

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION



CASE 04-T-1687 - Application of Long Island Power Authority for a Certificate of Environmental Compatibility and Public Need for the Construction of a 13 mile, 345 kV Electric Transmission Facility, the Newbridge Road Connector, in the Towns of Hempstead, Oyster Bay, and Huntington.

***STAFF'S  
STATEMENT IN SUPPORT***

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Dated: Albany, New York  
October 21, 2005

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STAFF'S STATEMENT IN SUPPORT

INTRODUCTION

This statement is submitted by the Staff of the Department of Public Service (Staff) designated to represent the public interest in this proceeding. It is submitted in support of the Joint Proposal in this proceeding dated October 21, 2005 (Joint Proposal). The Joint Proposal is being filed with the Secretary to the Public Service Commission (Commission) concurrently with this statement in support. The signatories to the Joint Proposal include Staff, the Long Island Power Authority (LIPA) and the New York State Department of Transportation (NYSDOT) (collectively referred to as the "Signatory Parties").

The administrative record consists of the Joint Proposal, the pre-filed application, exhibits (Exhibits 1-15, as corrected by errata) and testimony (Panel of Parmelee, Petschauer, Dahl, Netti, Shmookler & Siener; Panel of Ordon and Corrado) originally submitted by LIPA, the supplemental exhibits (proposed Exhibits 16 through 35, and proposed Staff Exhibit 36) and testimony (Panel of Parmelee, Petschauer, Dahl, Netti, Shmookler & Siener; Staff Witness Davis) submitted by LIPA and Staff, and the public statements set forth in the transcript [Tr. 2-8].

The Joint Proposal provides for the construction, operation and maintenance of a new 345 kilovolt ("kV") underground transmission facility consisting of approximately thirteen (13) total circuit miles (the "Facility") enabling full receipt and delivery of capacity from the Neptune Regional Transmission System ("Neptune RTS") project recently approved by the Commission. The Facility will be comprised of one (1) circuit that will extend west approximately four (4) miles from the LIPA Newbridge Road Substation ("Newbridge") to the LIPA East Garden City Substation ("EGC") (the "Western Connector") and one (1) circuit that will extend east approximately nine (9) miles from Newbridge to the LIPA Ruland Road Substation ("Ruland") (the "Eastern Connector").

The Joint Proposal contains a number of safeguards that, taken together, minimize the potential harm to the environment resulting from construction and operation of the Facility. These protections relate to use of best construction practices, construction timing to minimize impacts, fence and sidewalk replacement, sediment monitoring, erosion control, traffic maintenance and control, conservation of topsoil, conservation of archaeological resources, conservation of agricultural resources, site restoration and re-vegetation, visual impact mitigation and landscaping, compliance with occupational safety regulations, building codes and local laws, right-of-way maintenance, and the protection of nearby gas, electric and communication facilities. The Joint proposal also includes a number of offsets, that is, transportation improvement

projects to be undertaken by LIPA. The Joint Proposal also requires advance public notice of construction, complaint handling procedures, environmental supervision, and stop-work authority to cease violations. Finally, the Joint Proposal provides a dispute resolution mechanism to ensure that any disagreements are addressed promptly and brought to the Commission for resolution if they cannot be resolved informally among the parties.

#### SETTLEMENT PROCEDURES

In accordance with Commission rules and prior to the commencement of negotiations, all parties to this proceeding were notified of the impending settlement negotiations and notice of the impending negotiations was duly filed with the Secretary of the Commission on May 24, 2005. Negotiations commenced with a conference call held by the parties on June 1, 2005. Additional negotiations were handled by exchanges of drafts. Compliance with the Commission's settlement rules and processes was maintained at all times.

#### PUBLIC INVOLVEMENT

Public Statement Hearings were held to obtain input and encourage participation by the public. Public statement hearings were conducted on March 10, 2005 at the Levittown High School in Levittown, New York. Prior to the public statement hearings, informational sessions were hosted by Staff where interested persons had an opportunity to discuss the proposal. One individual spoke at the public statement hearings. She expressed concern about the sufficiency of using an advertisement in

*Newsday* as the vehicle to inform the public of the hearings. She also expressed a concern about breast cancer clusters and whether adding more electrical current would contribute to more cancer clusters. These concerns were considered by Staff during the settlement negotiations.

#### THE LEGAL BACKGROUND

The following section is intended to provide a summary of the actions, considerations, findings and/or decisions the Commission must by law undertake, consider and/or determine in making a decision on the subject application in this proceeding. Subsequent sections will deal with each of the matters raised on a more detailed and specific basis.

#### Article VII Findings

In rendering a decision on an application pursuant to Article VII, the Commission may not grant a certificate for the construction or operation of a major utility transmission facility unless it shall find and determine:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility represents the minimum adverse environmental impact;<sup>1</sup>
- (d) what part, if any, of the line shall be located underground;
- (e) that such facility conforms to a long-range plan

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<sup>1</sup> Considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations including but not limited to, the effect on agricultural lands, wetlands, parklands and river corridors traversed [N.Y. Pub. Serv. Law §126 1(c)].

for expansion of the electric power grid;<sup>2</sup>

- (f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued there under;<sup>3</sup> and
- (g) that the facility will serve the public interest, convenience, and necessity.

The concept of "environmental compatibility and public need" requires that the Commission "protect environmental values, and take into account the total cost to society of such facilities" when making a decision on whether it should grant an Article VII certificate [Chapter 272 of the Laws of 1970, Section 1, Legislative Findings]. No single aspect of an application can be looked at in a vacuum; rather the Commission must consider the totality of all of the relevant factors in making its determination of environmental compatibility and public need. The relevant factors include, without limitation, the electric system requirements, the cost, the environmental impact, the availability and impact of alternatives, undergrounding considerations, conformance to long-range plans, state laws and local laws, and the public interest, convenience and necessity.

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<sup>2</sup> Of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability [N.Y. Pub. Serv. Law §126 1(d)(2)].

<sup>3</sup> All of which shall be binding upon the commission, except that the commission may refuse to apply any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality [N.Y. Pub. Serv. Law §126 1(f)].

Consultation on Cultural Resources

Ordinarily, the Commissioner of the Office of Parks, Recreation and Historic Preservation (State Historic Preservation Officer or "SHPO") must be given notice and the opportunity to consult if a State agency proposes to approve any project when it appears that any aspect of the project may or will cause any change, beneficial or adverse, in the quality of any property listed on the National Register of Historic Places or any historic, architectural, archeological, or cultural properties listed, or eligible to be listed, on the State Register of Historic Places [N.Y. Parks Rec. & Hist. Preserv. Law, §14.09 (McKinney, 1984)]. However, such consultation process is not required if the project is also subject to review by SHPO in a Federal review process pursuant to Section 106 of the National Historic Preservation Act (NHPA) [36 CFR 800]. Here, because the longitudinal placement of the Facility along the east side of the Seaford-Oyster Bay Expressway (NY135) will require an exception to NYSDOT's policy for accommodation of utilities within State highway right-of-way, said exception required to be approved by the Federal Highway Administration, the project is subject to a Federal review. As the Federal review triggers review by SHPO and Federal consultation pursuant to the NHPA, consultation with SHPO during the State agency review is not required [9 NYCRR Section 428.2(a)].<sup>4</sup>

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<sup>4</sup> In any event, the review and protection of cultural resources has been assured and the requirements of the NHPA are being fulfilled - see Section D-3 below.

Conditions & Modifications

In rendering a decision granting an application for an Article VII certificate, the Commission may in its discretion grant the application upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the Commission may deem appropriate [N.Y. Pub. Serv. Law §126 (1)].

