

PSEG LONG ISLAND LLC
On Behalf of and as Agent for
THE LONG ISLAND LIGHTING COMPANY d/b/a LIPA

Commercial Avenue Equipment Project

Appendix E
Local Law Analysis

LOCAL ORDINANCE ANALYSIS

1.0 Introduction

The applicant (“Applicant”) is PSEG Long Island LLC (“PSEG Long Island”) on behalf of and as agent for the Long Island Lighting Company d/b/a LIPA, a wholly-owned subsidiary of the Long Island Power Authority (“LIPA”). LIPA is a corporate municipal instrumentality of the state, a body corporate and politic and political subdivision of the state, exercising essential governmental and public powers. Public Authorities Law, § 1020-c(1). In addition, Public Authorities Law § 1020-p provides that:

[i]t is hereby found and declared that the operation of the authority is primarily for the benefit of the people of the state of New York, for the improvement of their health, welfare and prosperity, and is a public purpose, and the authority shall be regarded as performing an essential governmental function in carrying out the provisions of this title.

To carry out its essential governmental purposes, LIPA is required solely to “apply to the appropriate agencies and officials of the federal and state governments for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable....” See Public Authorities Law § 1020-g(e).

Notwithstanding LIPA’s exemption from the jurisdiction of local municipalities, the Applicant submits the following analysis of Local Ordinances. The analysis is submitted for the sole purpose of allowing the Commission to evaluate under Article VII the Commercial Avenue Equipment Project’s (“Project”) compliance with the substantive local requirements that would otherwise be applicable to a major utility transmission facility. Where code provisions cannot be complied with because they are unreasonably restrictive, the Applicant requests that the Commission refuse to apply them to the Project.

Nothing herein should be construed or interpreted as either LIPA or PSEG Long Island agreeing to subject itself to the jurisdiction of any county or local municipality; waive its exemption from such jurisdiction; or waive or forfeit any other right to which it is entitled under the law.

The Project is proposed to be sited in the following jurisdictions:

- County of Nassau
 - Town of Hempstead

This Appendix identifies, for each of the jurisdictions listed above, the substantive local ordinances, laws, resolutions, regulations, standards and other requirements relevant to the Project activities (“Local Ordinances”). The Applicant will comply with the substantive requirements of these Local Ordinances, and the location of the Project and its construction and operation will be in accordance with all such Local Ordinances, except for those substantive requirements of Local Ordinances that the Applicant in this Appendix identifies as unreasonably restrictive in view of: (i) the existing technology; (ii) factors of costs or economics; or (iii) the needs of consumers. This Appendix contains justification statements in support of the Applicant’s request that the Public Service Commission (“Commission”) not apply those substantive Local Ordinances identified as unreasonably restrictive.

Due to the preemptive effect of Public Service Law (“PSL”) Section 130, all procedural requirements to obtain any approval, consent, permit, certificate or other condition for the construction or operation of the Project do not apply.

Table 1 Compliance Summary Table		
Municipality	Subject of Ordinance	Applicant Will Comply or Requests PSC Relief
<i>County of Nassau</i>		
	Admin. Code Section 11-A-3.0 – Violations	Will Comply
	Admin. Code Section 12-4.1 - Sidewalks and curbs on state highways and county roads outside of incorporated villages and cities	Will Comply
	Admin. Code Section 12-4.3 – Deposits of material on county roads	Will Comply
	Admin. Code Section 12-13.0 – Construction, maintenance and control of bridges within the County	Will Comply
	Admin. Code Section 21-24.2 – Preventing the spread of invasive species in Nassau County; Prohibitions	Will Comply
	Admin. Code Section 21-24.6 – Disposal of prohibited invasive species	Will Comply
	Nassau County Ordinance No. 35-2017 – An ordinance to regulate County rights of way in relation to utilities	Will Comply
	Rules and Regulations Pertaining to Work on County Roads and Within County Right-of-Way	Will Comply
<i>Town of Hempstead</i>		
	Town Code Chapter 86 – Building Construction Administration; Appendix A 221 – Building Code Administration	Will Comply
	Town Code Chapter 128 – Garbage and Rubbish	Will Comply
	Section 128-2 – Accumulation and dumping prohibited	Will Comply
	Section 128-6 – Precollection practices in collection districts	Will Comply
	Section 128-24 – Litter in public places	Will Comply
	Section 128-29 – Truck loads causing litter	Will Comply
	Section 128-31 – Litter in lakes and fountains	Will Comply
	Section 128-39 – Owner to maintain premises free of litter	Will Comply
	Town Code Chapter 138 – Smoke	
	Section 138-1 – Emission of dense smoke	Will Comply

