

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 26, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman

CASE 11-T-0116 - Application of Long Island Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law to Increase the Design Capacity of the Existing 10.6 Mile Wildwood to Riverhead Electric Transmission Line from 69kV to 138 kV.

ORDER APPROVING  
THE ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN  
TO INCREASE THE DESIGN CAPACITY OF THE EXISTING WILDWOOD TO  
RIVERHEAD ELECTRIC TRANSMISSION LINE

(Issued and Effective July 3, 2014)

BY THE COMMISSION:

INTRODUCTION

On July 12, 2012, the Commission issued an Order adopting the terms of a Joint Proposal and granted the Long Island Power Authority (LIPA or the company) a Certificate of Environmental Compatibility and Public Need (Certificate) in accordance with Section 122 of the Public Service Law for a proposed increase to the design capacity of the existing 10.6 mile Wildwood to Riverhead electric transmission line (the

Project).<sup>1</sup> Ordering Clause 5 of the July 12, 2012 Order directed LIPA to submit an Environmental Management and Construction Plan (EM&CP) consistent with the Certificate Conditions applicable to the Project. We conclude that the EM&CP, as revised, meets the requirements of the Certificate Conditions and is otherwise in compliance with Certificate granted in the July 12, 2012 Order, and therefore, approve the EM&CP.

EM&CP

On January 23, 2013, LIPA submitted a proposed EM&CP and forwarded copies to the parties and three public libraries in the Project vicinity. On February 21, 2013, LIPA submitted a revised notice adding that three new poles will be installed adjacent to the Wildwood Substation in conjunction with the undergrounding of a 300 foot section of the Project at the substation. The revised notice of the filings was served on 275 residents along the line route, was published in the Community Journal, Riverhead News Review, and the Village Beacon Record and an electronic copy of the EM&CP was made available on its website.

Comments were due 45 days after LIPA's filings. The Departments of Agriculture & Markets (Ag & Markets) and Environmental Conservation (DEC) submitted comments. The Department of Public Service (DPS Staff) also provided comments regarding the EM&CP.

On December 19, 2013, the company filed a revised EM&CP including its responses to comments from the various parties. On January 3, 2014, Ag & Markets provided additional comments on the revised EM&CP. DEC provided additional comments on February 20, 2014 and on March 17, 2014 LIPA responded to

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<sup>1</sup> Case 11-T-0116, Order Adopting the Terms of A Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (issued July 12, 2012).

those comments, as well as some concerns Staff had communicated to the company.

#### Party Comments

LIPA revised the EM&CP in a number of ways to address concerns expressed by various parties. The concerns and LIPA's responses to party comments are summarized below.

#### Department of Environmental Conservation

In response to comments submitted by DEC, LIPA added a copy of the July 12, 2012 Certificate to the revised EM&CP. DEC commented that the Appendix D of the EM&CP did not include a list of invasive species or identify the location of invasive species. DEC also stated that the EM&CP did not provide the requisite detail concerning an invasive species prevention and management plan or the location of cleaning activities related to invasive species. LIPA responded by clarifying that the EM&CP would be supplemented with an invasive species list and revised drawings showing the locations of invasive species and invasive species cleaning stations after it had completed its invasive species survey, scheduled to take place three to nine months prior to commencing construction. LIPA also revised the list of invasive species best management practices to provide additional detail on methods and procedures it intends to follow. Further, LIPA clarified the content of the Environmental Guidance procedures contained in Appendix F.

In response to DEC's concerns regarding the long-term right of way management plan for the Project, LIPA explained that the Project is located in an existing right-of-way and that the long-term management plan in the EM&CP is currently being followed for the right-of-way. LIPA also provided explanations for the ordering clauses and certificate conditions which did

not apply to the EM&CP and added an explanation regarding accessing the project within a State-regulated wetland adjacent area. LIPA added a certification that the EM&CP was organized and developed in accordance with the requirements of the Certificate and the EM&CP Guidelines. Further, LIPA replaced references to National Grid documents with reference to LIPA environmental documents, confirmed that it would not rely on National Grid documents and revised the EM&CP to specify the exact location of facilities and operations centers referenced in the document.