Burden of Proof

As the applicant in this proceeding, LIPA has the burden of proof to demonstrate to the Commission that there is an adequate justification for the Commission to take each required action and to make each required finding and determination in a manner favorable to the proposal put forth by LIPA in its application or in a joint proposal [Delaney v. Public Service Comm'n, 507 N.Y.S.2d 471, 473 (A.D.2 Dept., 1986)].

ARGUMENT

The Joint Proposal is in the Public Interest

A. General Considerations

The Joint Proposal was arrived at fairly in full compliance with all Commission rules and all parties had an opportunity to participate. After thorough investigation and discussion, Staff was able to fully understand the respective positions of the parties and believes that the Joint Proposal is a reasonable compromise of those diverse positions. Joint Proposals by their very nature involve compromise to satisfy diverse interests. As in most Joint Proposals, the individual components are a series of inter-related compromises that do not

stand alone. Therefore, the individual components of a settlement must be judged as a package. If the overall package is in the public interest, that is all that is required.

The Commission's Procedural Guidelines for Settlement (1992) (at p. 8) sets forth the following criteria for deciding whether a settlement is in the public interest:

a. A desirable settlement should strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.

b. In judging a settlement, the Commission shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties.

Our recommendation to the Commission is that the overall package of the Joint Proposal that includes construction of the Facility as modified and subject to specified safeguards to protect the environment, should be approved as it is in the public interest. The key factors that justify our recommendation that the Joint Proposal is in the public interest are as follows:

- 1) the Facility will make possible the interconnection of 660 MWs of new generation capacity to the New York power grid;
- 2) the Facility will make possible new opportunities for displacement of higher cost generation, enhance opportunities for market-based transactions, and help further the transition to a competitive electric

- industry in New York State;
- 3) the Joint Proposal includes sound provisions for the protection of the environment;
  - 4) the Joint Proposal includes new transportation improvements provided as offsets to the temporary disturbance of land uses caused by the Facility;
  - 5) the Facility is the least cost configuration of the major configuration alternatives considered;
  - 6) the Facility makes extensive use of existing right-of-ways avoiding to the degree possible the clearing or disturbance of natural habitat; and
  - 7) the Joint Proposal embodies the agreement of normally adversarial parties to a reasonable result.

B. Basis of the Need - Electric System Requirements

Under the process of Article VII of the Public Service Law, the Neptune RTS was approved by the Commission to address an increasing need for additional electric capacity on Long Island. The Commission determined that, "[t]he [Neptune RTS]... is needed to provide additional electric supplies for the energy market on Long Island and to increase its transmission ties and interconnection with other regions."<sup>5</sup> The Neptune RTS provides an additional 660 MW of electricity for Long Island. The new

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<sup>5</sup> Case 02-T-0036: Application of Neptune Regional Transmission System LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Two 600-Megawatt (+/- 500 kV) High Voltage Direct Current Submarine/ Underground Electric Transmission Cables to Connect Load Centers in New York with Transmission and Generation Resources in New Jersey, *Opinion and Order Adopting Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need For a Transmission Facility From New Jersey to Long Island* (Issued January 23, 2004), p. 16.

capacity provided by the Neptune RTS will result in a more diversified and reliable system that is better able to accommodate various uncertainties with respect to load, generation, transmission, and emergencies caused by extreme weather and off-island contingencies.

It is critical that once the power carried by the Neptune RTS gets to Long Island it can be delivered to the system without being "bottle-necked" or requiring LIPA to reduce or back down other needed resources. Deliverability is essential to good utility planning as only power that can be delivered can satisfy locational and statewide installed capacity requirements. If the addition of power into the system at Newbridge requires that other resources on Long Island be backed off, the benefit of the Neptune RTS would be greatly reduced because it would not qualify as capacity. As a result, the energy and capacity savings from accessing more competitively-priced power in the PJM Interconnection, L.L.C. ("PJM") would be reduced due to restrictions on imports.

Analyses conducted as part of the Neptune RTS System Reliability Impact Study ("SRIS") and the *LIPA Transmission System Analysis with Neptune RTS Interconnection* ("Transmission System Analysis"), conducted by KeySpan Engineering and Survey, Inc., identified the need for the Facility. The Transmission System Analysis tested the existing facilities' ability to deliver power eastward from Newbridge and other Nassau County facilities without any system reinforcements. The Transmission System Analysis found that the two (2) existing Newbridge to

Ruland 138 kV circuits will overload as high as twenty two percent (22%) above the circuit's Long Term Emergency ("LTE") dynamic rating for various system contingencies. The addition of the Eastern Connector, with a series reactor, will eliminate these overloads.

The Transmission System Analysis also tested the impact of moving additional levels of power into Nassau County. According to the Transmission System Analysis, as additional power was delivered into Nassau, the existing EGC to Newbridge 138 kV circuits overloaded twenty percent (20%) under normal conditions, thereby restricting the deliverability of the power. The analysis also showed overloads as high as twenty percent (20%) above the circuit's LTE dynamic ratings for various system contingencies. Addition of the Western Connector eliminated these overloads.

The Facility will also provide additional support to the balance of the NYISO system as well as to the ISO-New England by expanding the transmission capacity and further integrating the region. To the extent a coordinated northeast regional market develops, the potential economic benefits are expected to increase.

The Facility will also help support delivery of power from other resources to Western Nassau County and to the load center in Suffolk County. The Facility will provide additional reliability by supporting the existing infrastructure even when no imports are occurring by reinforcing and increasing the capability of the existing transmission capacity.

The approved Neptune RTS, together with the Facility, contribute to achieving a goal of increasing the amount of interconnection capacity, minimizing power flow constraints, improving system reliability and increasing power transfer capability<sup>6</sup> by allowing an additional 660 MW of electricity to be imported into Long Island. The Facility will contribute significantly by minimizing power flow constraints, improving system reliability and increasing power transfer by, as noted above, supporting delivery of power from other resources to Western Nassau County and to the load center in Suffolk County. The Facility will also enhance reliability by supporting the existing infrastructure, even in the absence of imports, by reinforcing and increasing the capability of the existing transmission capacity.

The Facility will also increase the opportunities for transactions among buyers and sellers in the wholesale markets thereby generally enhancing competition in the electric industry in New York State.

### C. Engineering Feasibility

#### 1. System Reliability Impact Studies

Studies performed by LIPA to evaluate the impact of the Facility on system reliability and security and to determine what reinforcements are necessary for the New York State transmission system, and a System Reliability Impact Study (SRIS), were submitted with the Application as Attachments E-4-1 and E-4-2.

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<sup>6</sup> LIPA Energy Plan, Vol. 1, p. 2-1.

The studies included thermal, voltage, short circuit, and stability analysis.

The SRIS for the New York State transmission system was conducted under the direction and review of LIPA. The NYISO was consulted on the scope of the study and the system representations modeled in the SRIS. The scope for the SRIS was reviewed and approved by the NYISO's Operating Committee ("OC") on June 20, 2001. The scope and the OC resolution approving it are included with the Application as Attachment E-4-3 and E-4-4, respectively.

The SRIS was submitted on May 1, 2003 and reviewed by the NYISO staff. The NYISO staff concluded that the Neptune RTS and the Facility do not adversely impact the reliability of the LIPA system or the New York Bulk Power System. Subject to the need for continued assessment of fault duty impacts and replacing breakers overstressed due to the Neptune RTS and the Facility, if any, on the Con Edison and LIPA systems prior to energizing the Neptune RTS and the Facility, NYISO staff concluded that all applicable reliability issues have been addressed in the SRIS, and recommended its OC approval (Attachment E-4-5 of the Application).