Table 1 Compliance Summary Table		
Municipality	Subject of Ordinance	Applicant Will Comply or Requests PSC Relief
	Section 138-2- Escape of soot, cinders, etc.	Will Comply
	Town Code Chapter 140 – Earth and Soil Removal	
	Section 140-3 – Pit and bank excavations	Will Comply
	Section 140-4 – No stripping or removal	Will Comply
	Town Code Chapter 144 – Noise	Requests Partial PSC Refusal to Apply
	Town Code Chapter 160 – Precautions Against Oil Spills	
	Section 160-2 – Oil discharge prohibited	Will Comply
	Section 160-4 – Duty to notify	Will Comply
	Section 160-6 – Liability and corrective measures relating to spillage	Will Comply
	Town Code Chapter 161 – Illicit Discharges	Will Comply
	Section 161-6 – Discharge prohibitions	Will Comply
	Section 161-8 – Prohibition against activities contaminating stormwater	Will Comply
	Section 161-13 – Notification of spills	Will Comply
	Town Code Chapter 164 – Public Wetlands Preservation	Will Comply
	Town Code Chapter 165 – Freshwater Wetlands	Will Comply
	Town Code Chapter 175 – Excavations in Streets	Will Comply
	Section 175-5 – Street opening regulations and restrictions	Requests Partial PSC Refusal to Apply
	Section 175-6 – Maintenance of traffic and protection of the public	Will Comply
	Section 175-7 – Detail of construction	Will Comply
	Town Code Chapter 176 – Roll-Off Containers	Will Comply
	Town Code Chapter 177 – Materials: Deposit	Will Comply
	Town Code Chapter 181 – Sidewalks, Roads and Streets	

Table 1 Compliance Summary Table		
Municipality	Subject of Ordinance	Applicant Will Comply or Requests PSC Relief
	Section 181-2 – Requirements of construction	Will Comply
	Section 181-4 - Trees	Will Comply
	Section 181-11 - Removal of snow, ice and obstructions	Will Comply
	Section 181-13 – Littering	Will Comply
	Section 181-14 – Obstructing walks	Will Comply
	Town Code Chapter 182 – Streets; Construction of Curb Cuts and Driveway Entrances	Will Comply
	Town Code Chapter 184 – Tree Preservation	Will Comply
	Section 184-2 and 184-5 - Removal of trees prohibited without permit; replacement required; Permissible trees in sidewalk area	Will Comply
	Section 184-10 – Prohibited deposits on public property	Will Comply
	Town Code Chapter 190 – Vehicle Speed Limits	Will Comply
	Town Code Chapter 192 – Weight Restrictions: Commercial Vehicles	
	Section 192-1 – Gross weight restrictions upon commercial vehicles using certain Town highways	Will Comply
	Section 192-3 – Exception	Will Comply
	Town Code Chapter 202 – Parking	Will Comply
	Town of Hempstead Building Zone Ordinance (BZO)	
	BZO Section 310 – Public utility buildings	Will Comply
	BZO Section 220 – Y Industrial District; Permitted uses; prohibited uses	Will Comply
	BZO Section 222 – Y Industrial District; Front Yards	Will Comply
	BZO Section 223 – Y Industrial District; Rear Yards	Will Comply
	BZO Article XXIV – Signs	Will Comply
	BZO Section 244 – Signs permitted in specific use districts	Will Comply
	BZO Section 245 – Setback requirements	Will Comply
	BZO Section 246 – Signs: General provisions	Requests PSC Partial Refusal to Apply

Table 1 Compliance Summary Table		
Municipality	Subject of Ordinance	Applicant Will Comply or Requests PSC Relief
	BZO Section 302 – Prohibited and restricted uses	Will Comply
	BZO Section 305 – Site plans	Will Comply
	BZO Section 308 – Reduction of lot area restricted	Will Comply
	BZO Section 311 – Clear sight triangle	Requests PSC Partial Refusal to Apply
	BZO Section 313 – Location of parking spaces for premises zoned for business, light manufacturing or industrial uses	Will Comply
	BZO Article XXXVIII – Stormwater Management and Erosion and Sediment Control	Will Comply
	Section 389 – Applicability	Will Comply
	Section 393 - Maintenance and repair of stormwater facilities	Will Comply