In response to DEC's February 20, 2014 comments, LIPA explained that the term "compatible species" as used in the EM&CP (Table 1, Appendix G) signifies plant species compatible with the normal operation of electric transmission facilities based on the species height and growth potential. LIPA clarified that the term was not meant to identify ecologically compatible (or non-invasive) species. LIPA also revised the EM&CP to remove those species DEC lists as Prohibited Invasive Species.<sup>2</sup> LIPA reiterated a number of best practices it will implement to prevent transport and spread of invasive species during construction, added the Environmental Energy Alliance of New York's Best Management Practices for Preventing the Transportation of Invasive Plant Species to Appendix F of the EM&CP and stated that it would follow the management practices described there for construction and long-term maintenance of transmission line within DEC jurisdictional areas including wetlands and regulated adjacent areas. LIPA also replaced references to National Grid's general permit for freshwater wetland to that of Public Service Enterprise Group Long Island (PSEGLI), explaining that both general permits provide for the

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<sup>2</sup> See proposed 6 NYCRR Part 575, available at <http://www.dec.ny.gov/regulations/93900.html>.

same protections. Finally, LIPA clarified that there are no structures proposed in wetland or water bodies within the Project vicinity and added the freshwater wetland classifications to Table 3 (p. 20).

Department of Agriculture and Markets

In response to Ag & Markets' comments that the Environmental Features Drawings lacked sufficient information, LIPA revised the drawings to include aerial ortho-photographs as the background and to clearly depict parkland and parcel boundaries. LIPA also revised the drawings to depict land dedicated to specialty crops. LIPA added a statement indicating that the Environmental Supervisor/Monitor would provide site-specific techniques to be implemented to avoid or minimize construction-related impacts to agricultural resources. LIPA also added information showing the location of existing right-of-way access points and work areas near structures and corrected or clarified information regarding areas within and along the right-of-way currently or previously used in agricultural production.

Although it does not expect any agricultural soils to be compacted due to its intention to avoid working within agricultural lands during the growing season, LIPA added a provision stating that if it becomes necessary to traverse cultivated land during the growing season, soil penetrometer readings would be taken every 100 feet immediately prior to and after construction activities. If soil compaction is indicated by post-construction readings, LIPA provided that it would work with the affected landowner to ensure proper remediation of the soil resource.

In a letter dated January 3, 2014, Ag & Markets expressed continued concern regarding safeguards for

agricultural resources. LIPA's March 17, 2014 EM&CP revisions explained that it will only access poles located within active agricultural lands when the ground is frozen to alleviate concerns regarding soil compaction. LIPA also clarified that it intended to be responsible for testing soils for compaction caused by construction of the project and remediate any compaction it does cause. LIPA also provided additional information regarding pole location and access.

DPS STAFF

DPS Staff provided input to LIPA regarding various portions of the EM&CP. LIPA revised the EM&CP to clarify or broaden the exclusion areas for (i) field cleaning of equipment to include areas within 100 feet of any water body or wetland and (ii) staging/laydown locations and pesticide/herbicide application to include the regulated wetlands and their adjacent areas. In response to Staff's request, LIPA confirmed and delineated two National Wetland Inventory mapped wetlands and provided details concerning the two areas, which confirms that the areas are outside the 20 foot work area within the right-of-way and therefore, the project is not expected to have any significant adverse impact on those wetland areas. LIPA also clarified that the work areas around each pole will be limited to 20 feet and identified the areas on the drawings provided in Appendix D of the EM&CP.

LIPA also clarified other sections of the EM&CP by adding headings to separate the discussion of vegetation, soil and hydrological wetland indicators and construction and access practices in wetland areas. LIPA indicated in its revised EM&CP that for engineering and reliability reasons, including eliminating risks associated with multiple overhead 138 kV transmission lines crossing each other, it extended the

underground segment of the approved transmission facility from approximately 300 feet to approximately 900 feet. DPS Staff agrees with the company's justification and the change will not result in any substantial change in environmental impacts nor is it related to any contested issues decided during the Article VII proceeding. LIPA states that it will backfill the trench needed for the 900 foot section of underground cable with soil removed from the trench and will backfill holes where existing poles will be removed with soil removed to install the required new poles near the substation.

In response to Staff's input, LIPA added a discussion of specific construction schedule restrictions. LIPA also confirmed or provided additional detail regarding notice to the general public, adjoining landowners and other identified stakeholders regarding the Project in general, as well as contact information for complaints. LIPA also provided additional information regarding fuel/chemical spills procedures for the Project; details were provided regarding engineering, right-of-way limits and layout of the underground cable, proposed new poles and the Wildwood substation. Further, LIPA revised the EM&CP to include details regarding the construction practices for changing insulators, clarified or corrected proposed construction access to various poles (again emphasizing that it does not intend to acquire additional property rights), and communication and protocols for portions of the project where construction will occur adjacent to the Long Island Rail Road.

