

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 20, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 01-T-1679 - Application of Long Island Power Authority for a
Certificate of Environmental Compatibility and
Public Need Regarding the Replacement of the
138 kV Submarine Electric Transmission Line
Between Northport, New York and Norwalk,
Connecticut.

ORDER ADOPTING THE TERMS OF THE JOINT
PROPOSAL AND GRANTING CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

(Issued and Effective June 21, 2007)

BY THE COMMISSION:

INTRODUCTION

On October 25, 2001, the Long Island Power Authority (LIPA) applied, pursuant to Public Service Law (PSL) Article VII, for a certificate of environmental compatibility and public need to construct a major electric transmission facility, a 138 kV submarine electric transmission line between Northport, New York and Norwalk, Connecticut.¹ The purpose of the facility is to replace seven liquid-insulated cables mostly lying on the floor of Long Island Sound with three solid dielectric cables buried approximately 10 feet below the floor of the Sound. The cables being replaced were installed in 1969 and have had a history of damage and service outages.

¹ Our certificate applies only to the jurisdictional boundaries of New York State.

Shortly after the filing, it became apparent that additional coordination between Connecticut Light & Power (CL&P) and LIPA was required. Accordingly, LIPA filed a request on July 19, 2002 to suspend further proceedings until these issues could be resolved.

Those issues were resolved as stated in LIPA's October 20, 2004 letter, and on November 24, 2004 LIPA submitted a substantially amended application. On December 15, 2004, a notice of impending negotiations was filed with the Commission and served on all parties in accordance with our rules.² The initial settlement conference was held on March 21, 2005. Subsequent settlement negotiations among the parties led to the March 14, 2007 filing of a joint proposal (Proposal) executed by LIPA, Staff of the Department of Public Service (Staff), the New York State Department of Environmental Conservation (DEC), and the Town of Huntington. The signatories filed comments in support of the Proposal on May 1, 2007. No statements were filed in opposition.

According to the parties, the Proposal, if adopted, would resolve all issues in the proceeding and should result in the issuance of an Article VII certificate. On May 15, 2007, an evidentiary hearing was held in Northport at which the Proposal was entered into the formal record together with the numerous exhibits and prefiled testimony referenced in the Proposal.³ There were no exceptions to the Proposal by any party. In addition, on the same date, a public statement hearing was held in Northport regarding the Proposal.⁴ No members of the public attended the hearing to present comments.

² 16 NYCRR §3.9.

³ The evidentiary record consists of 68 pages of transcript (Tr.) and 40 exhibits, including the Proposal (Ex. 40).

⁴ Notices of the public statement hearings were duly published in two local newspapers on two different occasions prior to the hearing.

Description of the Proposed Facility

The proposed facility consists of approximately 11 miles of three 138 kV electric transmission cables installed beneath the bed of Long Island Sound between LIPA's substation in the Town of Huntington on the Northport Power Station property and a CL&P Substation in Norwalk, Connecticut. This facility, which replaces the existing liquid-insulated cables between the same two points, will have the same nominally-rated transfer capability of 300 MW with two of the three cables in service. The only above ground portion of this facility in New York will be within the boundaries of LIPA's existing substation.

LIPA Waiver Motions

LIPA requests waivers of the application requirements of 16 NYCRR § 86.3(a)(1)(i) and (iii) regarding scale mapping requirements; §86.3(a)(2) regarding 1:250,000 scale land maps; §86.3(b)(1) and (2) regarding aerial photographs; and §88.4(a)(4) regarding electric system studies. The Proposal recommends waiving the requirements as unnecessary given the nature of the facility. A State Administrative Procedure Act (SAPA) notice⁵ was issued on the waiver requests, but no comments have been received.

Other Permits

According to the Proposal,⁶ LIPA will submit an application to the New York State Office of General Services (OGS) to revise and update the existing authority to replace the existing cable system and install and operate the facility under Long Island Sound within the boundaries of the State of New York. At the evidentiary hearing, however, it became clear that the parties believed that pre-construction authority from the New York State Office of General Services would not be necessary because the removal and installation of the new facility would be performed within the existing right-of-way and pursuant to

⁵ SAPA 01-T-1679SA1 (published December 26, 2001).

⁶ Exhibit 40, Appendix D (4).

the existing authority granted by OGS.⁷ Accordingly, the proposed ordering clauses have been amended below to reflect this clarification. LIPA will be required to update its permits when the facility is completed.

The Proposal

The Proposal addresses the many factors that are relevant to the siting of the proposed transmission facility, including the need for the facility and its compatibility with the environment. It specifically addresses those areas and the statutory findings required for the issuance of an Article VII certificate. Each of those areas are briefly discussed below.

Recognizing that this Proposal will be implemented by a number of parties over a number of years, it also includes a provision regarding future disagreements over the myriad of interpretation or implementation issues that could arise. In the event of such a dispute, the parties will attempt in good faith to resolve it among themselves. If the disagreement cannot be so resolved, the matter may be brought to the Commission.⁸

Need

According to the Proposal, the new transmission facility is needed for a great number of reasons. The ability to reliably transmit power between Long Island and Connecticut with both regions reliability constrained, is critical. The existing cable has been out of service roughly one-third of the time over the past five years. Because the new facility will be buried and requires no liquid coolant, it will be less subject to damage and, therefore, reliability will be improved. The Proposal also states that the facility is part of a diverse portfolio of system resources that LIPA is currently pursuing. It notes that the new facility will increase electrical supply

⁷ Tr. 60-61.

⁸ The parties should consider the use of alternative dispute resolution approaches before resorting to litigation before the Commission.

and the opportunities for wholesale transactions, thereby generally enhancing competition. Regarding cost, the Proposal recites an estimated total cost of \$105 million for the facility as proposed, the least costly of the alternative routes and the alternative means of supplying capacity to Long Island that were examined.⁹

Environmental Impact

The Proposal recites that the complete amended application and exhibits as submitted for the record describe all probable environmental impacts of the facility. Those impacts should be minimal and should be limited to temporary construction activities, according to the parties. The signatory parties agree that "the Facility as located and configured for this Joint Proposal represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the available alternatives, and other pertinent considerations".¹⁰ The Proposal indicates that the selected route is preferred by the parties because it reuses "existing and previously disturbed rights-of-way, reuses existing electrical interconnection equipment, avoids or minimizes the disturbance of natural habitat, is reasonable in terms of cost, and preserves an integral part of the interconnected electric grid for the sake of system reliability and diversity."¹¹

The Proposal goes on to describe each of the following specific areas: land use, visual impact, cultural resources, coastal resources, flood plains, streams and wetlands, vegetation and terrestrial resources, protected species and habitat, geologies, soils and erosion, seabed characteristics, finfish, benthos and shellfish, and impacts caused by transportation, noise, communications, and electrical and

⁹ The Proposal lists five different generation alternatives, a demand side management alternative, and a HVDC alternative (Proposal, p. 5).

¹⁰ Proposal, p. 6. See, PSL §126 (1)(c).

¹¹ Id.

magnetic fields.¹² In a number of cases, impacts of the facility will be non-existent because it will be physically located underground and under the bed of Long Island Sound. In all other cases, the Proposal concludes either, there will be no significant impact, or, that specific provisions are included within the recommended proposal that will minimize potential impacts.¹³

Similarly, issues regarding transportation, noise, and communications and electromagnetic field impacts are either considered negligible or are subject to specific considerations in the ordering paragraphs recommended in the Proposal.¹⁴

The one impact with which there is a concern is Chapter 141 of the Code of the Town of Huntington which restricts construction noise during certain hours of the day. According to the Proposal, once work is begun on the termination installation in the substation, it must be continued on a 24-hour basis until completed because of the complexity of the work and the need to maintain appropriate atmospheric conditions during its completion. Accordingly, the Proposal asks that we refuse to apply Chapter 141 of the Code of the Town of Huntington.¹⁵

Alternatives

To determine whether the facility has the minimum adverse environmental impact, the statute requires a consideration of available technology and the nature and economics of the various alternatives and their associated

¹² Proposal, pp. 6-12.