2.0 Requests for PSC Relief

2.0.1 Town of Hempstead

2.0.1.1 Sections 144-2, 144-3 and 144-5 – General and specific noise prohibitions and limitation

Section 144-2 prohibits the making of unreasonable noise or noise disturbance. The phrases “unreasonable noise” and “noise disturbance” are each defined as “any sound which either endangers or injures the safety or health of humans or animals or annoys or disturbs a reasonable person of normal sensitivity or endangers or damages property.” Section 144-3 prohibits certain activities including, among others: (i) the use of any vehicle in such a manner as to create a noise disturbance across a residential real property boundary, (ii) the discharge of the exhaust from any stationary internal-combustion engine or motor vehicle, except through a muffler which effectively prevents loud noises therefrom, (iii) construction activity other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, (iv) creating sound on any street or public property adjacent to any school, institution of learning or court while the institution or court is in session, or adjacent to any hospital, which unreasonably interferes with the workings thereof, and (v) operating any mechanical powered saw, sander, drill, grinder, lawn or garden tool, snow blower or similar

device, which creates an unreasonable noise across a real property boundary other than between the hours of 7:00 a.m. and 9:00 p.m.

Section 144-5 provides that “[n]o person shall operate ... any mechanism or device ... which shall create a noise within the Town of Hempstead exceeding the limiting noise spectra” for transient and steady noise given in the tables set forth below:

Table I

Limiting noise spectrum for transient noise.

Band Pressure Level Decibels re 0.0002 Microbars	Octave Band Center Frequency (cycles per second)
92	63
87	125
79	250
72	500
66	1,000
60	2,000
54	4,000
52	8,000

Table II

Limiting Noise Spectrum for Steady Noise

Band Pressure Level Decibels re 0.0002 Microbars	Octave Band Center Frequency (cycles per second)
72	63
67	125
59	250
52	500
46	1,000
40	2,000
34	4,000
32	8,000

During the daytime hours of 7:00 a.m. to 7:00 p.m., the limits in Table I above apply to transient noises lasting more than 12 seconds. From 7:00 p.m. to 7:00 a.m., the same limits apply to transient noises lasting more than six seconds.

The Applicant requests that the Commission refuse to apply the prohibitions in: Section 144-2 on producing sound which annoys or disturbs a reasonable person of normal sensitivity; Section 144-3 on “(i) the use of any vehicle in such a manner as to create a noise disturbance across a residential real property boundary ...; and Section 144-5 on operating “any mechanism or device ... which shall create a noise within the Town of Hempstead exceeding the limiting noise spectra” for transient and steady noise given in the above tables. This is because these prohibitions are unduly restrictive in view of the existing technology, cost and the needs of the Applicant’s

consumers. A number of the processes and activities to be conducted in the course of the Project, including use of motorized equipment engaged in excavation, produce noise. The noise associated with the Project is limited to the construction phase of the Project, which is temporary and will take place primarily during daytime hours. Noise associated with the construction phase is estimated to range from 65 dBA to 83 dBA at distances of 100 to 200 feet from the construction activity. Estimated construction noise levels at distances of 100 feet or more do not exceed the Federal Transit Administration (“FTA”) daytime residential noise level guideline of 90 dBA. Estimated construction noise levels from trenchless construction at distances of 100 feet or more do not exceed the FTA nighttime residential noise level guideline of 80 dBA. At distances of 500 feet or more, construction noise levels are estimated to be 69 dBA or less. Indoor noise levels would be lower than outdoor noise levels by 15 dBA or more. Full compliance with these town noise prohibitions is technically impossible or impracticable. All of these impacts will be intermittent and will occur only for limited periods during Project construction, and they are unavoidable given the nature of such construction activities. This request cannot be obviated by design changes to the Project because noise is unavoidable given the nature of such construction activities. The Applicant will implement noise mitigation measures during the course of the Project. These measures demonstrate that this request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable.

The Applicant requests that the Commission refuse to apply the prohibitions in: Section 144-3 on “(iii) construction activity other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays”; and “(v) operating any mechanical powered saw, ... drill, ... or similar device, which creates an unreasonable noise across a real property boundary other than between the hours of 7:00 a.m. and 9:00 p.m.” This is because these prohibitions are unduly restrictive in view of the existing technology, cost and the needs of the Applicant’s consumers. While the bulk of the construction activities on the Project will occur during daytime hours, the Applicant anticipates that certain small portions of Project work will need to be conducted during overnight hours in the Town of Hempstead.

