 <b>NEW YORK</b> STATE OF OPPORTUNITY.	<b>Adirondack Park Agency</b>	<b>Order</b>	<b>Date Issued:</b>
PO Box 99 · 1133 NYS Route 86 Ray Brook, NY 12977 Tel: (518) 891-4050 · Fax (518) 891-3938 <a href="http://www.apa.ny.gov">www.apa.ny.gov</a>		<b>In the Matter of the Issuance of General Permit 2017G-1 for Access to and Replacement of Utility Poles in Wetlands</b>	


**WHEREAS:**

1. This document constitutes an Order approving the issuance of General Permit 2017G-1;
2. Section 809.13(e) of the Adirondack Park Agency Act (APA Act) states that the Agency shall have authority, in connection with its project review jurisdiction, “to issue a general permit for any class of projects concerning which the agency determines it may make the requisite statutory findings on a general basis;”
3. Pursuant to Section 572.23(b) of Agency regulations, on May 12, 2017, the Agency proposed to issue General Permit 2017G-1 as a renewal of General Permit 2014G-2 “Access to and Replacement of Utility Poles in Wetlands” by the adoption of a resolution specifying the applicable geographic area, time period, basis of jurisdiction, activity and probable frequency, and proposed findings of fact, conclusions of law, and mitigating conditions;
4. General Permit 2017G-1 “Access to and Replacement of Utility Poles in Wetlands” indicates that the permit will:
  - a. be available for use throughout the Adirondack Park;
  - b. be effective from the date of issuance unless otherwise modified or revoked by the Agency;
  - c. authorize jurisdictional activities pursuant to Article 24 of the Environmental Conservation Law, §§ 809(2)(a) and 810(1) of the APA Act, and 9 NYCRR §§ 570.2, 578.2(a), and 578.3(n)(1) and (2);
  - d. allow for regional and municipal utility companies to replace utility poles in wetlands and/or establish temporary structures in wetlands to access utility poles for approximately fifteen projects per year; and
  - e. include relevant findings of fact, conclusions of law, and mitigating conditions.
5. General Permit 2017G-1 includes findings of fact, conclusions of law and mitigating conditions to address potential adverse environmental impacts and the statutory criteria for permit issuance;

6. Pursuant to section 572.23(c) of Agency regulations, General Permit 2017G-1 was publically noticed in the Environmental Notice Bulletin, in newspapers of general circulation both inside and outside the Adirondack Park, and with the Adirondack Local Government Review Board, and was provided for public review and comment, and the minimum 30 day public comment period has expired;
7. The Agency has considered the public comment received and finds that no changes are suggested or needed to the proposed General Permit 2017G-1; and
8. Pursuant to 6 NYCRR 617.5(c)(26), renewal of General Permit 2014G-2 titled "Access to and Replacement of Utility Poles in Wetlands" by the issuance of General Permit 2017G-1 is a Type 2 action for purposes of the State Environmental Quality Review Act (SEQR), and no environmental impact statement or additional SEQR document is required.

NOW, THEREFORE, IT IS ORDERED THAT:

- I. The Agency, having considered the foregoing and General Permit 2017G-1 for the "Access to and Replacement of Utility Poles in Wetlands," finds that General Permit 2017G-1 meets the statutory and regulatory criteria set forth in APA Act § 809.13(e), ECL Article 24, and 9 NYCRR § 572.23 on a general basis;
- II. General Permit 2017G-1 for the "Access to and Replacement of Utility Poles in Wetlands" is hereby issued; and
- III. The Deputy Director of Regulatory Programs shall record General Permit 2017G-1 in the county clerk's office of all counties situated wholly or partly within the Adirondack Park, and shall provide notice of the approval of General Permit 2017G-1 in accordance with the requirements of 9 NYCRR 572.23(c).

 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></p> <p>PO Box 99 · 1133 NYS Route 86 Ray Brook, NY 12977 Tel: (518) 891-4050 · Fax (518) 891-3938 www.apa.ny.gov</p>	<b>APA General Permit 2017G-1</b>	Effective Date:
	<p><b>In the Matter of the Issuance of a General Permit for:</b></p> <p><b>Access to and Replacement of Utility Poles in Wetlands</b></p>	

### **SUMMARY AND AUTHORIZATION**

This general permit is issued to regional and municipal utility companies within the Adirondack Park to allow for the replacement of utility poles in wetlands and/or the establishment of temporary structures in wetlands to access utility poles.

This general permit is in effect until modified or revoked by the Agency.

### **JURISDICTION**

Pursuant to Article 24 of the Environmental Conservation Law (the Freshwater Wetlands Act), Executive Law §§ 809(2)(a) and 810(1) (the Adirondack Park Agency Act), and 9 NYCRR §§ 570.2, 578.2(a), and 578.3(n)(1) and (2), within the Adirondack Park, any form of filling or any other activity that substantially impairs the functions served by or the benefits derived from freshwater wetlands is a "regulated activity" requiring a permit from the Agency. Replacing utility poles in wetlands when stone ballast is added to the new hole and placing temporary structures such as bog matting in wetlands constitute fill, and may also substantially impair the functions and values of wetlands.