#### DISCUSSION AND CONCLUSION

The transmission facility to be upgraded is located within an existing right-of-way that runs between LIPA's Wildwood and Riverhead Substations and completion of the Project

will not require LIPA to acquire any additional property rights. The Project consists primarily of installing new insulators connecting the existing conductor to existing poles. A short piece of the transmission facility (approximately 900 feet) near the Wildwood Substation will be installed underground and several new poles will be installed in the existing right-of-way where the underground segment will transition to overhead prior to entering the Wildwood Substation. LIPA states that no additional property rights will need to be acquired for this Project.

The adverse environmental impacts of the Project are expected to be minimal due to the Project's location within an existing right-of-way and the limited requirement for new poles and trenching near LIPA's Wildwood Substation. Moreover, the Joint Proposal's terms and conditions provide that LIPA must utilize mitigation activities to minimize or prevent any adverse impacts to the environment that could occur during Project construction, operation and maintenance.

#### Agricultural Resources

The Project crosses active agricultural lands and a one mile section designated Suffolk County Agricultural District Six. Agricultural activities currently occurring under the existing transmission structure are expected to continue following completion of the Project. Moreover, temporary impacts will be minimized through proper scheduling and planning and in response to Ag & Markets concerns, LIPA revised the EM&CP to clarify that it will only access poles located within active agricultural lands when the ground is frozen to alleviate the potential for soil compaction. LIPA also clarified in the EM&CP that it is responsible for testing soils for compaction and for remediating any compaction cause by Project activities.

Long Term Right of Way Management

DEC expressed concern regarding the description contained in LIPA's first EM&CP submission concerning right-of-way management. LIPA's subsequent clarification explaining that LIPA and not National Grid is responsible for the management of the right-of-way and provided sufficient explanation for those Certificate Conditions which do not apply to this Project. Many Certificate Conditions that may be applicable to other Article VII transmission projects are not applicable to this Project because it is being constructed in an existing right-of-way, almost exclusively on existing structures, with minimal vegetation clearing and no additional acquisition of property rights.<sup>3</sup>

Invasive Species Management

DEC's comments indicated that proper management of invasive species is a key issue for this Project and we agree. As required by the Certificate, LIPA's EM&CP includes an invasive species prevention and management plan for agricultural areas and DEC regulated freshwater wetlands and adjacent areas. Further, LIPA added the Environmental Energy Alliance of New York's Best Management Practices for Preventing the Transportation of Invasive Plant Species to Appendix F of the EM&CP and has committed to following the management practices described there for construction and long-term maintenance of transmission line within DEC jurisdictional areas. Prior to construction, LIPA will also conduct an invasive species survey and provide the results of the survey including lists of invasive species and their locations to DPS Staff and DEC. Not only is the survey important for this Project but it will also

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<sup>3</sup> Authorized clearing is limited to mowing and brush and branch removal and does not provide for the clearing of trees.

provide DEC with valuable information about the inventory of invasive species in the Project area.

CONCLUSION

The revised EM&CP as modified above complies with the Certificate granted in this case and is approved.

The Commission orders:

1. The Environmental Management and Construction Plan (EM&CP) filed January 23, 2013 (as supplemented and revised on December 19, 2013 and March 17, 2014) by the Long Island Power Authority (LIPA) is approved.

2. LIPA shall conduct a survey for invasive species 3 to 9 months before the start of construction of the project and prior to the start of any construction activities shall file with the Secretary a revised set of Environmental Features and Drawings showing the location(s) of identified invasive species, location(s) of invasive species cleaning stations, and a list of invasive species to be encountered during construction. LIPA shall provide copies of the revised documents to the Department of Environmental Conservation and the Department of Agriculture and Markets.

3. At least thirty (30) days prior to the start of construction, LIPA shall file with the Secretary an original and five (5) copies of the complete final version of the EM&CP as described in this Order, including the requirement of Condition 2 above. LIPA shall also place a copy of the final EM&CP in three public libraries in the Project vicinity and post an electronic copy on its website.

4. This proceeding is continued.

By the Commission,

KATHLEEN H. BURGESS  
Secretary