The OC approved the SRIS on June 11, 2003 (Attachment E-4-6 of the Application). The SRIS evaluated 138 kV operation of the Facility. In the future, LIPA plans to upgrade the operation of the Facility from 138 kV to 345 kV, through minor substation improvements. Such upgrade will not occur until all NYISO review and planning procedures have been completed and an

SRIS for 345 kV operation has been approved.

2. Electric and Magnetic Fields (EMFs)

Most of the electric power transmitted over long distances in the United States is carried on AC (alternating current) lines. The transmission voltage used on these lines depends on the distance over which the power is transmitted and on the amount of power to be transmitted. Over long distances there is a very definite advantage in terms of reduced power loss in the lines ("line losses") to having as high a voltage as possible. Over time, there has been a steady increase in voltages in use by the electric industry from the originally typical 30-40 kV AC transmission systems in use prior to 1920. In 1973, the Commission received two applications for Article VII certificates for the construction of 765 kV electric power transmission lines. The high voltage of the lines was a cause of substantial public concern about possible health hazards, among other things. The first application was submitted by the New York Power Authority for the construction of a 765 kV line from the Canadian border (near Massena) to Utica. The second application was submitted jointly by Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation for the construction of a 765 kV line from Rochester to Oswego. Issues of common interest raised by the applications were heard in Cases 26529 and 26559, respectively, on a joint record.

Regarding electric fields, the Commission declared, in effect, a moratorium on new electric fields higher than 1.6 kV/m at the edge of the transmission right-of-way, one meter above

ground level, with the line at rated voltage [Cases 26529 and 26559, Power Authority of the State of New York and Health/Safety of Extra-High Voltage Lines, Opinion No. 78-13 (issued June 19, 1978), mimeo pp. 40-41]. As to magnetic fields, the Commission concluded that a prudent approach should be taken that will avoid unnecessary increases in existing<sup>7</sup> levels of magnetic field exposure and, as an interim measure in the absence of a consensus in the scientific community or direct causal evidence as to whether prolonged exposure to low levels of magnetic fields from power lines causes biological effects in humans, adopted the requirement that all future Article VII transmission circuits shall be designed, constructed and operated such that magnetic fields at the edges of their rights-of-way, measured one meter above ground level, will not exceed 200 milliGauss (mG) when the circuit phase currents are equal to the winter-normal conductor rating [Cases 26529 and 26559, Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities (issued September 11, 1990), 30 NY PSC 1607].

(a) Electric Fields

Electric fields are produced by voltage and increase in strength as the voltage increases [Exhibit 14, Application Appendix C, page C-8]. Based on the shielded, underground line configuration of the proposed cable, the emanation of an electric field beyond the cable is virtually eliminated [Exhibit 14, Application Appendix C, page C-12]. There is no question that

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<sup>7</sup> By this reference to "existing", the order restricts design choices that would produce higher magnetic fields than typical 345 kV lines, thereby choosing 200 mG for the interim standard.

the minimal electric field of the Facility complies with the 1.6 kV/m limit. The existing overhead transmission facilities will continue to operate at present voltage levels and as a result, the existing electric fields along the route of the Facility will remain essentially unchanged [Exhibit 14, Application Appendix C, page C-12].

(b) Magnetic Fields

Magnetic fields result from the flow of current through wires or electrical devices and increase in strength as the magnitude of the current increases [Exhibit 14, Application Appendix C, page C-8]. Magnetic fields will emanate from the transmission line and substation improvements that constitute the proposed Facility. Computer simulations were used to calculate the expected magnetic field levels at the edge of the right-of-way of the transmission line and at the occupied structures nearest to the transmission line. During the construction design phase, additional computer simulations will be used to calculate the expected magnetic field levels in the vicinity of the affected substations.

Using the Commission's "winter normal conductor rating" methodology for the transmission line, maximum magnetic field levels calculated at the right-of-way edge ranged from less than 1 mG for the northerly right-of-way edge at EMF Study Location 6, to 129.4 mG for the southerly right-of-way edge at EMF Study Location 4. All of the maximum calculated levels of magnetic field strength are lower than the 200 mG winter normal conductor rating standard established by the Commission in 1990 as an

interim standard [Exhibit 14, Application Appendix C, pages C-47 through C-78 (for EMF Study Locations 1-10) and Exhibit 34 (for EMF Study Location 11)].

The Commission's interim policy on magnetic fields uses a worst-case peak calculation of magnetic fields based on the winter normal conductor rating of a transmission line. It was adopted in the absence of a consensus in the scientific community or direct causal evidence as to whether prolonged exposure to low levels of magnetic fields from power lines causes biological effects in humans.<sup>8</sup> Because of the lack of definitive information, however, it is generally considered rational to follow a policy of "prudent avoidance" of magnetic fields where economical. Most studies of the biological effects of magnetic fields from power lines are based on typical actual exposures -- generally the annual average exposure -- rather than peak exposures. In order to model the magnetic fields on an average exposure basis, load flows for the average cases were developed based on current average loads plus a factor based on the

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<sup>8</sup> The lack of consensus continues. While most studies continue to conclude that no cause-and-effect relationship between EMF and ill health has been established at the levels generally found in residential environments, in 2002, the International Agency for Research on Cancer, a part of the World Health Organization, designated power line magnetic fields in the extremely low frequency range of the electromagnetic spectrum as "possibly carcinogenic to humans" in reference only to childhood leukemia under conditions of long-term average exposure to magnetic fields above 4 milligauss, and not to any other type of cancer in children or adults, because there was "limited evidence" based on epidemiological studies and "inadequate" evidence in laboratory studies. In addition, the California Department of Health Services issued a report in June 2002 wherein three scientist-reviewers concluded "they are inclined to believe that EMF can cause some degree of increased risk" of childhood leukemia, adult brain cancer, Lou Gerhig's disease, and miscarriage. They also concluded that they "are not inclined to believe" EMF increases the risk of various other diseases, including breast cancer, heart disease, Alzheimer's disease, depression, and birth defects. [Exhibit 14, Application Appendix C, pages C-96-99]

forecasted growth rate in demand for this portion of LIPA's service territory.

Using an average load methodology for the transmission line, maximum magnetic field levels calculated at the nearest occupied structures are as follows:

EMF Study Location		Northerly Nearest Occupied Structure	Southerly Nearest Occupied Structure
1	Distance from C/L:	NA	80 ft
	mG:	NA	1.9
2	Distance from C/L:	60 ft	80 ft
	mG:	9.1	1.9
3	Distance from C/L:	20 ft	105 ft
	mG:	14.3	<1
4	Distance from C/L:	140 ft	25 ft
	mG:	5.8	30.5
5	Distance from C/L:	55 ft	35 ft
	mG:	27.9	25.5
6	Distance from C/L:	240 ft	150 ft
	mG:	<1	<1
7	Distance from C/L:	NA	NA
	mG:	NA	NA
8	Distance from C/L:	75 ft	NA
	mG:	<1	NA
9	Distance from C/L:	NA	NA
	mG:	NA	NA
10	Distance from C/L:	78 ft	NA
	mG:	11.6	NA
11	Distance from C/L:	40 ft	45 ft
	mG:	17.0	3.4

[Source: Exhibit 34]

During the construction design phase, LIPA will be considering minor modifications of the placement of the proposed 345 kV transmission line within the rights-of-way in respective segments to increase the distance from the nearest occupied

structures as an EMF minimization technique. LIPA will also be considering re-phasing of the circuits within the rights-of-way in respective segments as an EMF minimization technique.

