOA (excluding any specific permit application/decisions), National Grid and the Corps shall use their best efforts to expeditiously resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that in the event such measures fail to resolve the dispute, they shall proceed in accordance with applicable Federal law.

Article X. – Public Information

Justification and explanation of National Grid's programs or projects before other agencies, departments, and offices will not be the responsibility of the Corps. The Corps may provide, upon National Grid's request, assistance to support justification or explanation of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding the Corps regulatory activities. National Grid will give the Corps, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

Article XI. – Amendment, Modification and Termination

A. This MOA may be modified or amended only in writing and by mutual agreement of the Parties.

B. Either Party may terminate this MOA, without cause, upon sixty (60) days written notice to the Principal Representative of the other Parties at the addresses provided in Article VII. In the event of termination, National Grid shall continue to be responsible for all costs incurred by the Corps under this agreement prior to the date of such termination.

C. Within sixty (60) days after termination, or the expiration of this MOA, the Corps shall conduct a final accounting to determine the actual costs of the work performed pursuant to this agreement. Within thirty (30) days of completion of this accounting, the Corps shall return to National Grid, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), any unobligated or unexpended funds advanced in excess of the actual costs.

Article XII. - Miscellaneous

A. The following link is provided to the Regulatory Informational webpage:
<http://www.nae.usace.army.mil/Missions/Regulatory/WRDA214.aspx>

B. This MOA will not affect any pre-existing or independent relationships or obligations of the Parties.

C. The Corps participation does not imply endorsement of National Grid projects nor does it diminish, modify or otherwise affect the Corps statutory or regulatory authorities.

D. This MOA and attachments constitute the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this MOA. No waiver, consent, modification or change of terms of this MOA shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any Party to enforce any provision of this MOA shall not constitute a waiver by that Party of that or any other provision.

E. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by Federal law and regulation.

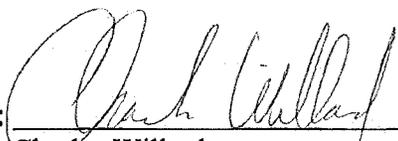
F. This MOA does not preclude the Parties from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreement entered into should not contradict or otherwise undermine the intent of this MOA.

Article XIII. Effective Date

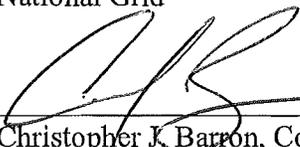
This MOA will become effective on the date of the signature by the last Party. This MOA shall remain in force until March 29, 2020, or until this agreement is terminated, or until all available funds have been expended and not otherwise replenished by amendment to increase the maximum amount of this MOA.

IN WITNESS WHEREFORE, the Parties hereto execute this MOA to the last date written below.

Date: 2/14/2017

BY:  
Charles Willard
Director, Environmental
National Grid

Date: 29 MAR 2017

BY: 
Christopher J. Barron, Colonel
District Engineer
U.S. Army Corps of Engineers

APPENDIX A

Project	State	Permit Filing (est.)	FY	Op Co	FY18	%	
Invenergy	RI	Feb-2017	17	TNEC	NEP	74%	23
D4 Vernon - Deerfield 4 (Knox)	MA/VT	Mar-2017	17	NEP	TNEC	23%	7
J10 line reconductoring	MA	Mar-2017	17	NEP	MECo	3%	1
3314 line maintenance	VT	Mar-2017	17	NEP	Gas	0%	0
Q143/R144 Line Upgrades	MA/RI	Mar-2017	17	NEP/TNEC			
Essex Pole Replacements	MA	Mar-2017	17	MEC			
W23W	MA	Mar-2017	17	NEP			
Markley Data Center	MA	Apr-2017	18	NEP			
G7	MA	May-2017	18	NEP			
L190/G185S TAP (Old Baptist Rd. to Davisville Sub)	RI	Spring 2017	18	NEP			
3308 Asset Recondition	RI	Spring 2017	18	TNEC			
S171/T172 Polearm Replacement ACR	RI	Spring 2017	18	NEP			
Adams Substation	MA	July 2017	18	TNEC			
Relocate E-131 & Q-117 at substation	MA	July 2017	18	TNEC			
Grand Army Substation	MA	2017	18	NEP			
X3/W4 Line Reconductoring	MA	2017	18	NEP			
R9 Reconductoring	RI/MA	2017	18	NEP/TNEC			
H17 Reconductoring	RI	2017	18	TNEC			
K189/G185N Reconductoring	RI	2017	18	TNEC			
S171/T172 Tap to West Farnum	RI	2017	18	TNEC			
Phase 2 Shieldwire	MA	2017	18	NEP			
Phase 2 Shieldwire	RI	2017	18	NEP			
X24/e157	MA	Fall 2017	18	NEP			
Warren Substation Flood Mitigation	RI	2017	18	NEP			
315 ACR	MA/RI	2017	18	NEP			
Z1-Y2 Somerset-Hathaway ACR	MA	2017	18	NEP			
303/3520 W. Medway - Bellingham - Brayton Pt ACR	MA	2017	18	NEP			
North Rvr Rbld (A127/B128, Y177, E205, D4)	MA	2017	18	NEP			
Z1-Y2 Somerset-Hathaway River Crossing	MA	2017	18	NEP			
Green River Erosion (Greenfield, MA) (E205)	MA	2018	18	NEP			
E205E ACR (West of CT River)	MA	2017	18	NEP			
F184 ACR	MA	2017	18	NEP			
O42 TAP: Dunstable to James River ACR	MA	2017	18	NEP			
Amesbury 5 retaining wall	MA	2017	18	MECo			
Old Boston Road Substation / distribution /transmission	MA	2017/2018	18	NEP/MECo			
S8 (SW Strategy III)	MA	2018	18	NEP			
S9 (SW Strategy III)	MA	2018	18	NEP			
S145 TAPS ACR	MA	2018	18	NEP			
394/397 ACR	MA	2018	18	NEP			

ATTACHMENT B

Performance Measures

The following table identifies performance measures that the Corps will compile and report to the National Grid Project Manager on a quarterly basis. These measures are indicators of performance for the MOA and are based upon national Corps goals and regulations.

PM ID	AGREEMENT PERFORMANCE MEASURES	MOA PERFORMANCE TARGETS
1	Determination of completeness of Corps applications	Within 15 days of submission
2	Individual Permit decisions within 120 days after submittal of a complete application with the exception of those that are delayed due to: absence of CWA Section 401 certification; Section 7 of the Endangered Species Act (ESA) consultation(s); Section 106 of the National Historic Preservation Act consultation(s); untimely submittal of information or comments from National Grid; extended comment period for Public Notice; and/or environmental review processes with statutory time frames (e.g. Environmental Impact Statement).	55% of submitted actions
3	General permit decisions within 60 days after submittal of a complete application	85% of submitted actions

Definitions and Notes:

- 1. Determination of completeness of Corps applications.** This refers to applications formally deemed complete in accordance with 33 CFR Part 325.1.
- 2. Individual permit decisions within 120 days after submittal of a complete application.** The national Corps goal for processing individual permits is 50% within 120 days of a complete application.
- 3. General permit decisions within 60 days after submittal of a complete application.** The national Corps goal for processing general permit actions is 80% within 60 days of a complete application.