¹³ For example, specific provisions are made with regard to streams and wetlands, protected species and habitats, and construction turbidity monitoring. Proposal, pp. 7, 8, 10.

¹⁴ Id., pp. 10-12.

¹⁵ Under PSL, §126 (1)(f), we may refuse to apply any local ordinance law, standard or requirement if we conclude that, as applied to the proposed facility, it is unreasonably restrictive in view of the existing technology or of factors of costs or economics, or the needs of consumers.

economics, including the alternative of taking no action.¹⁶ The Proposal reviews a number of alternatives.

Taking no action was not considered viable due to the declining reliability of the existing line and the continued environmental problems it will cause if left in service.

New generation alternatives, including additional renewable or distributed generation, were considered by the parties, but have also been examined in an integrated fashion in LIPA's overall Energy Plan 2004-2013. In addition, each of the generating alternatives is significantly more expensive than the proposed facility and most have greater environmental impacts.

Conservation alternatives are also examined, as Demand Side Management (DSM) savings could have similar performance benefits for the LIPA system as the proposed transmission facility.¹⁷ Again, LIPA points to its Energy Plan 2004-2013 which includes DSM investments. The Proposal concludes that additional conservation would be significantly more expensive than the proposed facility and may not provide the needed capacity in a timely fashion.

The use of direct current as an alternative was explored, but the parties agreed it would be economically inefficient because it would require large converter stations at both interconnection points and other substation modifications not required for alternating current.

The Proposal also reviews alternate routes for the line and recommends a route which the Proposal describes as: reusing an area previously disturbed; following a route containing the least amount of surface and shallow surface bedrock and other obstructions; and allowing the existing cables to be kept in service during installation. After comparing the relative impacts of alternative construction approaches, including drilling and dredging techniques, the Proposal

¹⁶ PSL, §126(1)(c).

¹⁷ DSM alternatives, however, would not provide any benefit to the New England system or for the expansion of the wholesale market.

recommends the use of a jet plow embedment installation. This technique will also limit the need for cable splices.

Long Range Plans and System Impact Studies

The Proposal states that the facility does not violate any long range plans and is consistent with LIPA's Energy Plan 2004-2013. It also states that the facility is expected to have substantially the same impact on the Long Island and Connecticut electric systems as the cable being replaced.

State and Local Laws

The Proposal recites LIPA's agreement to conform as required to the New York State Uniform Fire Prevention and Building code, the Town of Huntington local laws and ordinances (except for Chapter 141 discussed below), and the Suffolk County local laws and ordinances.¹⁸

Other Issues

The Proposal states that there is no need for the acquisition of additional real property or real property rights.

The Proposal includes the applicant's agreement to provide \$50,000 in community benefits to the Town of Huntington to be used for Long Island Sound research purposes.

In addition, attachments to the Proposal include findings required under Article VII of the Public Service Law, proposed ordering clauses and certificate conditions, environmental management and construction plan (EM&CP) guidelines, and a proposed water quality certification. The parties have agreed to the terms and conditions of these Proposal attachments.

Parties' Statements

Staff, LIPA, and DEC filed statements in support of the Proposal. No party or member of the public filed any opposition.

¹⁸ Proposal, p. 17.

DEC states that it had three areas of primary concern with LIPA's application, including jet plow impacts, coastal erosion, and impacts on endangered and threatened species. According to DEC, these issues were resolved with LIPA as reflected in the conditions included in Appendix D to the Proposal, and it expresses its confidence that, if those conditions are adopted and enforced, the environmental impact findings required by the Public Service Law can be made.¹⁹

With regard to environmental impacts and mitigation, DEC notes a number of provisions in the Proposal designed to limit construction impacts. For example, DEC points to dredging conditions concerning the depth of the cable at various locations, and conditions prohibiting side casting that help satisfy DEC that the jet plow is a preferred installation method. DEC also notes the provisions regarding a cable installation monitoring plan which the parties will submit as part of the EM&CP process. DEC's concerns for the nesting season of the piping plover and least tern are also addressed with construction window conditions incorporated in the Proposal. DEC finally notes that the remaining provisions of the Proposal adequately summarize the potential environmental impacts, and the proposed certificate conditions include sufficient controls to minimize any potential impacts that cannot be avoided.²⁰

Staff

Staff states that the Proposal was derived in full compliance with all Commission rules and all interested parties have had a full and fair opportunity to participate. Staff also characterizes the Proposal's conditions as reasonable compromises among the diverse positions set forth by the parties. It therefore urges that the individual components of the settlement be judged in the context of the entire Proposal.

¹⁹ DEC's Comments in Support, p. 2.

²⁰ Id., p. 5.

Staff states that the Commission's criteria for approving the terms of joint proposals among normally adversarial parties²¹ have been met and it recommends that the facility be certified as in the public interest.²² Staff provides the following reasons justifying that recommendation:

1. The facility will maintain needed transmission capability on Long Island;
2. The facility will improve system reliability by eliminating reliance on existing cables that are subject to frequent outages and physical damage;
3. The facility will make possible continuing opportunities for displacing higher cost generation;
4. The environmental impacts of the facility are expected to be minimal, limited to temporary construction disturbance and the removal of an environmental hazard (the existing cable that currently leaks dielectric fluid into the waters of Long Island Sound);
5. The Proposal includes sound provisions for the protection of the environment;
6. The facility is the least cost for equivalent capacity of the reasonable alternatives;
7. DSM and distributed generation programs cannot reasonably be expected to be provided in the short term in such quantities as to offset the capacity provided by the facility; and
8. The Proposal embodies the agreement of normally adversarial parties to a reasonable result.²³

On the issue of need, Staff discusses the geographically isolated and vulnerable nature of the

²¹ Case 90-M-0255, Proceeding on Motion of the Commission Concerning Its Procedures for Settlement and Stipulated Agreements filed in C. 11175, Opinion 92-2 (issued March 24, 1992).

²² Staff's Comments in Support, p. 2.

²³ Id., pp. 9-10.

transmission infrastructure in and surrounding Long Island. It discusses LIPA's Energy Plan 2004-2013, noting the variety of approaches being considered to meet future load, including specifically this facility. Staff recites its investigation of the various alternatives, concluding that the transmission line replacement offers the best approach.²⁴

Staff also supports the conclusion in the Proposal that the new facility, as appropriately conditioned, would have the minimum adverse environmental impact as required by statute. Staff finds that the facility will comply with all local laws and regulations, with one exception. Noting that we may find a local ordinance, law, or resolution unreasonably restrictive in view of existing technology, factors of cost or economics, or of the needs of consumers,²⁵ Staff recommends that Chapter 141 of the Code of the Town of Huntington, which restricts noise associated with construction activities during certain hours of the day, be waived. Staff agrees with and supports the position in the Proposal that the application of this law is unreasonably restrictive because, once termination installation is commenced, it must be continued on a 24-hour basis "because of the complexity of the work and the need to maintain atmospheric conditions during the work which are critical to the electrical integrity of the termination."²⁶

Staff's comments also recommend that LIPA's motions for waiver of the application requirements of 16 NYCRR §§ 86.3(a)(1)(i)&(iii), 86.3(a)(2) and 86.3(b)(1)&(2) regarding mapping and aerial photographs be granted. It also supports the waiver of §88.4(a)(4) regarding electric systems studies because the proposed facility replaces a substantially similar one. Staff finally recommends that the findings and ordering clauses set forth in the Proposal be included as part of any certificate.

²⁴ Staff's Comments in Support, pp. 15-16. In addition, Staff notes that there are likely to be no electro-magnetic or telecommunications impacts of the facility.