Finally, LIPA will provide calculations of projected magnetic field levels for the areas surrounding the respective substations and the need for, and feasibility of, low-cost measures of "prudent avoidance" of magnetic fields which would result in a meaningful reduction of such levels. [Exhibit 27, pages 9-10].

### 3. Communications

At voltages of 345 kV and above, there is a potential for electric transmission lines to cause radio and telecommunication noise and television interference near the transmission line. However, the Facility is not expected to produce any such interference because of the use of a shielded, underground cable that virtually eliminates the emanation of an electric field beyond the cable. [Exhibit 14].

### D. Probable Environmental Impacts

The application, testimony and exhibits to be supplied for the record describe the nature of the probable environmental impacts of the Facility and are briefly summarized below. The environmental impacts are expected to be minimal, limited to temporary construction disturbance and the introduction of additional structures and equipment into existing LIPA substations. The Facility as located and configured represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations. The selected

route and configuration is preferred because it re-uses existing and previously disturbed rights-of-way, re-uses existing electrical interconnection equipment, avoids or minimizes the disturbance of natural habitat, is reasonable in terms of cost, and avoids disturbance of residential and commercial properties and activities in a densely populated area.

1. Land Use

The Facility has been sited and designed to avoid long-term or permanent impacts to all land uses within and adjacent to the proposed right-of-way [Exhibit 4, Section 4.3; Exhibit 35]. Long-term impacts to land uses as a result of operation of the transmission cables have been avoided by placement of the cables underground, utilization of existing utility and public right-of-ways, and by keeping the cable routes away from existing developed areas to the extent possible. Temporary land use disturbances will occur during installation of the cables; however, these temporary disturbances will not have significant impact on existing and known future planned land uses. The installation of new equipment and equipment upgrades at the existing substations will not result in any significant land use impacts.

Nearly the entire Eastern Connector route is located within existing road, railroad and other utility corridor right-of-ways in order to minimize impacts. These locations have been previously disturbed, thereby minimizing the potential impacts due to the installation of the transmission cable. Within the Levittown neighborhood, the LIRR right-of-way traverses a

predominantly residential area. The residences and other land uses will experience temporary disturbances associated with construction activities. Direct disturbance to properties other than the right-of-way will be avoided to the extent possible by accessing the right-of-way from existing roadways. Residents will be notified of the planned construction activities and schedule prior to the start of construction. Use of the right-of-way of the Seaford-Oyster Bay Expressway (NY135) avoids residences and minimizes local road closures and traffic re-routing during construction without impeding traffic flow on the Expressway.

The transmission cable will traverse two segments of Bethpage State Park. In the first segment, the route follows an existing LIPA overhead transmission line, a bike path and state park road through the park until it exits at the northern boundary. Placing the cable transmission line along the previously disturbed transmission line, roadways and bike paths minimizes the removal of trees that could have an adverse impact on park aesthetics. Due to the cable's underground design, there are no long-term impacts to the state park concerning its use or accessibility. Temporary impacts will be localized to one area of the park along the LIPA right-of-way and the bike paths in order to minimize the overall impacts. The temporary impacts will be further reduced and avoided by seasonal construction when the bike paths are not in use. Lastly, mitigation efforts such as grading and re-vegetation will be used to restore the area to its previous aesthetic. In the second segment, the transmission

cable will be installed with horizontal directional drilling (HDD) to minimize impacts to natural forestland and maintained golf course facilities.

The SUNY Farmingdale campus is located adjacent to Bethpage State Park. The proposed route stays entirely along the property boundary where it will have the least cumulative impacts. The cable will be located underground where it will have no long-term impacts. The short-term impacts to the Farmingdale campus are anticipated to be entirely from construction activities. However, construction impacts have been minimized by routing of the cable through an injection well field and along an overhead transmission line corridor where vegetation is currently maintained in an herbaceous condition. The disturbed areas from construction will be restored according to a re-vegetation plan. Detailed consideration of Facility placement and construction will avoid adverse effects on the injection well field, which is a contaminated site remediation facility operated by the U.S. Army Corps of Engineers.

The majority of the Western Connector will be within the limits of a LIRR right-of-way, one section of which traverses an area between two golf courses within the Nassau County-owned Eisenhower Park. The proposed route is located (essentially "out-of-bounds") between actively used areas of two golf courses.

The route was selected to reduce impacts to existing vegetation by minimizing the amount of clearing necessary. Directional drilling methods may also be utilized in areas around the maintenance building to reduce any impact to the existing

building and daily operations of the golf course personnel. The proposed construction will also be scheduled in the off-season to further reduce any impact to the operations of the golf course and the public enjoyment of the property. Similar to the measures proposed for Bethpage State Park, the construction will be localized to one area, will progress quickly and will include measures to restore the park aesthetic and minimize impacts on recreational use.

Construction shall be scheduled to minimize adverse effects on the use of residential and recreational areas adjoining the Facility, in particular, neighborhood park areas, golf courses at Eisenhower Park and golf courses and recreation trails at Bethpage State Park, considering, among other things, cost, environmental, and engineering factors, and to minimize impacts on transportation facilities and the traveling public as provided herein.

The project-specific EM&CP Plan that will be prepared for the Facility will provide construction details and identify mitigation measures to minimize disruption. Typical measures include:

- ◆ Undergrounding to eliminate Facility visibility;
- ◆ marking the edge of workspace to keep construction vehicles on the right-of-way;
- ◆ generally limiting construction to daylight hours;
- ◆ directional drilling under primary roadways to minimize traffic disruption;
- ◆ use of mufflers on construction equipment and limited idling of equipment at the construction site;
- ◆ wetting exposed areas to limit dust generation;
- ◆ Environmental Inspector on hand to address any concerns of residents;
- ◆ providing a community liaison to address concerns of residents; and

◆ Traffic Control and Safety Plan.

2. Visual Impact

The Facility has been sited and designed to minimize impacts to visual and aesthetic resources [Exhibit 4, Section 4.4]. There will be no permanent visual or aesthetic impacts caused by the cable and substation upgrades because cables will be located entirely underground and there will only be incremental upgrades to the existing substations in keeping with their current visual character. Temporary visual impacts to pedestrians, motorists, and residents will occur during installation of the cable due to the presence of construction equipment, and as a result of vegetation and selective tree clearing in existing right-of-ways. Due to the linear nature of the project, no one location will be impacted for more than a few days and disturbed areas will be restored. A conduit to accommodate the future upgrade of the Facility to 345 kV operation shall be installed as part of the Facility so as to eliminate the need for further disturbance of the landscaping around the northern perimeter of the Newbridge Road Substation.

Upon completion of the Neptune and LIPA transmission facilities at the Newbridge Road Substation (including the new spare 345 kV conduit), LIPA will prepare for DPS Staff review a visual assessment and landscaping/mitigation plan for the area around the Substation which shall include measures regarding removal of oversize trees or undesirable vegetation, landscaping, drainage, grading, measures to contain pedestrians and control litter including restoring or replacing fences and sidewalks and

the possible installation of a bus shelter, and such other mitigation measures as are appropriate. Provision for the consultation with other interested stakeholders, if appropriate, will be included. Upon approval by DPS Staff, the landscaping/mitigation plan will be implemented.

Existing plantings removed during construction that provide screening, including screening of the existing overhead facilities, shall be replaced with landscaped screening as appropriate to maintain adequate screening between the transmission corridor and residential locations.