### **ELIGIBILITY**

This general permit only applies where:

- a. The sole basis of Agency jurisdiction on the project site is fill or substantial impairment to the functions and values of a wetland incidental to the replacement of a utility pole or the establishment of a temporary structure for access to a utility pole;
- b. The replacement pole will be located within the existing utility company right-of-way or fee ownership;
- c. The project will not result in an increase in the number of utility poles in wetlands; and
- d. The project will be undertaken by a regional or municipal utility company.

**CONDITIONS**

1. All utility companies undertaking an activity authorized herein shall comply with all terms and conditions of this general permit, and shall require that any agent, contractor, project engineer, or other person undertaking an activity authorized herein acknowledge in writing that they have received a copy of and have read and understand this permit and all conditions. Failure to comply with this permit is a violation and may subject the utility company and its agents, contractors, project engineers, and other parties to civil penalties and other legal proceedings.
2. Prior to undertaking the replacement of any pole to a height or structure width greater than the existing pole, the utility company shall obtain from the Agency either a letter of compliance with this general permit or a new permit for the proposal.
3. Whenever practicable, access through wetlands shall occur on frozen ground and with the use of wide-tracked vehicles.
4. All activities shall occur in compliance with the "Best Management Practice for Preventing the Transportation of Invasive Plant Species," published by Environmental Energy Alliance of New York, 4/26/2012.
5. Temporary access structures, including bog mats and work pads, shall be removed within 30 days.
6. Existing poles to be replaced shall be removed completely from the wetland, including the portion of the pole that was below grade.
7. If the hole for a replacement pole is to be backfilled with gravel or other ballast, the top 6 inches shall be backfilled with organic soil and the final elevation around the pole shall be the same as the surrounding wetland surface.
8. The total area of wetland disturbance shall be limited to the minimum necessary to repair, replace or construct the utility pole and line. Clearing of existing vegetation shall be limited to vegetation that poses an immediate hazard or hindrance to construction activities. Grading and grubbing of the wetland shall be minimized to the greatest extent practicable.
9. Each utility company that undertakes an activity pursuant to this general permit shall prepare an annual report, due on December 31 of each year, summarizing the activities proposed to be undertaken. The report shall include the geographic coordinates of each activity and the pole numbers involved, or a Geographic Information System (GIS) shape file containing the relevant information.

10. The Agency may conduct on-site investigations, examinations and evaluations as it deems necessary to ensure compliance with the terms and conditions of this permit. Such activities shall take place at reasonable times and upon advance notice where possible. The utility company shall provide access to the Agency upon request.
11. This permit does not grant any right to trespass upon the lands of, or interfere with the riparian rights of others in order to perform the permitted work, nor does it authorize the impairment of any rights, title, or interest in real or personal property.
12. Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local. In particular, ECL Article 11 or Article 15 permits may be needed from the New York State Department of Environmental Conservation.

#### **FINDINGS OF FACT**

1. Freshwater wetland covertypes potentially affected by access to and replacement of utility poles include the covertypes referenced in the Freshwater Wetlands Act: wetland trees, wetland shrubs, emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, wet meadow vegetation, bog mat vegetation, and submergent vegetation. These covertypes form the wetlands described in the Agency's implementing regulations: deciduous swamp, coniferous swamp, shrub swamp, emergent marsh, deep water marsh, wet meadows, and bog.
2. The wetlands affected by pole replacement and access provide important benefits valued by society such as flood and storm control and abatement, wildlife habitat, surface and subsurface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics, and nutrient cycling.
3. Using wide-tracked vehicles and bog mats on frozen ground helps to minimize rutting, compaction of soils, and alteration of drainage patterns in wetlands.
4. The timely removal of bog mats, work pads, and other structures from a wetland will allow the wetland vegetation to recover more quickly and will protect wetland values.
5. The replacement of any pole to a height greater than the existing pole may result in adverse impacts to the scenic, aesthetic, open space, and other resources of the Park.
6. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing § 14.09 of the New York State Historic Preservation Act of 1980.

**CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval set forth in Executive Law § 809, 9 NYCRR Part 574, Environmental Conservation Law §§ 24-0103 and 24-0105, and 9 NYCRR Part 578. The Agency hereby finds that, for all wetland value ratings, the regulated activities authorized by this general permit and undertaken as authorized:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the land use area(s) involved;
- c. will be consistent with the overall intensity guidelines for the land use area(s) involved;
- d. will comply with the shoreline restrictions of Executive Law § 806;
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social benefits that might be derived therefrom; and
- f. will secure the natural benefits of wetlands associated with the project, consistent with the general welfare and beneficial economic, social, and agricultural development of the state.