²⁵ PSL, §126 (1)(f).

²⁶ Staff's Comments in Support, p. 22.

LIPA's Comments

LIPA also echoes the provisions of the Proposal, concluding that granting the Article VII certificate as requested and conditioned by the Proposal is in the public interest. Beginning with the issue of need, LIPA argues that the facility is needed to improve reliability, noting both physical interruptions to the cable as well as negative impacts on the New York Independent System Operator's (NYISO's) assessment of the reliability of LIPA's interconnections. This decreased reliability results in an increase in LIPA's local installed capacity requirement, thereby increasing rates. It notes the improved abilities to import and export power which the facility will provide, thereby facilitating the operation of the wholesale market. LIPA also argues that the facility is needed for environmental reasons because damage to the existing facility has allowed dielectric fluid to leak into Long Island Sound.

The facility is also needed for economic reasons, according to LIPA, because production simulations have estimated a potential production cost penalty associated with the loss of the import capability over the existing, less reliable line of approximately \$2 million per year.²⁷

LIPA states that the proposed facility is the best alternative for meeting the need, based on its review of various generation, alternative transmission line technology, and conservation alternatives, as well as the alternative of taking no action. In addition, LIPA argues that the proposed route is superior to all of the alternative routes considered.²⁸

Based on all the above, LIPA contends that the facility represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives. Again, echoing the Proposal, LIPA's comments note that the environmental impacts are expected to be minimal and are limited to temporary

²⁷ LIPA's Comments in Support, pp. 9-10.

²⁸ Id., pp. 10-15.

construction disturbances and the addition and replacement of structures and equipment at existing substations and the Northport Power Station.

LIPA's comments proceed to discuss the environmental impacts of the facility with regard to soils, seabed, bathymetry and geology, water depths, sediments and water quality, impacts on fin fish, benthic organisms and habitats, commercial shellfish resources and crustaceans, wetlands and coastal resources, impacts to wildlife and protected species, existing land use, archeological and historic resources, visual and aesthetic resources, and noise.²⁹ As have the other signatories, LIPA submits that the impacts on these resources are either non-existent or are appropriately mitigated by the provisions in the Proposal.

LIPA also joins the other signatories in arguing that Chapter 141 of the Town of Huntington's laws and local ordinances not be applied as unreasonably restrictive in view of existing technology. Its comments additionally describe the basis for its motion for waivers of various 16 NYCRR provisions and conclude by arguing that the Proposal complies with the Commission's settlement rules and guidelines.

DISCUSSION AND STATUTORY DETERMINATIONS

The March 14, 2007 Proposal submitted in this case is endorsed by the four parties who have been active in this proceeding. LIPA, Staff, DEC, and the Town of Huntington entered settlement discussions in March 2005, and their negotiations produced the Proposal that is presented here. That Proposal addresses all the statutory and regulatory issues pertaining to LIPA's certificate request to construct and operate the replacement facility. It provides ample opportunity to examine the proposed route and configuration for the facility, its probable environmental impacts, and the steps needed to ensure that the facility represents the minimal

²⁹ Id., pp. 15-21.

adverse environmental impact, considering the state of available technology, and the nature and economics of various alternatives, and other pertinent considerations.

The record in this case also fully supports a finding of public need. The facility is necessary to replace the aging, less reliable, and damaging-to-the-environment facility installed in 1969. The facility will improve reliability, expand market opportunities, reduce costs, and eliminate a source of pollution in Long Island Sound. The facility also conforms to the long-range plans for the expansion of the electric power grid serving Long Island, the State and the electric power systems interconnected with New York. The analyses that have been provided on the record fully support the decision to construct and operate the proposed facility.

Further, the facility will be located entirely underground except where it surfaces to connect with the terminal substations. This, in conjunction with the facts that existing transmission rights-of-way are being used to route the facility and no additional real property or real property rights will be required, provides substantial support for our finding that the proposed facility represents the minimum adverse environmental impact.

Various alternatives to the proposed route were identified and evaluated, including DSM measures and the option of taking no action. We find, however, that none of them has as few impacts or as low a cost as does the proposed route supported by the Proposal. We have carefully considered the parties' comparative analysis of the various alternatives, and we find that each alternative is less desirable than the primary Proposal.

In addition, the Proposal provides a full account of the environmental impacts that are expected from the proposed

facility and it demonstrates that adequate mitigation measures can be taken to minimize any potential impacts.

Regarding the application of local laws to the proposed facility, the parties have shown that a single provision of the Code of the Town of Huntington should be waived (Chapter 141) to accommodate the facility's construction. This waiver is similar to the one we granted in Case 04-T-1687,³⁰ but here the Town has agreed to the waiver. Accordingly, with the Town's agreement, its local law will be waived to the extent set forth in the Proposal.

The environmental management and construction plan (EM&CP) LIPA is required to provide will address all the steps to be taken to minimize the impacts adjacent to the transmission facility. All affected jurisdictions and interested parties will be afforded an opportunity to review and comment on the EM&CP, which is being prepared for submission premised on the terms and conditions of the Proposal.

Finally, we find that the process has provided all interested parties and the public full opportunity to participate and that the parties have adhered to our settlement rules and guidelines. Accordingly, based on the Proposal, the evidentiary record, and the signatories' statements in support, we find the terms and conditions of the Proposal acceptable (except as noted above) and find and determine that:

1. The facility is necessary to replace the existing but often damaged 1385 Cable that connects two reliability-constrained regions, Southwest Connecticut and Long Island. The facility will help maintain the reliability of the Long Island

³⁰ Case 04-T-1687, Application of Long Island Power Authority for a Certificate of Environmental Compatibility and Public Need to Construct the Newbridge Road Connector, Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (issued November 23, 2005), p. 18.

system by providing a pathway for emergency power supplies in the event there is a major transmission or generation outage on Long Island. The facility will be less susceptible to interruptions caused by physical damage than are the existing cables.

2. The nature of the probable environmental impacts include: (a) temporary construction impacts on the seabed in Long Island Sound; (b) exposure of finfish to short-term turbidity in the vicinity of construction activities; (c) some mortality of benthic organisms in the direct path of the cables; (d) potential mortality of less mobile shellfish individuals in the direct path of the cables; (e) ordinary construction impacts on the site of the Northport Power Station associated primarily with the construction activities necessary to lay the cables and upgrade the substation; and (f) some mortality of benthic organisms in the immediate vicinity of the cable burial by resettlement of the sediments suspended by the hydraulic jet plow.

3. The facility, as proposed by the parties, represents the minimum adverse environmental impact, considering the state of available technology, and the nature and economics of the various alternatives and other considerations such as the effects on agricultural lands, wetlands, visual impacts, and river corridors.

4. The entire facility shall be located underground except for certain aboveground electrical equipment in the existing switchyard.

5. Construction of the facility is consistent with the most recent New York State Energy Plan which sets forth the State's energy policies and long-range planning objectives and strategies and the LIPA Energy Plan.

6. Location of the facility, as proposed by the parties, conforms to applicable State and local laws and

regulations issued thereunder, except Chapter 141 of the Code of the Town of Huntington. Chapter 141 of the Code of the Town of Huntington is unreasonably restrictive as applied to the facility in view of existing technology, as it restricts noise associated with building construction activities to between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except under emergency conditions, and certain other heavy construction activities to between the hours of 7:00 a.m. and 10:00 p.m., whereas the termination installation and any attendant noise, once commenced, must be performed on a continuous 24-hour basis until completed because of the complexity of the work and the need to maintain atmospheric conditions during the work which are critical to the electrical integrity of the termination. Accordingly, with respect to the termination installation work, we refuse to apply Chapter 141 of the Code of the Town of Huntington.

7. Need has not been demonstrated in this proceeding for the acquisition of additional real property or real property rights of any kind. Following construction, LIPA will need to revise and update the existing authority from the New York State Office of General Services to operate the facility as a replacement for the existing cable.