### 3. Cultural Resources

Approximately 4.2 miles, or 32%, of the cable route has the potential to contain cultural resources [Exhibit 4, Section 4.5]. A Phase I cultural resource investigation is currently underway and will be completed prior to construction, and route modifications or other mitigation will be made as necessary to avoid adverse impact on resources identified. The New York State Office of Parks, Recreation and Historic Preservation was consulted regarding the potential effect of the Facility on historic and archaeological resources and according to correspondence dated February 28, 2005, has determined that the Phase I cultural resource investigation is necessary in previously undisturbed areas to ensure that the Facility will have no effect on historic and archaeological resources [Exhibit 36]. LIPA shall not undertake construction in areas where Phase I cultural resource surveys have not been completed and until such time as the results of any additional cultural resource

surveys that are required (Phase II or more) have been reviewed by the appropriate authorities, including OPRHP and DPS, and EM&CP details for resource protection or recovery are approved. Should archeological materials, human remains or evidence of human burials be encountered during construction, LIPA shall stabilize the area and cease construction activities pending a further review by appropriate authorities.

#### 4. Water Resources

No surface waters will be impacted by the Facility [Exhibit 4, Section 4.8]. The rate of storm water runoff will temporarily increase from exposed construction areas. Storm water runoff will be controlled through implementation of standard erosion and sedimentation control procedures, such as the installation of silt fences or hay bales around work areas. No groundwater resources will be directly impacted by the Facility and implementing best management practices and monitoring during construction will minimize the potential for indirect impacts.

#### 5. Vegetation and Terrestrial Resources

Impacts on vegetation and wildlife have been minimized by placement of the cable within existing cleared right-of-ways and disturbed areas, and by implementing directional drill construction techniques at various locations [Exhibit 4, Section 4.6]. An estimated 5.4 acres of forested vegetation will be permanently cleared to establish a permanent ROW for the Facility. The 5.4 acre area to be disturbed includes two crossings of successional northern hardwood (totaling 900 linear

feet) on the east and west margins of the Meadowbrook State Parkway, approximately 1,800 linear feet of successional northern hardwood on the east side of the Seaford-Oyster Bay Expressway (NY135) where forested vegetation extends to the edge of the roadway pavement, approximately 1,600 linear feet of successional northern hardwood in Bethpage State Park near South Barry Lane (of which approximately 1,100 linear feet would be directionally drilled); approximately 5,300 linear feet of chestnut oak forest in Bethpage State Park along the east side of Winding Road, and approximately 700 linear feet of white pine plantation along the east side of Winding Road. None of the forested areas to be cleared are considered significant or unique habitats and the 5.4-acre area affected is considered insignificant on both a local and regional level. All other vegetated areas temporarily disturbed by the Facility will be restored according to a project-specific re-vegetation plan. No wetlands or protected species and habitats will be impacted by construction and operation of the Facility.

LIPA will prepare a ROW and vegetation management plan for the entire ROW of the Facility including measures for periodic maintenance and the prevention of encroachments. NYSDOT will maintain the ROW within the right-of-way of the Seaford-Oyster Bay Expressway (NY135), including the management of encroachments.

LIPA will prepare a plan for converting the ROW vegetation within Bethpage State Park between station 86+00 and station 101+00 from tall-growing forest species to native grass

and shrub meadow. Implementation will be subject to approval by Bethpage State Park officials and if necessary LIPA will convene a meeting with DPS Staff and such officials to seek approval or to work out an alternate plan.

LIPA will prepare a plan for screen planting at Bethpage State Park at station 86+00 using shrub and small tree species appropriate for placement beneath the existing overhead transmission line to be installed as part of Facility restoration. Implementation will be subject to approval by Bethpage State Park officials and if necessary LIPA will convene a meeting with DPS Staff and such officials to seek approval or to work out an alternate plan.

#### 6. Geology, Soils & Erosion

No permanent or significant impacts regarding geology, soils or erosion are anticipated [Exhibit 4, Section 4.7]. Soils along the cable route will be temporarily disturbed during construction activities. Erosion-control structures, temporary seeding and re-vegetation, and erosion-control fabrics will be used to minimize temporary impacts to soils. Clearing, grading, subsequent maintenance, and restoration shall be confined to the certified right of way and new off-right-of-way access roads. Existing work areas along the cable route shall be restored to original conditions, except where restoration would be contrary to sound right-of-way management practices, or to any approved long-range right-of-way management plan applicable to the Facility; or a property owner (other than LIPA) on whose land restoration is required declines such effort.

7. Transportation

The Facility crosses numerous roadways [Exhibit 4, Section 4.9; Exhibit 35]. All plans for road crossings will be reviewed with the appropriate local and State officials to minimize traffic flow impacts during installation of conductors.

The EM&CP will indicate design specifications to address planned highway construction. A traffic control and safety plan will be prepared as part of the consultation process.

Impacts to traffic flow on primary roadways and at bridge crossings will be avoided by implementing directional drill construction techniques at all primary road and bridge crossings. Construction access to the right-of-way of limited access highways shall be provided from off-highway locations. Temporary lane closures may be required along secondary roadways during construction. Traffic control personnel and safety signage will be employed to ensure safe and successful traffic flow when secondary roadway lanes are temporarily shut down. The Facility will not have any significant impacts on railroads, aviation, or navigable waters. It is not anticipated that any lane closures or other traffic disturbances on the Seaford-Oyster Bay Expressway (NY135) would be necessary during construction as the trench proposed for the Facility at this location would be accessed from off-highway locations and would be located away from the roadway. Prior to submitting its construction plans for the Seaford-Oyster Bay Expressway (NY135) segment, LIPA will provide to NYSDOT a preliminary design marked to avoid conflicts with the following potential future transportation projects that

NYSDOT may seek to undertake in the future: an extension of the Bethpage Parkway, noise walls, an additional travel lane, and foundations for overhead sign structures, guide rail and highway lighting installations, and shall offer to consult with NYSDOT concerning any comments it may offer and will use reasonable efforts to accommodate any NYSDOT concerns.

LIPA agrees to undertake the following offsets:

- (a) Coordinate with the United States Postal Service to study the feasibility of installing and if feasible, install, an electric truck idling station at the regional postal facility adjacent to the Ruland Road Substation
- (b) Explore the feasibility of installing, and if feasible, install solar chargers or conduct a gas to electric conversion program at Eisenhower Park and Bethpage State Park golf courses for golf carts
- (c) Consult with the Metropolitan Transportation Authority and municipal officials concerning the feasibility and desirability of installing a bus shelter near Newbridge Road Substation, and install one if found to be feasible and desirable by said entities.
- (d) Coordinate with NYSDOT for studying feasibility of using LIPA property adjoining the Ruland Road Substation for a Long Island Rapid Commute Vehicle (RCV) Station (see NYSDOT & others, Long Island Transportation Plan 2000)
- (e) Install two 4" conduits and pullboxes in a trench along the Seaford-Oyster Bay Expressway (NY135) for future Intelligent Transportation System (ITS) use by NYSDOT as per NYSDOT detailed design drawings showing joint occupancy of 4" conduits and 345 kV cable.

#### 8. Noise

During construction of the Facility, there will be operating equipment that will require worker personal protection equipment pursuant to Occupational Safety and Health Administration regulations [Exhibit 4, Section 4.10].

Construction noise effects on the community will be mitigated by

the attenuating effect of distance, the presence of existing vegetation, the intermittent and short-lived character of the noise, and the use of functional mufflers on all construction equipment. People in close proximity to the Facility, generally within 300 feet, may experience some temporary disturbance due to audible noise during construction activities. Mitigation measures to minimize disruption to residential areas will be addressed in the EM&CP. Typical measures include:

- ◆ marking the edge of workspace to keep construction vehicles on the ROW;
- ◆ generally limiting construction to daylight hours;
- ◆ use of mufflers on construction equipment and limited idling of equipment at the construction site;
- ◆ having an Environmental Inspector on hand to anticipate any concerns of residents; and
- ◆ providing a community liaison to address concerns of residents.