An example of a type of Project activity that may occur during overnight hours is the installation of cable within manholes along Town roadways at locations where the Applicant in consultation

with officials of the town and of the villages that the Project traverses determine that such work should be performed at night in order to create lesser impacts than work conducted during the day, even taking into account the lower overall ambient noise levels and persons' heightened sensitivity to noise at night. Certain locations along the Project route are roads in commercial corridors with sufficiently high daytime vehicular traffic volumes that these Project activities would create considerable impacts if conducted during the day. This is particularly true in areas where the Project will require the use of detours or alternating one way traffic. Such detours are much less impactful to vehicle traffic if performed at night rather than daytime. Similarly, Project activities near daytime-operating facilities such as businesses and schools will have less impact if conducted at night. The Applicant will consult with local government officials with the goal of reaching agreement with them on locations where nighttime Project work is less impactful than daytime work, and requests that the Commission refuse to apply the above-cited laws as necessary to allow nighttime work at such locations

2.0.1.2 Section 175-5 – Street opening regulations and restrictions

Section 175-5(C) of this Local Ordinance prohibits excavation on any newly constructed or resurfaced town street, roadway or highway for a period of not less than five years. This restriction does not apply to the part of the road right-of-way abutting the new road surface.

The Applicant requests that the Commission refuse to apply to the Project the prohibition on excavation within any newly resurfaced streets set forth in Section 175-5(C) because it is unduly restrictive in view of the existing technology, cost and the needs of the Applicant's consumers. The Project is comprised of an electric transmission line that is proposed to connect the proposed reactors located at the Commercial Avenue Terminal to manholes located within Commercial Avenue and Quentin Roosevelt Boulevard. The Project requires excavation within those roadways to perform that work. The Project's location is a function of the overall integrated Project design and reflects the requirements of constructability, security and public safety. This request cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable.

2.0.1.3 BZO Section 246 - Signs: General Provisions

Section 246(B) provides that signs “shall not be attached to fences, trees, utility poles or similar supporting devices.”

The Applicant requests that the Commission refuse to apply the portion of Section 246(B) that prohibits signs from being attached to fences because it is unreasonably restrictive in view of the existing technology, cost factors and the needs of consumers. This law conflicts with Section 11 of the National Electric Safety Code (NESC), which provides, in pertinent part, that “[f]or fenced or walled electric supply stations without roofs, a safety sign shall be displayed on each exterior side of the fenced or wall enclosure.” For reasons of efficiency, safety, reliability, this NESC requirement reflects the uniform practice for construction, operation and maintenance of high-voltage electric transmission stations. The needs of the Applicant’s consumers are best met by enabling the Applicant to perform the Project and operate and maintain the electric transmission line the Commercial Avenue Terminal efficiently, safely and reliably. The Applicant submits that these factors outweigh the impact on this municipality that would result from the Commission’s refusal to apply Section 246(B).

2.0.1.4 BZO Section 311 – Clear sight triangle

This Local Ordinance provides that on corner lots no wall, fence or other structure shall be erected or altered and no hedge, tree, shrub or other growth shall be maintained “at a height greater than 2 1/2 feet at any point within a radius of 20 feet of the point formed by any intersecting property lines adjacent to roads or highways.”

The Applicant requests that the Commission refuse to apply to the Project the fence height restriction in Section 311 because the requirements are unreasonably restrictive in view of the existing technology, cost factors and the needs of consumers. This ordinance cannot be reconciled with the Applicant’s BMPs and station design requirements, which contain a number of requirements for purposes of security, safety and reliability. These include security-driven requirements to ensure that sites such as the Commercial Avenue Terminal, which is located on a corner lot, are entirely surrounded by a fence of sufficient height to prevent unauthorized access.

For purposes of safety and security, the Applicant plans to construct/replace the existing fence at that site with a fence that will be approximately 8-feet tall. This request is the minimum necessary and cannot be obviated by design changes to the Project. Any adverse impacts of granting this request will be mitigated to the maximum extent practicable. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain the Project safely, securely and reliably. The Applicant submits that these factors outweigh the impact on this town that would result from the Commission's refusal to apply this requirement.