8. The facility will serve the public interest, convenience and necessity.

CONCLUSION

We note in conclusion that this facility is unusual. Most Article VII facilities result in some environmental damage, but few eliminate an existing source of pollution while simultaneously providing substantial reliability and economic benefits. This result is made possible due to advances in the technology of cable construction since 1969, one result of which is a reduction in the cost of undergrounding high voltage lines.

This allows the certification and construction of this facility, which provides long-term environmental benefits at a reasonable cost.³¹

The Commission orders:

1. Subject to the conditions set forth in this Opinion and Order, Long Island Power Authority (LIPA) is granted a Certificate of Environmental Compatibility and Public Need (Certificate) authorizing construction and operation of three 138 kV electric transmission cables and related substation facilities (facility) extending from the LIPA switch yard on the site of the Northport Power Station in the Town of Huntington, Suffolk County, and running beneath Long Island Sound along the route detailed herein. All conditions in the Certificate shall apply as well to the decommissioning and removal of the existing 1385 Cable System.

2. LIPA shall, within 30 days after the issuance of the Certificate, submit to the Commission either a petition for rehearing or a verified statement that it accepts and will comply with the Certificate. Failure to comply with this condition shall invalidate the Certificate.

3. If construction of the facility hereby certified is not commenced within 18 months, the Certificate may be vacated with notice to LIPA.

4. LIPA will submit an application to the New York State Office of General Services (OGS) following construction to

³¹ Improved technology and declining costs may also allow undergrounding to be utilized to mitigate or eliminate other types of environmental impacts. Accordingly, we urge parties to more closely consider underground construction as a mitigation technique where overhead construction is otherwise being considered.

install and operate the facility underneath Long Island Sound and within the territorial boundaries of the State of New York.

5. Construction of the facility shall not commence until the Connecticut portion of the cable has received such permits and approvals as are necessary for it to be constructed pursuant to any Federal and State permit or licensing requirement applicable within the territorial boundaries of the State of Connecticut.

6. LIPA shall integrate and coordinate maintenance of the certified facility with that of adjacent utility facilities.

7. LIPA shall promptly notify the Commission in writing should it decide not to complete construction of all or any portions of the facility and shall serve a copy of such notice upon all parties.

Description of Route

8. The proposed location of the facility is approved, as follows: The facility begins at the switchyard on the site of the Northport Power Station in the Town of Huntington, Suffolk County, and travels underground out of the switchyard in a northerly direction a distance of approximately 520 feet to a fence; thence underground in a northerly direction a distance of approximately 80 feet under a grassy upland area to a beach; thence underground in a northerly direction a distance of approximately 150 feet under the beach to the seabed of Long Island Sound; thence underground in a northwesterly direction a distance of approximately 5.4 miles under the seabed of Long Island Sound to the boundary between the States of New York and Connecticut along a route designated by LIPA as the "East Route Corridor."

Laws and Regulations

9. a) LIPA's motion for a waiver of the application requirements of 16 NYCRR §§ 86.3(a)(1)(i) & (iii), 86.3(a)(2) and 86.3(b)(1)&(2) regarding mapping requirements and aerial photographs is granted in the manner requested in the motion. LIPA's motion for a waiver of the application requirements of 16 NYCRR §88.4(a)(4) regarding electric system studies is granted as such studies are unnecessary because the facility is designed as a "like-for-like" replacement.

b) Each substantive Federal, State and local law, regulation, code and ordinance applicable to the facility authorized by the Certificate shall apply, except any substantive local law or regulation which the Commission has refused to apply as being unreasonably restrictive as discussed herein.

c) No provisions of the Code of the County of Suffolk have been found to be unreasonably restrictive.

d) No provisions of the Code of the Town of Huntington have been found to be unreasonably restrictive, except Chapter 141 which is unreasonably restrictive as applied to the facility in view of existing technology as it restricts noise associated with building construction activities to between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except under emergency conditions, and certain other heavy construction activities to between the hours of 7:00 a.m. and 10:00 p.m., whereas the termination installation and any attendant noise, once commenced, must be performed on a continuous 24-hour basis until completed because of the complexity of the work and the need to maintain atmospheric conditions during the work which are critical to the electrical integrity of the termination. Accordingly, with respect to termination installation work within the Northport substation, the Commission refuses to apply Chapter 141 of the Code of the Town of Huntington.

e) No State or local legal provision purporting to require any approval, consent, permit, or certificate or other condition for the construction or operation of the facility authorized by the Certificate shall apply, except:

- (i) those of the Public Service Law and regulations and orders adopted thereunder,
- (ii) those provided by otherwise applicable State law for the protection of employees engaged in the construction and operation of the facilities,
- (iii) those permits issued under a federally delegated environmental permitting program, and
- (iv) those referenced below.

f) LIPA shall construct the facility in a manner that conforms to all standards of the American National Standards Institute (ANSI) including, without limitation, the National Electric Safety Code (NESC) [including Institute of Electrical and Electronics Engineers (IEEE) Standard IEEE C2-2002] and any stricter standards adopted by LIPA.

g) LIPA shall construct the facility in a manner that conforms to all applicable requirements of the New York State Uniform Fire Prevention and Building Code.

10. Nothing herein shall preclude LIPA from voluntarily subjecting itself to any State or local approval, consent, permit, certificate or other condition for the construction or operation of the facility.

a) As stated in the Proposal, LIPA shall subject itself to building plan review and obtain building permits, inspections, and certificates of occupancy, if required, upon the inspection and completion of construction from OGS to the

degree that the subject matter of the New York State Uniform Fire Prevention and Building Code applies to the facility, subject to the Commission's ongoing jurisdiction.

b) To the extent required in connection with the delivery of oversized components, LIPA or its suppliers shall obtain any necessary permits from the relevant local or State agencies.

c) LIPA shall comply with the requirements for the protection of underground facilities set forth in 16 NYCRR Part 753 "Duties of Excavators."

d) A copy of each permit or approval received from the issuing agencies shall be provided to Staff of the Department of Public Service (DPS Staff) by LIPA promptly after receipt by LIPA of such permit or approval and before commencement of construction across the affected area.

e) If LIPA believes that any action taken, or determination made, by a State or local agency in furtherance of such agency's review of the permits and approvals referenced herein, is unreasonable or unreasonably delayed, LIPA may petition the Commission, upon reasonable notice to that agency, to seek a resolution of any such unreasonable or unreasonably delayed requirement. The permitting agency may respond to the petition, within three business days, to address the reasonableness of any requirement or delay.

f) LIPA shall operate the facility in conformance with approvals and authorizations of the New York Independent System Operator (NYISO) and Independent System Operator – New England (ISO-NE) regarding operation of the facility.

g) If applicable, LIPA shall submit a Notice of Intent to exercise authority under the general stormwater State

Pollutant Discharge Elimination System permit of construction and industrial activities.

Environmental Management and Construction Plan

11. LIPA shall not begin site preparation or construction with respect to any portion of the facility (except for surveying, soils testing and such other related activities as are necessary to prepare final design plans) before it has submitted to the Commission and the parties, and the Commission has approved, an Environmental Management and Construction Plan ("EM&CP") for the relevant portion of the facility.

12. The EM&CP shall be prepared in accordance with the EM&CP guidelines attached as Appendix E to the Proposal.

13. Except where this Certificate requires otherwise, the terms of the Proposal (to the extent not superseded in this Certificate) and the environmental protection measures contained in the Supplement to Application and 401 Water Quality Certification shall be incorporated into the EM&CP. These measures shall be applied during construction, operation and maintenance of the certified facility.

14. Deviation from the certified centerline, as reasonably necessary, shall be allowed for appropriate environmental or engineering reasons, except where a conflict with a specific provision of the Proposal (to the extent not superseded in this Certificate) or this Certificate would be created.