The increase in noise during construction of the Facility will be temporary and minor based on the time of day and duration of construction. Modeling was performed to evaluate the noise impact associated with the upgrade of the Newbridge Road Substation. It was determined that the upgrades will result in essentially no increase in the existing noise levels; therefore, there would be no noise impacts. LIPA will conduct a pre-operational 345 kV upgrade noise study and post-operational noise study. Although the 345 kV upgrade is not expected to cause a noticeable increase in ambient noise levels that exist before operation of the 345 kV upgrade, LIPA will study the impact of the upgrade on ambient noise levels. If the incremental impact of the 345 kV upgrade does not create a noticeable increase in ambient noise levels at sensitive noise receptors, no further studies on mitigation will be necessary. If there is such a

noticeable incremental impact, LIPA will take appropriate measures to mitigate that impact.

If the aforementioned mitigation measures are not successful in mitigating any incremental, noticeable noise impact from the 345 kV upgrade at sensitive noise receptors, then LIPA will perform a cost benefit analysis concerning possible available noise reducing measures, such as noise control features, noise cancellation technology, and other measures for other equipment in the Newbridge Road Substation and provide said analysis to Staff. LIPA shall consult with Staff concerning what further action could be warranted or appropriate.

Construction will generally be performed only during the hours of 7:00 A.M. - 6:00 P.M., Monday through Friday. Nothing herein shall preclude LIPA from making the necessary arrangements for the extension of work hours with appropriate local agencies in compliance with local ordinances. DPS Staff shall be notified at least 48 hours in advance if planned weekend, evening or holiday construction becomes necessary.

E. Minimum Adverse Environmental Impact

The application, testimony and exhibits to be supplied for the record describe the availability and impact of alternatives to the Facility and are briefly summarized below. The Facility as located and configured is preferable, on balance considering all factors, to any of the alternatives considered. The selected route and configuration is preferred because it makes extensive use of existing rights-of-way and minimizes land use impacts and the disturbance of natural habitat, is reasonable

in terms of cost, and does not have an adverse effect on system reliability.

1. The "No-Build" Alternative

The "No-Build" alternative is not a viable option in this proceeding as the decision to approve the Neptune RTS has already been found to be in the public interest by the Commission. Assuming the Neptune RTS will be constructed (construction is currently scheduled to begin October 26, 2005), additional transmission facilities on Long Island, such as the Facility, to transmit the electricity delivered to Long Island via the Neptune RTS, are necessary.

2. Alternate Routes

The Facility as located and configured is the superior route as it makes efficient use of existing right-of-way corridors and involves the least amount of community disturbance. Five alternate routes were also considered [Exhibit 3, Section 3.2.1; Exhibit 35]. Alternate Route 1 is not recommended because construction would necessitate lane closures, directly impede traffic and hinder access to area homes and apartments for an extended period of time. Alternate Route 2 is not recommended due to disruption of residential areas and very limited access space along the route's bluff area, which will preclude safe operation of excavating equipment as well as adequate route space for the Eastern Connector. In addition, the need to renegotiate numerous easements with multiple property owners is viewed as less viable in relation to the preferred route.

Alternate Route 3 is not recommended because it entails

full or partial road closures, traffic rerouting and interruptions to access of residential homes and the main entrance to the Bethpage State Park golf courses throughout the construction period. Numerous existing underground facilities along this alternate route are also expected to complicate construction and increase construction time as compared to the proposed route.

Alternate Route 4 is not recommended because the route is lined with residential homes on both sides and Farmingdale University on the west near State Route 110 where underground facilities (e.g., natural gas, telecommunications, water, drainage, and associated manholes) occupy most of Melville Road for its entire length (LIRR right-of-way to State Route 110) making the installation of a major underground transmission circuit very difficult at best. Melville Road was recently improved and repaved and additional construction would be a major disruption to the surrounding established community. Facility construction along State Route 110, which is within a heavily-traveled retail and commercial business area, is expected to adversely affect traffic flow and business opportunities in the area. For this alternate, road or lane closures and traffic reroutes can be expected for the duration of the construction period through this overly burdened thoroughfare.

Finally, Alternative 5 is not recommended because the Prime Route has lower cumulative impacts. Alternative 5 provides less separation of the route from residential and commercial properties thereby potentially increasing temporary noise and

land use impacts.

Within Alternate 5 the cable traverses 19 lots owned by others in which easements to install and maintain the 345kV cable must be secured, at a minimum. Land purchase or eminent domain issues are likely with respect to some of these lots. In addition, there may be some economic impacts to currently undeveloped residential lots along the northern portion of Alternative 5 because the required cable easements may limit the future use and economic development of portions of the properties. Construction time for this alternative is expected to take 2 weeks more than the Prime Route. In addition to the impacts noted above, the economic impact to the five businesses along Alternative 5 will be greater than in the Prime Route because the businesses along the Prime Route would be accessed from behind and there would be no interference with access as there would be for Alternative 5. Finally, the directional drill under Central Avenue and the LIRR Commuter Rail is expected to be deeper than the designed 15 to 20 feet below grade depth in order to pass below the LIRR track facility which is 10 to 12 feet below nearby road grade at this location. The added depth of burial is expected to adversely impact the 345 kV cable thermal rating and possibly restrict planned power flow along this portion of the circuit.

The Prime Route minimizes noise and land use disturbance impacts because of the natural treed buffer (typically 50 feet to 100 feet) between the roadway and the residential homes to the east, which are approximately 160 feet

away from the cable route. Transportation and construction impacts including access to homes and businesses and the potential for temporary loss of utility services are minimized by locating the cable entirely within a mowed right-of-way along the east side of the Seaford - Oyster Bay expressway and by minimizing the number of intersections which are traversed.

In summary, some of the consequences related to the alternatives discussed above are traffic delays, extended construction time due to the numerous underground obstructions throughout the alternative routes, increased construction times and labor costs, construction noise and traffic impacts at residential sites, potential adverse financial impacts on local businesses due to nearby construction, as well as potential access limitations to residences, businesses and institutions due to excavation and other construction activities. These consequences would significantly outweigh the benefit of a shorter circuit length resulting in lower material costs. As such, use of these route alternatives are not recommended because of the consequences, risks, and significantly greater local community impacts.

### 3. Alternative Technologies

An overhead transmission facility alternate would typically require greater right-of-way width than underground facilities at a similar voltage rating [Exhibit 3, Section 3.2.2]. Because of the lack of adequate right-of-way space within the corridor between the substations, the proximity of residences to the right-of-way that would make adequate screening

of new tower structures impossible, and the potential very high costs for the acquisition of additional right-of-way for this project, underground construction of the Facility is warranted.

The use of high voltage direct current ("HVDC") technology was considered and rejected because the Neptune RTS termination at the Newbridge Road Substation will already have been converted from DC to AC, and will be compatible with the LIPA electrical transmission system. Consequently, HVDC technology would not be warranted for this application.

The use of a dielectric fluid filled cable or a pipe-type technology was considered and rejected because the use of dielectric fluid to fill the pipe and both insulate and cool the cable increases engineering complexity and potential environmental risks associated with a cable leak.

Finally, in order to satisfy the delivery requirements and considering the existing LIPA electrical system characteristics and right-of-way limitations, 138 kV was selected for the initial operational phase. LIPA's long-range transmission plans call for the eventual installation of 345 kV circuits on the right-of-ways between the East Garden City and Ruland Road Substations. Given the limited space available in these right-of-ways, and the long-range plans for these right-of-ways, cables designed to operate at 345 kV at a future time are the appropriate design for this Facility.

