

CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION

In the Matter of the Violations of Article 57 of the
Environmental Conservation Law of the State of
New York (“ECL”)

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ORDER ON CONSENT

No. CPBJPPC 1-2018

By

Long Island Electric Utility Servco LLC, Respondent.

(Suffolk County)

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WHEREAS

1. The Central Pine Barrens Joint Planning and Policy Commission (hereinafter referred to as “the Commission”) has jurisdiction over land use activities within the Central Pine Barrens as defined in the Long Island Pine Barrens Protection Act of 1993, as amended (hereinafter the “Act”).
2. Long Island Lighting Company d/b/a LIPA, is a corporate municipal instrumentality of the State of New York (“Licensee” or “LIPA”), with offices at 333 Earle Ovington Boulevard, 4th Floor, Uniondale, NY 11553. PSEG Long Island (“PSEG LI”), with offices at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553, operates and maintains the electricity transmission and distribution system as agent for LIPA (“Agent”). Long Island Electric Utility Servco LLC (“Servco”) is a wholly owned subsidiary of PSEG LI which the Amended and Restated Operations Services Agreement between LIPA and PSEG LI expressly encompasses in its designation of PSEG LI as the “Service Provider.” Servco is executing this Consent Order on behalf of LIPA in its capacity as agent for LIPA, and neither Agent nor Servco is a principal party to this Agreement.
3. LIPA, owns the property known as the LIPA Riverhead Substation (the “Substation”) on Suffolk County Tax Map (“S.C.T.M.”) parcel number (#) 900-195-2-2 and right of way on SCTM # 900-193-7-2 (the “Property”) as more specifically shown on Exhibit A attached hereto and made a part hereof located to the north and south of Nugent Drive (Suffolk County Route 94 or New York State Route 24), in the Town of Southampton, County of Suffolk, State of New York.
4. The Substation and the Property are located in the “Core Preservation Area” of the Central Pine Barrens area as defined in the Act and as described in Article 57 of the New York State Environmental Conservation Law (“ECL”), §57-0107(11), and, as such is under the jurisdiction of the Commission.
5. The Act and the Central Pine Barrens Comprehensive Land Use Plan (the “CLUP”), adopted by the Commission in 1995, prohibit certain activities, including development, unless such activity has first received a hardship waiver from the Commission pursuant to ECL §57-0123.

6. Pursuant to a Compelling Public Need Hardship Waiver granted by the Commission on November 19, 2008 for the LIPA Riverhead Substation Expansion Project (the "Project"), LIPA was required to restore a total of 3.42 acres of scrub oak habitat (1.95 acres) and pitch pine habitat (1.47 acres) as mitigation for the disturbance to natural vegetation caused by the Project. The mitigation was completed.
7. On May 25, 2017, Respondent notified the Commission that 1.95 acres of the Property which had previously restored as mitigation for the Project was subsequently disturbed.
8. On May 31, 2017, Commission staff observed and confirmed that disturbance had occurred on the Property.
9. On January 17, 2018, the Commission adopted a resolution which determined that the Respondent had allegedly committed a violation and directed that a Notice of Violation be issued to Respondent. The Notice of Violation was issued immediately thereafter.
10. Respondent hereby acknowledges that it has conducted the disturbance of the Property in violation of the Act.
11. Respondent desires to resolve the within matter through this Order on Consent rather than to engage in litigation on the issues.
12. The Commission agrees to settle the within matter through this order on Consent with Respondent rather than to engage in litigation on the issues.
13. Respondent, represented by counsel, affirmatively waive its rights to a public hearing in this matter in the manner provided by law, and consents to the entering and issuing of this order, and agrees to be bound by the terms and conditions contained here.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

- I. Cease and Desist. Respondent shall immediately cease and desist any and all further activities in violation of any provision of the ECL in relation to disturbance activity on the Property
- II. Relief.
 - A. **Penalty.** With respect to the activities identified in this Order, the Commission assesses against Respondent a civil penalty in the sum of TWENTY FIVE THOUSAND (\$25,000) DOLLARS, which shall be paid immediately following execution of this Order and no later than 30 days from August 15, 2018, pursuant to a resolution adopted by the Commission on May 16, 2018.
 - B. **Method of Payment.** Required payment shall be made in accordance with the following three paragraphs.

- i. The payable portion of the penalty is to be paid by bank check made payable to "Central Pine Barrens Joint Planning and Policy Commission," as the case may be.
- ii. Payment to the Commission must have written on its face: CPBJPPC 1-2018/("Name of Respondent").
- iii. Payment to the Commission shall be delivered to:

Central Pine Barrens Joint Planning and Policy Commission
624 Old Riverhead Road
Westhampton Beach, New York 11978

C. Respondent shall prepare a draft conservation easement, with the Commission as Grantee, to protect a 1.2 acre wooded, undeveloped parcel, currently owned by LIPA, previously owned by LILCO, in the Core Preservation Area on the west side of Ashton Road in Middle Island in the Town of Brookhaven and identified as S.C.T.M. # 200-499-2-10.2. The conservation easement shall be reviewed and approved by Commission counsel prior to recording in the Office of the Suffolk County Clerk. The Commission shall be designated as the Grantee on the Easement. The recording of said conservation easement shall occur no later than 30 days after August 15, 2018.