15. Deviation from the design height and location of structures shall be allowed for appropriate environmental or engineering reasons, except where a conflict with a specific provision of the Proposal (to the extent not superseded in this Certificate) or this Certificate would be created.

16. Before completing the final site plan for the upland and in-water portions of the facility, LIPA shall have presented a draft site plan to the Town of Huntington for review and comment, subject to the Commission's ongoing jurisdiction, and the Town of Huntington shall have an opportunity to comment on the final site plan.

17. Before completing the final marine operations safety plan, LIPA shall have presented a draft marine operations safety plan to the Town of Huntington for review and comment, subject to the Commission's ongoing jurisdiction, and the Town of Huntington shall have an opportunity to comment on the final marine operations safety plan.

18. LIPA shall present a draft Turbidity Monitoring Plan for New York Waters to the Town of Huntington and DEC Staff at least sixty (60) days prior to filing an EM&CP for the in-water portion of the facility. Any comments of the Town of Huntington made within 30 days of receiving the draft Turbidity Monitoring Plan for New York Waters will be responded to in the final Turbidity Monitoring Plan for New York Waters. Any comments of the DEC Staff made within 30 days of receiving the draft Turbidity Monitoring Plan for New York Waters will be incorporated in the final Turbidity Monitoring Plan for New York Waters.

EM&CP Contents

19. LIPA shall provide, as a part of the EM&CP:

a) A final design plan that reflects conformance of the facility design with this Certificate, applicable Federal, State, and local requirements (including, but not limited to, applicable regulations, including those of the Department of Environmental Conservation (DEC), the Bureau of Alcohol, Tobacco and Firearms, Occupational Safety and Health Administration, NYS Department of

Labor, the Uniform New York State Fire Prevention and Building Code, chemical and waste-storage use and handling regulations).

b) A discussion of the status of efforts by LIPA to obtain permits necessary for construction of the facility from State, local and Federal agencies (USACOE, et.al.).

c) A summary of and response to any comments made by the Town of Huntington regarding the draft site plan.

d) A summary of and response to any comments made by the Town of Huntington regarding the draft marine operations safety plan.

e) A summary of and response to any comments made by DEC Staff and the Town of Huntington (including an explanation demonstrating incorporation of the comments of DEC Staff) regarding the draft turbidity monitoring plan for the in-water portion of the facility.

f) An explanation for any proposed deviation from the certified centerline shall be provided with supporting documentation in the EM&CP.

g) An explanation for any proposed deviation from the design height and location of structures shall be provided with supporting documentation in the EM&CP.

h) Details of nearby electric, gas, telecommunication, water, sewer, and related facilities and measures to protect the integrity, operation, and maintenance of those facilities.

i) A plan indicating the details and design of measures to protect the cathodic protection system and physical conditions of nearby facilities and structures, including any underground facilities. The plan shall include appropriate mitigation measures such as grounding and upgrade of existing protection devices or other facilities as appropriate for and identified in

cooperation with owners or operators of adjacent or nearby structures, pipelines, tanks, fences, etc.

- j) Details of the construction schedule.
- k) Facility construction worker parking areas shall be designated.
- l) The specification of noise mitigation procedures.
- m) The delineation of certified right-of-way and additional work areas to which LIPA shall confine construction and subsequent maintenance activities.
- n) A plan for removal, reuse, recycling and disposal of equipment.
- o) Detailed soil handling and erosion control plans including details on the installation of sedimentation/erosion control devices around areas to be disturbed and any stockpiled soils to prevent sedimentation into tidal wetlands during construction.
- p) Drawings detailing a grading plan, lighting plans, conceptual planting plan and proposed grade improvements, if any, for the modification of the switchyard.
- q) Tidal wetland and adjacent area locations shall be indicated on the drawings for the certified facility, the right-of-way, and any off-right-of-way access roads or staging areas.
- r) Detailed methods of construction for tidal wetland impact minimization for construction through tidal wetlands and adjacent areas.
- s) A detailed drawing that reflects a 500 foot buffer from protected species habitat.
- t) Clearing and vegetation treatment plans, including a plan for initial vegetative clearing in areas near tidal wetlands and any replanting in or near tidal wetlands.

u) Fuel and chemical handling procedures, and a spill response and route emergency plan. This plan shall provide proposed methods of handling storage, spills, removal and disposal of petroleum products, dielectric fluid, and any hazardous or controlled substance which may be stored or utilized during construction, operation or maintenance of the facility and removal, flushing and decommissioning of the existing 1385 Cable System.

v) A final Turbidity Monitoring Plan for New York Waters, incorporating the comments of DEC Staff and responding to the comments of Town of Huntington.

w) As part of the facility specific Turbidity Monitoring Plan for New York Waters, there will be a conceptual monitoring plan for turbidity that may include, but is not limited to: (i) sampling; (ii) determining extent of plume; and (iii) determining an action threshold(s) (i.e., allowable limits of turbidity) and what measures would be implemented to address turbidity in excess of such threshold(s),

x) A discussion of the environmental protection measures that will be taken in the field to minimize the suspension of in-situ sediments including, but not limited to, adjusting the rate of removal of the existing cable, changing the rate of advancement of the jet plow, and modifying hydraulic jetting pressures.

EM&CP Process

20. LIPA shall submit four copies of the EM&CP to the Commission, serve two copies on the Staff of the DEC, one copy on the Region 1 office of the DEC, one copy on the Commissioner of the New York State Office of Parks, Recreation and Historic Preservation ("OPRHP"); one copy on any other New York State agency (and its relevant regional offices) which requests the

document; and one copy on active parties on the service. LIPA shall also place copies for inspection by the public in at least one public library or other convenient location in each municipality in which construction will take place.

Contemporaneously with the submission and service of the EM&CP, LIPA shall provide notice, in the manner specified below, that the EM&CP has been filed.

21. LIPA shall serve written notice(s) of filing the EM&CP on all active parties to this proceeding, on each person on the Commission's service list considered potentially affected by the subject matter in the EM&CP, and on all statutory parties to this proceeding, and shall attach a copy of the notice to each copy of the EM&CP. Further, LIPA shall publish the notice(s) in a newspaper or newspapers of general circulation in the vicinity of the facility.

22. a) The written notice(s) and the newspaper notice(s) shall contain, at a minimum, the following:

- (i) a statement that the EM&CP has been filed;
- (ii) a general description of the facility, the need for the facility, the alternatives considered and the EM&CP;
- (iii) a listing of the locations where the EM&CP is available for public inspection;
- (iv) a statement that any person desiring additional information about a specific geographical location or specific subject may request it from LIPA;
- (v) the name, address, and telephone numbers of LIPA's representative;
- (vi) the address of the Commission; and

- (vii) a statement that any person may be heard by the Commission on any matter or objection regarding the EM&CP by filing written comments with the Commission and LIPA within 45 days of the filing date with the Commission of the EM&CP (or within 30 days of the date of the newspapers notice, whichever is later).

b) A certificate of service indicating upon whom all EM&CP notices and documents were served and a copy of the written notice shall be submitted to the Commission at the time the EM&CP is filed, and shall be a condition precedent to approval of the EM&CP.

23. a) LIPA shall report any proposed changes to the EM&CP to DPS Staff, DEC Staff and the Town of Huntington. DPS Staff shall refer to the Secretary of the Commission (or a designee) reports of any proposed changes that do not cause substantial change in environmental impact or are not related to contested issues decided during the proceeding. DPS Staff will refer all other proposed changes in the EM&CP to the Commission for approval.

b) Upon being advised that DPS Staff will refer a proposed change to the Commission, LIPA shall notify all active parties that have requested (before the approval of the EM&CP) to be so notified, as well as property owners or lessees whose property is affected by the proposed change. The notice shall:

- (i) describe the original conditions and the requested change;
- (ii) state that documents supporting the request are available for inspection at specified locations, and

- (iii) state that persons may comment by writing or calling (followed by written confirmation) to the Commission within 15 days of the notification date. Any delay in receipt of written confirmation will not delay Commission action on the proposed change.

c) LIPA shall not execute any proposed change until it receives oral or written approval, except in emergency situations threatening personal injury, property damage or severe adverse environmental impact, or as specified in the EM&CP.