#### F. Undergrounding Considerations

Except for the proposed substation modifications and manhole covers, the Facility is and should only be sited as an

underground facility given the density of development in the developed portions of the route and the parkland nature of the remainder of the route.

G. Conformance with Long-Range Plans for Expansion of the Electric Power Grid

The Facility does not violate any long-range plans, is consistent with the most recent State Energy Plan (2002), is consistent with the LIPA Energy Plan and will not adversely impact the electrical system of the State and interconnected systems [Exhibit 13]. The contributions of the Facility will help achieve the goals and objectives that LIPA's Energy Plan seeks for the transmission system on Long Island. In its Energy Plan, LIPA developed five (5) strategic objectives that are intended to guide the initiatives and actions LIPA undertakes over the next decade. The objectives are: (i) enhance the reliability of the bulk power system, (ii) enhance the reliability of the distribution system, (iii) minimize customer rates and increase customer satisfaction, (iv) promote a healthy environment, and (v) position LIPA to respond rapidly to change.<sup>9</sup> The design of and benefits provided by the Facility are consistent with these objectives.

H. Cost Issues

Staff believes that the Commission can and should find that the Facility will serve the interests of electric system economy and reliability. The Facility is the least-cost of the major configuration alternatives considered by the Signatory

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<sup>9</sup> LIPA Energy Plan, Vol. 1, p. vii.

Parties:

<u>Joint Proposal Configuration:</u>	<u>Cost:</u>
Prime Route (Western & Eastern Connector Route)	\$115 Million

<u>Alternative Configurations:</u>	<u>Cost:</u>
Alternate Route 1	\$124-127 Million
Alternate Route 2	\$114-116 Million
Alternate Route 3	\$117-120 Million
Alternate Route 4	\$123-126 Million
Alternate Route 5	\$116 Million

[Source: Joint Proposal, page 6].

#### I. Conformance with State Laws and Regulations

Staff has reviewed the State laws and regulations applicable to the proposed Facility. If an Article VII Certificate were to be granted subject to the Joint Proposal's proposed certificate conditions [Exhibit 27], Staff believes and recommends that a review of the record in this proceeding justifies a finding that the substantive provisions of State laws and regulations are or shall be conformed to by LIPA, the applicant, in the construction and operation of the Facility.

##### 1. New York State Uniform Fire Prevention and Building Code

LIPA has agreed to undergo building plan review and obtain building permits, inspections, and certificates of occupancy, as appropriate, upon the inspection and completion of construction, from the New York State Office of General Services (NYSOGS) to the degree that the subject matter of the New York

State Uniform Fire Prevention and Building Code applies to the Facility. [Joint Proposal, p. 23; for implementation, see: Exhibit 27, p. 2]. If LIPA follows such a course of action, not as an impermissible delegation or transfer of authority from the Commission under 19 NYCRR, § 1204.13, but as the exercise of NYSOGS under its independent authority that it would normally exercise but for Section 172(1) of the Public Service Law, the record in this proceeding supports a finding under Public Service Law Section 168(2)(d) that the Facility is designed to operate in compliance with applicable state laws, and regulations issued thereunder, concerning the New York State Uniform Fire Prevention and Building Code.

## 2. NYS DOT Permits

LIPA has agreed to undergo highway work permit and use and occupancy permit review and to obtain highway work and use and occupancy permits from NYS DOT pursuant to 17 NYCRR, Part 131 for the construction and operation of the Facility in the right-of-way of the Seaford-Oyster Bay Expressway (NY135), subject to the Commission's ongoing jurisdiction. [Joint Proposal, p. 23; for implementation, see: Exhibit 27, pp. 2-3]. If LIPA follows such a course of action, the record in this proceeding supports a finding under Public Service Law Section 168(2)(d) that the Facility is designed to operate in compliance with applicable state laws, and regulations issued thereunder, concerning the construction and operation of the Facility in the right-of-way of the Seaford-Oyster Bay Expressway (NY135).

3. Other State Laws

Adoption by the Commission of the recommended certificate conditions [Exhibit 27, pp. 2-3] will ensure and support a finding under Public Service Law Section 168(2)(d) that the Facility is designed to operate in compliance with the substantive provisions of all applicable state laws, and regulations issued thereunder.

J. Application of Local Laws and Regulations

In enacting Article VII, the Legislature declared it to be the purpose of such Article "to provide a forum for the expeditious resolution of all matters concerning the location of electric and gas transmission facilities . . . and all matters of state and local laws, in a single proceeding" [L. 1970, c.272, §1]. Two sections of Article VII deal directly with matters of local law affecting major utility transmission facilities.

The Commission may not grant a certificate for the construction or operation of a major utility transmission facility unless it shall find and determine "that the location of the facility as proposed conforms to applicable . . . local laws and regulations issued thereunder, all of which shall be binding upon the commission" [N.Y. Pub. Serv. Law, §126, 1(f)]. However, if the Commission finds that "any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement . . . as applied to the proposed facility . . . is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers" the Commission may "refuse to apply"

such local requirement [N.Y. Pub. Serv. Law, §126, 1(f)].

Public Service Law §130 provides that "no . . . municipality . . . may require any approval, consent, permit, certificate or other condition for the construction or operation of a major facility." Public Service Law §130 is self-executing, in that commencement of an Article VII proceeding at once displaces the kinds of municipal requirements to which the Section principally refers, those calling for the obtaining of local approvals for the construction or operation of the facility sought to be authorized in such Article VII proceeding [Case 25845, Consolidated Edison Company of New York, Inc. - Southern Tier Line, Op. No. 72-2, (issued January 25, 1972) 12 NYPSC 267, 316].

Therefore, the local laws inapplicable under PSL §130 are those imposing "procedural" requirements, while those applicable but subject to waiver under PSL §126(1)(f) impose "substantive" requirements consisting of specific standards or prohibitions [Cases 92-T-0114 and 92-T-0252, Niagara Mohawk Power Corporation - Independence Station, Opinion No. 93-17 (issued August 20, 1993) (hereinafter "Local Law Order"), mimeo p. 19].

The following guidelines for interpretation of the affected statutes apply in Article VII proceedings:

- (1) State and local laws and regulations that require approvals, consents, permits, certificates, or other conditions for the construction or operation of a utility facility (including those which afford agencies other than the Commission the discretion to apply their provisions) are inapplicable under PSL §130.

(2) Local laws and regulations that contain substantive requirements or prohibitions relative to the facility shall be applicable under PSL §126(1)(f) unless the Commission finds the local laws unreasonably restrictive and refuses to apply them under the statute.

(3) For local laws and regulations that contain substantive requirements or prohibitions but allow for waiving or conditioning of those requirements or prohibitions upon the receipt of local approvals, consents, permits, or certificates, the procedural requirements would be inapplicable under PSL §130, but the substantive requirements or prohibitions would remain in force unless waived (in the case of local laws) under PSL §126(1)(f) for cause.

(Local Law Order, mimeo pp. 19-20)

Unless a party can provide an adequate showing that the substantive requirements or prohibitions of local laws are unreasonably restrictive, the Commission is bound by those requirements or prohibitions (Local Law Order, mimeo p. 20). The burden is upon applicants to identify applicable local laws with substantive requirements and to justify adequately any need for waivers of any they consider unreasonable restrictive or that prohibit construction of the facility [Local Law Order, mimeo p. 20; Delaney v. Public Service Com'n, 507 N.Y.S.2d 471, 473 (A.D.2 Dept., 1986)].