D. Respondent shall not apply for nor seek Pine Barrens Credits nor shall Pine Barrens Credits be issued for the parcel identified as S.C.T.M. # 200-499-2-10.2.

E. The approximate \$50,000 recently incurred by Respondent to undertake and complete habitat restoration activity on the Property, which included areas that were previously restored by the Project, is applied to the remedy of this violation.

III. Settlement and Reservation of Rights.

- A. Upon completion of all obligations created in the Order, this Order settles only all claims for civil and administrative penalties concerning the activities described in this Order against Respondent and their successors (including successors in title) and assigns.
- B. Except as provided in Subparagraph III.A. of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Commission or authorities with respect to any parties, including Respondents.

IV. Failure, Default and Violation of Order.

- A. Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall be deemed to be a violation of both this Order and the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondent by the Commission and further action as deemed appropriate by the

Commission.

V. Indemnification.

Respondent shall indemnify and hold harmless to the extent permitted by law the Commission and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and its successors (including successors in title) and assigns.

VI. Binding Effect. The provisions of this Order shall inure to the benefit of and be binding upon the Commission and Respondent and their successors (including successors in title) and assigns.

VII. Modification. In those instances in which Respondent desires that any of the provisions, terms or conditions of this Order be changed, Respondent shall make written application, setting forth the grounds for the relief sought, to the Commission at 624 Old Riverhead Road, Westhampton Beach, New York 11978. No change or modification to this order shall be made or become effective except as set forth by a written order of the Commission.

VIII. Access and verification. For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of the Commission shall be permitted access to Ashton Road parcel and the Property and to cross other lands owned by Respondent to access the Property without prior notice at reasonable hours and intervals in order to inspect and determine the status of the properties, as deemed appropriate to determine the status of Respondent's compliance.

IX. Force Majeure. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if they cannot comply with any requirements of the provisions hereof, because of an Act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided, however, that Respondent shall immediately notify the Commission in writing when Respondent obtains knowledge of any such condition and request an extension or modification of the provisions hereof.

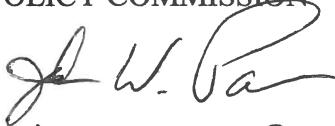
X. Entire Order. The provisions of this Order constitute the complete and entire Order issued to Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to paragraph VII of this Order. No informal oral or written advice, guidance, suggestion or comment by the Commission regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondents of their obligations to obtain such formal approvals as may be required by this Order.

XI. Effective Date. The effective date of this Order shall be the date upon which it is signed by the individual authorized by the Commission to do so on behalf of the Commission.

Dated: Westhampton Beach, New York

October 3, 2018

CENTRAL PINE BARRENS JOINT PLANNING
AND POLICY COMMISSION

By: 

Name: JOHN W. PAVACIC

Title: Executive Director

COMMISSION ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss.:

COUNTY OF SUFFOLK)

On the 3rd day of October in the year 2018, before me personally came John W. Pavacic, to me known, who, being duly sworn did depose and say that s/he resides at 624 Riverhead Rd. ¹¹⁹⁷⁸ Westhampton Beach, NY that s/he is the Executive Director of the **CENTRAL PINE BARRENS JOINT PLANNING AND POLICY COMMISSION**, the entity described herein and which executed the above instrument; and that s/he signed his name thereto with full commission authority so to do.

Sworn to before me this
3rd day of October, 2018

Notary Public

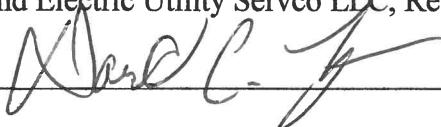
Carol A. Sholl

CAROL A. SHOLL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SH6180927
Qualified in Nassau County
My Commission Expires January 22, 2020

CONSENT BY RESPONDENT PSEG LONG ISLAND

Respondent, Long Island Electric Utility Servco LLC, acknowledges the authority and jurisdiction of the Central Pine Barrens Joint Planning and Policy Commission member to issue the foregoing Order, waives public hearing or other proceedings in the matter, accepts the terms and conditions set forth in the Order and consents to the issuance thereof and agrees to be bound by the provisions, terms and conditions contained therein.

Long Island Electric Utility Servco LLC, Respondent

By: 

Name: DAVID LYONS

Title: VP, Construction & Operations Services

an individual duly authorized by the respondent municipal corporation to sign on behalf of the municipal corporation and who may bind respondent municipal corporation to the terms and conditions contained herein.

Date: 8/14/2018

COMPANY ACKNOWLEDGMENT

STATE OF NEW YORK)

Nassau) ss.:

COUNTY OF SUFFOLK)

On the 14th day of August in the year 2018, before me personally came **DAVID LYONS**, to me known, who, being duly sworn did depose and say that he is the VP, Construction & Operations Services of the Long Island Electric Utility Servco LLC, the company described herein and which executed the above instrument; and that he signed his name thereto with full corporate authority so to do.

Sworn to before me this
14th day of August, 2018



Notary Public

PENNIE VAKKAS
Notary Public, State of New York
No. 5009208
Qualified in Nassau County
Commission Expires March 8, 2019