Notices, Reports and Consultations

24. a) LIPA shall make available to the public a toll free or local phone number of an agent or employee where complaints may be received during the construction of the certified facilities. In addition, the phone number of the Secretary, and the phone number of the Commission's Environmental Compliance Section, shall also be provided.

b) LIPA shall report to DPS Staff every complaint that cannot be resolved after reasonable attempts to do so, or within 30 days after receipt of the complaint (whichever comes first).

25. a) No less than 30 days before commencing site preparation, LIPA shall:

- (i) provide notice to local officials and emergency personnel;
- (ii) provide such notice for dissemination to local media and display in public places (such as general stores, post offices, community centers and conspicuous community bulletin boards).

b) The notice shall contain:

- (i) a map and a description of the facility in the local area;
- (ii) the anticipated date for start of construction;
- (iii) the name, address and local or toll-free telephone number of an employee or agent of LIPA;
- (iv) a statement that the facility is under the jurisdiction of the New York State Public Service Commission, which is responsible for enforcing compliance with environmental and construction conditions, and which may be contacted at an address and telephone number to be provided in the notice;
- (v) the notice will be written in language reasonably understandable to the average person.

c) Upon distribution, a copy shall be submitted to the Secretary of the Commission, and to DEC Staff.

26. LIPA shall provide construction contractors with complete copies of the Certificate, approved EM&CP, updated construction drawings, any site specific plans, any permit issued pursuant to §404 of the Federal Clean Water Act, and the §401 Water Quality Certification. To the extent that the listed documents are available before contracts for construction services are executed, such copies shall be provided to the contractors prior to execution of such contracts.

27. LIPA shall notify all construction contractors that the Commission may seek to recover penalties for violation of the Certificate, not only from LIPA, but also from its construction

contractors, and that construction contractors may also be liable for other fines, penalties and environmental damage.

28. a) At least two weeks prior to the start of construction, LIPA shall hold a preconstruction meeting. An agenda, location and attendee list shall be agreed upon between DPS Staff, the Town of Huntington and LIPA.

b) LIPA shall supply draft minutes from this meeting to all attendees, the attendees may offer corrections or comments and LIPA shall issue the finalized meeting minutes to all attendees.

c) If, for any reason, the construction contractor cannot finish the construction of this facility, and a new construction contractor is needed, there will be another preconstruction meeting with the same format as outlined above.

29. LIPA shall inform the Secretary, the Staff of the DPS and DEC and the Town of Huntington at least five days before commencing construction or clearing of the facility.

30. LIPA shall provide DPS Staff, and DEC Staff with weekly status reports summarizing construction, and indicating construction activities and locations scheduled for the next two weeks.

31. Within ten days after the facility is in service, LIPA shall notify the Commission of that fact.

32. Within ten days of the completion of final restoration, LIPA shall notify the Commission that all restoration has been completed in compliance with this Certificate and the EM&CP.

33. LIPA shall periodically consult with State and local highway transportation agencies about traffic conditions near the facility site.

34. LIPA shall keep local fire department and emergency management teams apprised of chemicals and waste on site.

35. LIPA shall immediately notify DEC of any fuel or chemical spills.

Public Health and Safety

36. Except as to the termination installation work within the Northport substation, construction work on buildings and structures shall only take place between 7:00 a.m. and 6:00 p.m. on weekdays. Other heavy construction work (excavation, grading, etc.) shall only take place between 7:00 a.m. and 6:00 p.m. with no day restriction. Nothing herein shall preclude LIPA from making the necessary arrangements for the extension of work hours and days with appropriate local agencies in compliance with local ordinances. DPS Staff and the Town of Huntington Supervisor's Office, Town of Huntington Department of Maritime Services and Town of Huntington Department of Engineering shall be notified at least 24 hours in advance if planned weekend, evening or holiday construction becomes necessary.

a) The termination installation work within the Northport substation, once commenced, may be performed on a continuous 24 hour basis until completed; provided, however, that the Town of Huntington Supervisor's Office, Town of Huntington Department of Maritime Services and Town of Huntington Department of Engineering shall be notified at least 24 hours in advance of the start of the termination installation work within the Northport substation.

37. All chemicals and waste shall be secured in a locked and controlled area.

38. LIPA shall take appropriate measures to minimize fugitive dust and airborne debris from construction activity.

39. LIPA shall make good faith efforts to minimize the impact of the construction of the facility on local traffic circulation.

40. LIPA shall engineer and construct the facility to be fully compatible with the operation and maintenance of nearby electric, gas, telecommunication, water, sewer, and related facilities.

41. The facility shall be designed and constructed to avoid adverse effects on the cathodic protection system and physical conditions of existing structures and facilities, including any underground facilities.

42. Facility construction worker parking shall be in designated areas which do not interfere with normal traffic, cause a safety hazard or interfere with existing land uses. Facility construction worker parking will be prohibited at the Soundview Beach parking lot. However, such parking is permitted at the Northport Power Plant.

43. LIPA shall design, engineer and construct the facility such that its operation shall comply with the electromagnetic field ("EMF") standards established by the Commission in Opinion No. 78-13 (issued on June 19, 1978) and the Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities (issued September 11, 1990), respectively.

Waterbodies, Wetlands and Coastal Resources

44. LIPA shall minimize disruption to tidal wetlands during facility construction, operation and maintenance.

a) Tidal wetland locations shall be delineated in the field.

b) Any activities which may affect tidal wetlands shall be designed and controlled to minimize adverse impacts, giving

due consideration to the environmental features and functions of the tidal wetlands and the adjacent area.

c) Construction through tidal wetlands or adjacent areas shall be carried out using methods of construction for tidal wetland impact minimization, including measures to assure that:

- (i) pre-disturbance flow regimes shall be maintained;
- (ii) the vegetative mat and wetland soil horizons shall be separated during excavation and replaced to as near the original position as possible during backfilling and restoration.

45. LIPA shall not wash equipment or machinery in any tidal wetland and shall not permit run-off resulting from washing operations to directly enter any tidal wetland.

46. LIPA shall not store, mix, handle open containers or load pesticides, chemicals labeled toxic, or petroleum products or refuel equipment within 100 feet of a tidal wetland or adjacent area.

47. LIPA shall comply with any conditions contained in the § 401 Water Quality Certification.

48. No mechanical dredging or mechanical excavation is authorized by this Certificate or may be performed in connection with construction or installation of the facility. With the prior written consent of DEC, however, LIPA may petition the Commission for explicit approval to perform mechanical dredging or mechanical excavation in connection with construction or installation of the facility, provided copies of the petition are served on all parties to this proceeding.