In its application, LIPA identified the local laws applicable to the Facility [Pre-filed Exhibit 7 as corrected by Errata dated March 3, 2005 and proposed Exhibit 33].

1. Town of Hempstead Local Laws and Ordinances

The Facility can be constructed by LIPA in a manner that conforms to all the substantive requirements of all of the local laws and ordinances of the Town of Hempstead applicable to the location and design of the Facility, except to the degree that the operation of machinery noise prohibitions of Chapter 144 of the Code of the Town of Hempstead would prohibit LIPA from conducting manhole splicing operations on a 24 hour basis. A generator and air conditioning unit are required to run continuously during the manhole splicing operation and produce moderate levels of noise [Exhibit 33]. The technology of splicing is such that the activity, once commenced, must continue on a 24 hour basis until completed [Exhibit 33]. The Commission should refuse to apply Chapter 144 of the Code of the Town of Hempstead to the degree that it would prohibit LIPA from running a generator and air conditioning unit continuously while conducting manhole splicing operations on a 24 hour basis, for reasons of the limitations of existing technology. [For implementation, see: Exhibit 26, page 2].

As the original application in this proceeding did not anticipate a potential refusal to apply Chapter 144 of the Code of the Town of Hempstead, pursuant to Section III-H, Paragraph 2 of the Joint Proposal, LIPA is to provide notice of the proposed refusal to apply the local law to the chief executive officer of the Town of Hempstead. The procedural steps for review and consideration of the Joint Proposal should allow the Town of Hempstead an opportunity to express its support, opposition or

indifference to the proposed refusal. The record in this proceeding supports a finding under Public Service Law Section 168(2)(d) that the Facility is designed to operate in compliance with all other applicable local laws, and regulations issued thereunder of the Town of Hempstead [Exhibit 7].

2. Town of Oyster Bay Local Laws and Ordinances

The Facility can be constructed by LIPA in a manner that conforms to all the substantive requirements of all of the local laws and ordinances of the Town of Oyster Bay applicable to the location and design of the Facility. The record in this proceeding supports a finding under Public Service Law Section 168(2)(d) that the Facility is designed to operate in compliance with all other applicable local laws, and regulations issued thereunder of the Town of Oyster Bay [Exhibits 7 & 33].

3. Town of Huntington Local Laws and Ordinances

The Facility can be constructed by LIPA in a manner that conforms to all the substantive requirements of all of the local laws and ordinances of the Town of Huntington applicable to the location and design of the Facility, except to the degree that the construction activity prohibitions of Chapter 141 of the Code of the Town of Huntington would prohibit LIPA from conducting manhole splicing operations on a 24 hour basis. A generator and air conditioning unit are required to run continuously during the manhole splicing operation and produce moderate levels of noise [Exhibit 33]. The technology of splicing is such that the activity, once commenced, must continue on a 24 hour basis until completed [Exhibit 33]. The Commission

should refuse to apply Chapter 141 of the Code of the Town of Huntington to the degree that it would prohibit LIPA from running a generator and air conditioning unit continuously while conducting manhole splicing operations on a 24 hour basis, for reasons of the limitations of existing technology. [For implementation, see: Exhibit 26, page 2].

As the original application in this proceeding did not anticipate a potential refusal to apply Chapter 141 of the Code of the Town of Huntington, pursuant to Section III-H, Paragraph 4 of the Joint Proposal, LIPA is to provide notice of the proposed refusal to apply the local law to the chief executive officer of the Town of Huntington. The procedural steps for review and consideration of the Joint Proposal should allow the Town of Huntington an opportunity to express its support, opposition or indifference to the proposed refusal. The record in this proceeding supports a finding under Public Service Law Section 168(2)(d) that the Facility is designed to operate in compliance with all other applicable local laws, and regulations issued thereunder of the Town of Huntington [Exhibit 7].

K. Real Property Considerations

Need has been demonstrated in this proceeding for the acquisition of additional permanent right-of-way, a voluntary NYSDOT use and occupancy agreement, and an off-right-of-way access easement on lands adjoining the existing right-of-way, as set forth below [Note: Station numbers refer to design drawings in Exhibits 5, 30, 31 & 32].

1. Permanent Right-of-Way

Need has been demonstrated in this proceeding for the acquisition of additional permanent right-of-way, as follows:

RIGHT-OF-WAY - WESTERN CONNECTOR

- a. Long Island Railroad (LIRR) Right-of-Way
  - Crossing south of East Garden City Substation near Station 258
  - From approximately Station 288 to Station 370
  - From approximately Station 370 to Station 460
- b. Private Property between LIRR and Commercial Avenue near Station 259
- c. Eisenhower Park Building Bypass near Station 370 (Nassau County)

RIGHT-OF-WAY - EASTERN CONNECTOR

- a. Long Island Railroad Right-of-Way from approximately Station 465 to Station 645
- b. Bethpage State Park
  - From approximately Station 55 to Station 105
  - From approximately Station 115 to Station 123
  - From approximately Station 167 to Station 178
- c. State University at Farmingdale
  - From approximately Station 179 to Station 203
  - From approximately Station 210 to Station 243
- d. Private Property (Tax Lot 55.3) near Stations 251 & 252  
[Exhibits 5, 30, 31 & 32].

2. NYSDOT Use and Occupancy Agreement

LIPA has agreed to obtain a use and occupancy permit from NYSDOT pursuant to 17 NYCRR, Part 131 for the construction and operation of the Facility in the right-of-way of the Seaford-Oyster Bay Expressway (NY135) from approximately Station 0 to Station 55 [Exhibit 5, Figure 5-2], subject to the Commission's ongoing jurisdiction. [Joint Proposal, p. 23; for implementation, see: Exhibit 27, pp. 2-3].

3. Off-Right-of-Way Access Easement

Need has been demonstrated in this proceeding for the acquisition of an off-right-of-way access easement to serve the Facility. An access easement is necessary to provide access to the Facility within the right-of-way of the Seaford-Oyster Bay Expressway (NY135) from the east at a staging area south of Central Avenue near Station 15 so as to avoid interference with traffic on the expressway [Exhibit 5].

L. Proposed Findings

The record in this proceeding supports the proposed findings set forth in Exhibit 26.

M. Certificate Conditions

The proposed certificate conditions set forth in Exhibit 27 are acceptable and appropriate for inclusion in a certificate authorizing construction and operation of the proposed Facility as reconfigured.

N. EM&CP Guidelines

The General Guidelines for Environmental Management and Construction Plan(s) set forth in Exhibit 28 are acceptable and appropriate for application to the proposed Facility as reconfigured.

O. Application Waivers

By motion, LIPA asked for several waivers of requirements contained in 16 NYCRR Part 86. By motion response, Staff provided qualified opposition to certain of the waiver requests. LIPA's motion for a waiver of the application requirements of 16 NYCRR Sections 86.3(a)(1)(iii) and 86.3(b)(2)

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regarding mapping requirements and aerial photographs should be granted in the manner requested in the motion, except as to Figure 5-2, Sheet 10 of 10 which was revised on April 26, 2005. LIPA's motion for a waiver of the application requirements of 16 NYCRR Section 86.10(a) regarding cost should be denied as moot as such information has been submitted. Proposed Certificate Condition 9(a) [Exhibit 27, p. 1] contains jointly proposed language the Commission should adopt to address the waivers.

CONCLUSION

For the foregoing reasons, the Staff of the Department of Public Service requests approval and adoption of the terms of the Joint Proposal.

Respectfully submitted,

PAUL AGRESTA  
Assistant Counsel

Dated: Albany, New York  
October 21, 2005