**GENERAL PERMIT** issued this  
day of \_\_\_\_\_, 2017

**ADIRONDACK PARK AGENCY**

\_\_\_\_\_  
Richard E. Weber III  
Deputy Director (Regulatory Programs)

**STATE OF NEW YORK  
COUNTY OF ESSEX**

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

REW:EAP:slp





*The mission of the ADIRONDACK COUNCIL is to ensure the ecological integrity and wild character of the ADIRONDACK PARK for current and future generations.*

## BOARD OF DIRECTORS

June 23, 2017

ROBERT J. KAFIN  
Chair

Richard Weber III  
Deputy Director, Regulatory Programs  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY 12977  
*(Via Electronic Submission)*

MICHAEL A. BETTMANN, M.D.  
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SARAH C. HATFIELD  
Vice-Chair

DANIEL J. RYTERBAND  
Treasurer

## **RE: General Permit P2017-G1 concerning the Access to and Replacement of Utility Poles in Wetlands**

CHARLES D. CANHAM, Ph.D.  
Secretary

Dear Mr. Weber,

EMILY M. BATESON  
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CURTIS R. WELLING  
ETHAN WINTER

On behalf of the Adirondack Council, I would like to thank you for the opportunity to offer the following comments on the Proposed General Permit P2017-G1 for the Access and Replacement of Utility Poles in Wetlands. As we noted in our comment letter, dated March 27, 2014, concerning the implementation of the original General Permit (P2014-G2), the Council recognizes the essential services that utility poles provide and that this infrastructure is critical to the overall power, communication and safety of our communities. Since the implementation of P2014-G2, water quality and the protection of our most sensitive aquatic habitats has only grown in importance at both the local, state, and federal level and remains a universal concern shared across the diverse spectrum of Adirondack stakeholders.

Overall, the Adirondack Council remains supportive of the proposed renewal of GP-P2014-G2, but we urge the Agency to be more assertive in their review of proposed projects and in their enforcement of Best Management Practices to the greatest extent possible. The replacement of old utility poles may often provide the opportunity to re-evaluate pole placement and other alternatives that use updated technology, are more habitat friendly, and can greatly minimize impacts. Wetlands consist of some of the Park's most sensitive habitats and are particularly prone to impacts if not closely monitored.

## EXECUTIVE DIRECTOR

WILLIAM C. JANEWAY



DEFENDING THE EAST'S GREATEST WILDERNESS

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**Impacts to Water Quality:**

1. The variation in chemicals used to treat wood is wide ranging and while treated woods are suited for outdoor use and nearly impervious to insect damage, the potential leaching of chemicals such as arsenic and chromium into wetland environment's should be a central consideration and concern.
2. When appropriate, preference for timber mats or building platforms should be given to wood that has not been treated with preservatives that will impact water quality or ecological integrity in a project area. Standardized measures to minimize soil disturbances and sedimentation must be properly installed and maintained at all times. These measures include seeding of native species, hay mulch, and the use of other control blankets and fences. Too often poorly installed erosion controls only exacerbate problems that could have otherwise been avoided.

**Impacts to Natural Resources:**

1. Careful planning and design can reduce the scenic, recreational, and biological impacts associated with forest fragmentation as a result of utility pole installation and removal. Existing vegetation should be preserved to the greatest extent possible. In cases where cutting cannot be avoided, tree and brush cutting should be done by hand to minimize disturbances to wetlands and wildlife.
2. It should also be noted that increased vegetative cutting along the utility corridors that will be associated with the proposed permit can open new opportunities for ATV trespass into areas that were previously inaccessible due to heavy vegetation. The Agency should anticipate that such activity is likely to occur and require utility companies to develop signage that would restrict and regulate unauthorized motor vehicle use along utility corridors that run contiguous to, or throughout wetland habitat.

**Impacts to Wildlife Communities:**

1. As mentioned in the permit, construction or removal of utility poles should be done during the winter months when wetland habitats are frozen, or in low flow periods later in the summer or early fall (July-October).
2. To the greatest extent possible, construction activities should be avoided in the spring, when amphibians, mammals, and breeding birds are most active.
3. If construction includes the replacement of a significant number of utility poles in one general area, a basic biological inventory should be completed that will detail which species are using the affected tract of land and what the expected impacts would be.

**Alternatives, Enhanced Public Health and Safety, and Avoiding Impacts to Scenic Views:**

1. Alternatives to pole replacement should always be considered before proceeding, and that consideration should be documented. Specifically, the Adirondack Park Agency (APA) in



partnership with local governments and utilities should always be looking for ways to use new technology, underground boring, or other alternatives to eliminate poles and above ground lines. These alternatives can provide more reliable, storm-safe communications and power systems while better protecting or enhancing the visual character of the Park, and avoiding surface impacts to water, natural resources, and wildlife.

2. Finally, as noted above, for general permits to be effective it is critical that APA personnel follow-up with site inspections to assist with and confirm compliance with all requirements.

In closing, the Adirondack Council believes that General Permit P2017-G1 is necessary for ensuring continued essential services and we support its renewal. Given the value of essential freshwater wetland habitats and the universal importance of clean ground water, any improvements made by the Agency to address the above issues will only improve how the Adirondack's legendary water resources are managed in the future. Thank you for accepting and reviewing our comments.

Respectfully,

A handwritten signature in blue ink that reads "Rocci Aguirre". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rocci Aguirre  
Conservation Director