49. The facility cables must be installed no less than ten feet below the seabed in the "Nearshore Cable Installation"

work area, defined as the area between the New York landfall (at the mean high water contour) and a point 1,000 feet seaward of the northernmost mean lower water contour depicted on "Comparison of Proposed Burial Depths" Drawing No. 1, dated November 3, 2005 [Exhibit 37].

a) LIPA must provide a minimum of 48 hours prior notice to the DEC Region 1 Staff and the Town of Huntington before performing Nearshore Cable Installation work.

b) LIPA shall obtain the services of a marine construction expert, independent from LIPA and all contractors and professionals working on either the design or construction of the facility, to act as an independent "Jet Plow Monitor" during the performance of Nearshore Cable Installation work. The individual chosen must be acceptable to DPS Staff. The qualifications of the individual shall be presented to DPS Staff for approval in conjunction with the submission of a proposed EM&CP for the relevant segment. Any decision made by DPS Staff will be subject to review by the Commission, on its own motion or upon the petition of any entity.

c) The Jet Plow Monitor must be present during the performance of all Nearshore Cable Installation work and shall oversee all jet plow passes and shall ensure that appropriate measures are taken to minimize turbidity and environmental impact.

d) For the Nearshore Cable Installation, if, during the initial attempt at Nearshore Cable Installation using the jet plow, there is a failure to bury the facility cables no less than ten feet below the seabed, LIPA may make three additional passes of the jet plow, to achieve the maximum burial depth achievable. In such case, LIPA may also make jet plow equipment changes or adjustments which could better allow for trench formation, but in no case is dredging or side casting of

materials allowed, nor are a geotextile cover or concrete mats allowed to be placed over the facility cables.

e) If, after these efforts, the facility cables are buried less than ten feet below the seabed, DPS Staff will make a written decision, after consultation with the Jet Plow Monitor and DEC Staff, whether best efforts have been made and the actual burial depth is adequate. Any decision made by DPS Staff will be subject to review by the Commission, on its own motion or upon the petition of any entity. The DPS Staff decision will be made before completion of the Nearshore Cable Installation work, and the required as-built drawings described below.

50. All laboratory analysis of water quality samples shall be conducted by a laboratory certified by the New York State Department of Health.

51. All turbidity/total suspended solids (TSS) data shall be submitted to DEC Staff and the Town of Huntington Department of Maritime Services within 30 days following installation or receipt of results from the laboratory, whichever is later.

52. During construction, LIPA shall implement the final Turbidity Monitoring Plan for New York Waters which shall detail the location and frequency of total suspended solids sampling and acoustic doppler current profile/optical back scatter correlation sampling to fully define the sediment plume created during construction.

53. During construction, LIPA shall implement mitigation measures such as changing the fluid pressure or decreasing the rate of advancement of the jet plow, and follow procedures for monitoring and mitigation as prescribed in the Turbidity Monitoring Plan.

Protected Species and Habitat

54. To protect state and federal listed species and habitat, no onshore construction work in connection with construction or installation of the facility shall take place within 500 feet of piping plover breeding areas from April 1 to September 1 of any year, except that this prohibition shall not apply to work within the fenced-in area of the switchyard. In case of hardship and with the prior written consent of DEC, however, LIPA may petition the Commission for explicit approval to perform onshore construction work within 500 feet of piping plover breeding areas from April 1 to September 1 of any calendar year in connection with construction or installation of the facility provided that LIPA utilizes a certified piping plover monitor for any work approved from April 1 to September 1 of any calendar year and provided copies of the petition are served on all parties to this proceeding. In case of hardship, DEC's consent will not be unreasonably withheld.

55. To prevent destruction of habitat, protected areas on the beach and bluff shall be marked with snow fencing prior to construction. The placement of the snow fencing shall be done in consultation with DEC Staff.

Other Conditions

56. Disturbed areas, ruts, and rills in upland and beach areas will be restored to original grades and conditions with permanent re-vegetation and erosion controls appropriate for those locations. Disturbed pavement, curbs and sidewalks shall be restored to their original preconstruction condition or improved.

57. LIPA shall install sedimentation/erosion control devices around areas of land to be disturbed and any stockpiled soils to prevent sedimentation into tidal wetlands during construction. These erosion control devices shall be installed

prior to construction and shall be maintained in place while working within 100 feet of the wetland and until the right-of-way on land has been revegetated and/or stabilized in accordance with pre-existing conditions.

58. LIPA shall, on completion of the facility:

a) provide an assessment of the need for landscape improvements, including vegetation planting earthwork or installed features to screen or landscape the facility with respect to the substation;

b) prepare plans for any visual mitigation found necessary; removal, rearrangement and supplementation of existing landscape improvements or plantings should be considered, as appropriate;

c) consult with DPS Staff on the content and execution of its assessment, resultant landscaping plan specifications and materials list; details shall include measures for controlling maintenance, third party or wildlife damage to any landscape and vegetation plantings;

d) present assessments and plans to DPS Staff for review within one year of the date the facility is placed in service;

e) provide a copy of "as built" drawings to DPS Staff, DEC Staff and the Town of Huntington depicting final burial depth and location of the facility;

f) provide a post-installation inspection schedule, a method for determining actual cable location and depth below seabed, and a plan for post-construction repair methods (including post-storm reburial if cables become exposed); and

g) indicate, if applicable, where the desired cable depth was not achieved and a plan for either achieving desired

burial depths or mitigating potential environmental health and safety impacts.

59. Existing transmission facility components replaced as part of construction of this facility shall be removed from the LIPA right-of-way to appropriate destinations and handled appropriately for re-use as available based on conditions (wood poles, conductors, etc.).

60. No herbicides will be used for construction or maintenance of the facility; only appropriate non-chemical techniques will be used to remove or control vegetation.

61. Applicable provisions of the Certificate, EM&CP, and orders approving the EM&CP shall be accommodated in any design, construction, ownership or maintenance contracts associated with the facility.

62. LIPA shall not store heavy machinery or equipment in any beach area or in or near any nesting and foraging areas of the piping plover and least tern, except that such machinery may be stored upon any improved parking surface at the Northport Power Station giving first utilization to such areas that are farthest from any nesting and foraging areas of the piping plover and least tern.

63. To ensure that there is no alteration of flood storage, no filling or enclosed structures upland of the high water mark are allowed and any footing/foundation construction in the substation will occur below the ground surface. Following cable decommissioning and installation of the new facility, the beach and upland area along the cable route will be returned to pre-existing elevations.

64. LIPA shall use the jet plow embedment technique for the seabed installation of the proposed facility.

65. The Town of Huntington, the Town of Huntington Board of Trustees, and the Huntington Town Board shall be named as an "additional insured" by endorsement on all insurance policies relating to the operations regarding removal of the existing 1385 Cable System and construction of the facility. This requirement shall apply to LIPA, its contractors, contractor vendees, subcontractors, agents and other responsible parties. Additionally, LIPA, its contractors, contractor vendees, subcontractors, agents and other responsible parties shall execute a hold harmless and indemnity agreement with the Town of Huntington with respect to removal of the existing 1385 Cable System and construction of the facility.

66. LIPA shall provide an on-water and turbidity monitor to supervise all in-water decommissioning and construction activity. The monitor may be the same person designated as the Jet Plow Monitor. The monitor shall be independent of all contractors or subcontractors performing any decommissioning and construction activity and shall report directly to a LIPA official with stop-work authority.

67. All dielectric fluid in the existing 1385 Cable System will be flushed from an onshore location prior to removal of the cables and conduits of the existing 1385 Cable System from the seabed. No on-water transfer of dielectric fluid shall be permitted.

68. All cables and conduits of the existing 1385 Cable System will be removed in their entirety from the seabed and no cutting and abandonment of any portion of the cables and conduits of the existing 1385 Cable System will be permitted.

69. A plan for the flushing of the dielectric fluid from the cables, storage of the dielectric fluid and the disposal or recycling of the cables shall be included in the EM&CP.

70. The clearing and vegetation treatment plans, including the plan for initial vegetative clearing in areas near tidal wetlands, shall minimize the clearing of vegetation to that necessary to allow construction and operation of the facility.

Environmental Supervision

71. LIPA shall designate a full-time supervisor, inspector and environmental monitor with stop work authority over all aspects of the facility; the supervisor shall be on site during all phases of construction and restoration. The environmental monitor(s) and construction inspector(s) shall be equipped with sufficient documentation, transportation and communication equipment to effectively monitor contractor compliance with the provisions of this Order, applicable sections of the Public Service Law, §401 Water Quality Certification, and the EM&CP. The name and qualifications of the supervisor, inspectors and environmental monitor(s) shall be submitted to DPS Staff at least two weeks prior to the start of construction.

72. The authority granted in the Certificate and any subsequent order(s) in this proceeding is subject to the following conditions necessary to ensure compliance with such order(s):

a) LIPA shall regard DPS Staff representatives (certified pursuant to Public Service Law Section 8) as the Commission's designated representatives in the field; In the event of any emergency resulting from the specific construction or maintenance activities that violate or may violate the terms of the Certificate or any other order in this proceeding, such DPS Staff representatives may issue a stop-work order for that location or activity;

b) A stop-work order shall expire in 24 hours unless confirmed by a single Commissioner; If a stop-work order is

confirmed, LIPA may seek reconsideration from the confirming Commissioner or the whole Commission; If the emergency prompting the issuance of a stop-work order is resolved to the satisfaction of the Commissioner or the Commission, the stop-work order will be lifted. If the emergency has not been satisfactorily resolved, the stop-work order will remain in effect.

c) Stop-work authority shall be exercised sparingly and with due regard to the potential economic costs involved and possible impact on construction activities; before exercising such authority, DPS Staff representatives shall consult (wherever practicable) with LIPA representatives possessing comparable authority; within reasonable time constraints, all attempts shall be made to address any issue and resolve any dispute in the field; In the event the dispute cannot be resolved, the matter shall be immediately brought to the attention of LIPA, Project Manager and the Department of Public Service Chief, Energy Resources and the Environment; in the event that a DPS Staff representative issues a stop work order, neither LIPA nor the contractor will be prevented from undertaking any such safety-related activities as they deem necessary and appropriate under the circumstances; stop work or implementation of measures, as described below, may be directed at the sole discretion of the DPS Staff representative during these discussions;

d) If a DPS Staff representative discovers a specific activity that is a significant environmental threat that is or may immediately become a violation of the Certificate or any other Order in this proceeding, the Staff representative may - - in the absence of responsible LIPA supervisory personnel or the presence of such personnel who, after consultation with the Staff representative, refuse to take appropriate action - - direct the field crews to stop the specific environmentally harmful activity immediately; If responsible LIPA personnel are not on site the

Staff representative shall immediately thereafter inform the Construction Supervisor and/or Environmental Coordinator of the action taken; The stop-work directive may be lifted by the Staff Representative if the situation prompting its issuance is resolved;

e) If the DPS Staff representative determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the Staff representative may, in the absence of responsible LIPA supervisory personnel, or in the presence of such personnel who, after consultation with the Staff representative, refuse to take appropriate action, direct LIPA or its contractors to implement the corrective measures identified in the EM&CP; The field crews shall comply with the DPS Staff representative directive immediately. The DPS Staff representative shall immediately thereafter inform LIPA's construction supervisor and/or environmental monitor of the action taken.

73. LIPA shall organize and conduct site compliance audit inspections for DPS Staff as needed, but not less frequently than once per month during the site preparation, construction, and restoration phases for the facility, and at least annually for two years after the facility is operational.

a) The monthly inspection shall include a review of the status of compliance with all certification conditions, requirements, and commitments, as well as a field review of the facility site, if necessary. The inspection may also include:

- (i) review of all complaints received, and their proposed or actual resolutions;

- (ii) review of any significant comments, concerns or suggestions made by the public, local governments, or other agencies;
- (iii) review of the status of the facility in relation to the overall schedule established prior to the commencement of construction; and
- (iv) other items LIPA or DPS Staff consider appropriate;

b) LIPA shall provide a written record of the results of the inspection, including resolution of issues and additional measures to be taken, to agencies involved in the inspection audit.

74. To protect sensitive life stages of protected species, and to avoid any conflict with major recreational use of the Long Island Sound, no in-water construction work in connection with construction or installation of the facility shall occur on and between April 30th and Labor Day in any calendar year. In case of hardship and with the prior written consent of DEC, however, LIPA may petition the Commission for explicit approval to perform in-water construction work in connection with construction or installation of the facility on and between April 30th and Labor Day in any calendar year provided copies of the petition are served on all parties to this proceeding including the Town of Huntington which should receive notice by express mail or overnight delivery. In case of hardship, DEC's consent will not be unreasonably withheld.

75. The Turbidity Monitoring Plan for New York Waters will be carried out regarding installation of the facility focusing on defining the extent of the suspended sediment plume and on measuring water column concentrations of suspended

sediment associated with cable-laying sediment disturbance in accordance with the Conceptual Monitoring Plan for New York Waters (Proposal, Appendix G). The final Turbidity Monitoring Plan for New York Waters will be presented to the Commission for approval as part of an EM&CP.

76. During removal of the existing 1385 Cable System and installation of the facility underneath Long Island Sound, a no-entry safety zone will be established within approximately a 1/2 mile radius from the center point of construction. This will result in a localized area within which navigational access will be temporarily prohibited for other vessels such that other commercial and recreational vessels will have adequate water area to navigate around the work area. The proposed no-entry and safety zone will be reviewed with the Huntington Harbor Master and Coast Guard officials prior to finalization.

77. A marine operations safety plan will be adhered to regarding removal of the existing 1385 Cable System and installation of the facility underneath Long Island Sound in a manner that protects navigational safety in and around the work areas in accordance with the Preliminary Marine Operations Safety Plan Joint Proposal, Appendix H) and including, among other things, an anchoring performance capability report and plan, procedures for the cessation of anchoring and securing of vessels during severe weather conditions, and procedures for periodic consultation with the Town of Huntington and Coast Guard officials. The final marine operations safety plan shall be presented to the Commission for approval as part of an EM&CP. If anchoring of work vessels is involved in the removal of the existing 1385 Cable System and installation of the facility underneath Long Island Sound, LIPA shall provide the Town of Huntington a copy of the anchoring plan and permit the Town of Huntington to suggest final procedures for cessation of

anchoring during severe weather conditions. The final procedures for the anchoring plan are to be developed by LIPA in consultation with the Town of Huntington and in consultation with the Department of Maritime Services and Coast Guard Officials.

78. It is expected that construction activities will be completed at the Northport landfall so as to avoid the start of the piping plover nesting season. In the event that construction activities (including decommissioning) extend past April 1st, in any calendar year, even for work that is greater than 500 feet from piping plover breeding areas, LIPA shall provide a certified piping plover "watcher" to supervise all beach and upland construction activity outside of the switchyard until the end of the piping plover nesting season or until construction is completed. The watcher shall be appropriately qualified and the designation of each individual to serve in that capacity by LIPA shall be subject to the review and approval of DEC, subject to the Commission's ongoing jurisdiction.

79. DEC Staff field representatives shall be permitted on the facility site. DEC Staff field representatives will notify the DPS Staff representative and LIPA representative of any activities that violate or may violate either the terms of the Certificate or the Environmental Conservation Law. The DPS and DEC Staff field representatives will cooperate in assessing site conditions and determining whether stop work authority should be exercised, or whether directing LIPA action to further minimize impacts is appropriate.

Cultural Resources

80. Should archeological materials be encountered during construction, LIPA shall stabilize the area and cease construction activities in the immediate vicinity of the find and

protect the same from further damage. Within twenty-four hours of such discovery, LIPA shall notify DPS Staff and OPRHP Field Services Bureau to determine the best course of action. No construction activities shall be permitted in the vicinity of the find until such time as the significance of the resource has been evaluated and the need for and scope of impact mitigation has been determined.

81. Should human remains or evidence of human burials be encountered during the conduct of archeological data recovery fieldwork or during construction, all work in the vicinity of the find shall be immediately halted and the remains shall be protected from further damage. Within twenty-four hours of any such discovery, LIPA shall notify the DPS Staff and OPRHP Field Services Bureau. All archaeological or burial encounters and their handling shall be reported in the status reports summarizing construction activities and reviewed in the site compliance audit inspections.

82. The terms and conditions of the Proposal are adopted as discussed herein.

83. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary