



FOLEY & LARDNER LLP

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
202-295-4097
dralston@foley.com

June 20, 2014 236207
236208

Ms. Cynthia T. Brown
Chief, Section of Administration (PSA)
Surface Transportation Board
Office of Proceedings (PD)
395 E Street, S.W.
Room 1034
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
June 20, 2014
Part of
Public Record

Re: **(1) Finance Docket No. 35819, Brookhaven Rail Terminal
And Brookhaven Rail, LLC – Reply Of Brookhaven Rail
Terminal And Brookhaven Rail, LLC To Town Of
Brookhaven’s Emergency Application**

**(2) Finance Docket No. 35141, U S Rail Corporation –
Construction And Operation Exemption – Brookhaven
Rail Terminal – Reply Of Brookhaven Rail Terminal And
Brookhaven Rail, LLC To Town Of Brookhaven’s
Emergency Application**

Dear Ms. Brown:

Please find enclosed for filing in the above dockets the attached Reply of Brookhaven Rail Terminal and Brookhaven Rail, LLC to the Town of Brookhaven’s Emergency Application, filed on June 12, 2014, in Finance Docket No. 35819 and Finance Docket No. 35141. If you have any questions, please let us know.

Respectfully submitted,

David T. Ralston, Jr.

Counsel for Brookhaven Rail Terminal and
Brookhaven Rail, LLC

Enclosures: Reply and Exhs. A, B, C
cc: Parties of Record

BOSTON
BRUSSELS
CHICAGO
DETROIT

JACKSONVILLE
LOS ANGELES
MADISON
MIAMI

MILWAUKEE
NEW YORK
ORLANDO
SACRAMENTO

SAN DIEGO
SAN FRANCISCO
SHANGHAI
SILICON VALLEY

TALLAHASSEE
TAMPA
TOKYO
WASHINGTON, D.C.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35819

BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC –
PETITION FOR DECLARATORY ORDER

FINANCE DOCKET NO. 35141

U S RAIL CORPORATION – CONSTRUCTION AND OPERATION EXEMPTION –
BROOKHAVEN RAIL TERMINAL

**REPLY OF BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC
TO TOWN OF BROOKHAVEN'S EMERGENCY APPLICATION**

**David T. Ralston, Jr.
Zachary L. Coffelt
Foley & Lardner LLP
3000 K Street, N.W.
6th Floor
Washington, D.C. 20007**

***Counsel for Brookhaven Rail Terminal
and Brookhaven Rail, LLC***

Dated: June 20, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35819

BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC –
PETITION FOR DECLARATORY ORDER

FINANCE DOCKET NO. 35141

U S RAIL CORPORATION – CONSTRUCTION AND OPERATION EXEMPTION –
BROOKHAVEN RAIL TERMINAL

**REPLY OF BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC TO
TOWN OF BROOKHAVEN’S EMERGENCY APPLICATION**

Brookhaven Rail Terminal and Brookhaven Rail, LLC (collectively “BRT”), reply in opposition to the Town of Brookhaven’s (“Town”) submission titled “Emergency Application to Keep Open/Reopen Proceedings” filed with the Surface Transportation Board (“Board”) on June 12, 2014, in STB Finance Docket No. 35819 (Document No. 236176) and STB Finance Docket No. 35141 (Document No. 236178) (collectively “Emergency Application”). The Board should ignore the Town’s “Emergency Application” in both matters before the Board because the “Emergency Application” presents new and irrelevant issues, and is nothing more than the latest in the Town’s belated, improper, and tiresome efforts to enlarge and confuse the matters pending before the Board.

As an initial matter, the Town’s so-called “Emergency Application” raises new issues that are irrelevant to *both* matters before the Board. With respect to Finance Docket No. 35141 (concerning the Motion to Reopen Proceeding), the Town raises arguments regarding Parcels B and C, whereas the Town’s Motion to Reopen Proceeding is limited to Parcel A, as Parcel A alone was the subject of the proceeding in Finance Docket No. 35141. In like manner, regarding

the proceeding in Finance Docket No. 35819 (concerning BRT's Petition for Declaratory Order), the only issue there is whether the track that BRT is constructing on Parcels B and C is a spur. The Town's "Emergency Application" does not raise legal or factual arguments on the question of whether BRT's planned track is a spur.

The Town attempts to show that its receipt of certain June 10, 2014, Notices of Cease and Desist (the "LIPA Notices") from the Long Island Power Authority ("LIPA") somehow establish that BRT does not possess an easement from LIPA to construct portions of BRT's spur track between Parcel A and Parcel B. The Town's contention is baffling because the LIPA Notices do not contest, dispute, or even mention the easements, and the Town has been provided with the very easements it now claims do not exist, attached hereto for the Board's reference as Exhibit A and Exhibit B. Instead, the LIPA Notices assert that certain of BRT's construction activities on Parcel C may have encroached onto certain LIPA-owned parcels.¹

The Town's second assertion is as mystifying as its first, because the June 11, 2014 letter (the "LIRR Letter") from the Long Island Rail Road ("LIRR") does not establish that BRT has made any "materially false representations" to the Board. Rather, as with the LIPA Notices, the LIRR Letter raises issues that are unrelated to both Board matters. The LIRR Letter evidences a private dispute between BRT and the LIRR that BRT is currently working with the LIRR to resolve, and does not support the Town's suggestion that BRT has acted improperly. Notably, the District Court in Case No. 2:14-cv-02286-GRB denied a similar application by the Town to re-open the record in the District Court proceedings based upon the LIPA Notices and the LIRR

¹ While the issues raised in the LIPA Notices are unrelated to either of the Board matters, BRT can advise the Board that BRT is currently investigating LIPA's complaints, and will promptly address those found to require attention.

Letter (proof of which is attached as Exhibit C in the form of the electronic notice of the Court's Order received by BRT's counsel in the federal case), and so should the Board.

Finally, notwithstanding the Town's continued hyperbolic spasms, there is no showing of an "emergency" here. Rather, this is another example of the Town's overstatements and misstatements, designed here to manufacture a crisis atmosphere the Town apparently believes is necessary to have the Board decide in the Town's favor. Besides conveying the Town's recognition of the weakness in its positions in both Board matters, the Town's latest filing confirms that if the record is not closed in Finance Docket No. 35819, as BRT has requested, the Town will continue its seriatim practice of filings concerning unrelated issues. Accordingly, the Board should close the record and enter a decision on BRT's Petition for Declaratory Order, as requested by BRT in its Motion to Close the Record and Enter Decision filed on June 9, 2014 (Document No. 236160).

Therefore, for all the foregoing reasons, BRT respectfully requests the Board ignore the Town's "Emergency Application" with respect to both matters before the Board, close the record in Finance Docket No. 35819, and issue decisions in both matters.

Respectfully submitted,

Brookhaven Rail Terminal and Brookhaven Rail, LLC

By: _____
David T. Ralston, Jr.

Foley & Lardner LLP
3000 K Street, N.W.
Washington, D.C. 20007
(202) 295-4097
dralston@foley.com

Dated: June 20, 2014

Counsel for Brookhaven Rail Terminal and Brookhaven Rail, LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2014, I caused to be served Brookhaven Rail Terminal's and Brookhaven Rail's Reply to the Town of Brookhaven's Emergency Application, by first-class mail, postage prepaid, upon the following Parties of Record in this proceeding:

TO: Judah Serfaty, Esq.
Rosenberg Calica & Birney LLP
100 Garden City Plaza, Suite 408
Garden City, NY 11530

U S Rail New York LLC
205 Sills Road
Yaphank, NY 11980

NYS Dept of Transportation
50 Wolf Road
Albany, NY 12232
Attn: Robert A. Rybak, Esq.

James H.M. Savage, Esq.
1750 K Street, N.W., Suite 350
Washington, D.C. 20006

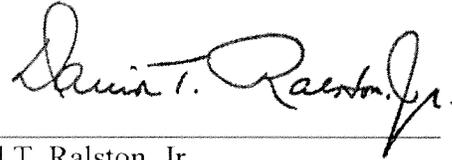
Lyngard Knutson, Esq.
Region 2 E.P.A.
290 Broadway, 25th Floor
New York, NY 10007

NYS Dept. of Environmental Conservation
New York Natural Heritage Program
Albany, NY 12233-4757
Attn: Tara Seoane

Field Office Supervisor
U.S. Fish and Wildlife Service
Long Island Field Office
340 Smith Rd.
Shirley NY, 11967

MTA Long Island Rail Road
Jamaica Station
Jamaica, NY 11435-4380
Attn: Helena E. Williams

New York & Atlantic Railway
68-01 Otto Road
Glendale, NY 11385
Attn: Paul Victor

A handwritten signature in black ink that reads "David T. Ralston, Jr." The signature is written in a cursive style with a horizontal line underneath the name.

David T. Ralston, Jr.
*Counsel for Brookhaven Rail Terminal
and Brookhaven Rail, LLC*

EXHIBIT A

EASEMENT

THIS INDENTURE, made this 27th day of ~~July~~ ^{August}, 2013, by and between **Long Island Lighting Company d/b/a LIPA** ("LIPA"), a New York corporation and wholly-owned subsidiary of the Long Island Power Authority, a corporate municipal instrumentality and political subdivision of the State of New York, with principal offices at 333 Earle Ovington Boulevard, Uniondale, Nassau County, New York 11553 (hereinafter referred to as "Grantor"), and **Brookhaven Eastern Holdings, LLC**, having its principal place of business at 38955 Hills Tech Drive, Farmington Hills, Michigan 48331 (hereinafter referred to as "Grantee"). Grantor and Grantee are herein collectively referred to as the "Parties."

WITNESSETH:

Whereas, Grantor is the owner in fee simple absolute of a certain parcel of land and of all the estate therein, which parcel is approximately 10,800 +/- square feet and part of the LIPA Right of Way Parcel No. 256, lying to the east of Sills Road (CR 101), to the south of the Long Island Expressway South Service Road and north of the Long Island Railroad, and being situate in Yaphank, Town of Brookhaven, County of Suffolk, State of New York; and is designated as part of Suffolk County Tax Map Number:

District 0200 Section 663.00 Block 0300 Lot 028.000 (hereinafter called the "Site")

Whereas, Keyspan Gas East Corporation d/b/a National Grid ("National Grid") received a license from Grantor dated July 22, 2008, over a portion of the Easement Area as hereinafter defined (the "Licensed Area"), to construct, maintain, repair and replace an underground gas transmission line and appurtenances thereto (the "Gas Facilities"), which license is to convert into a permanent easement upon the granting of an easement by Grantor to National Grid (hereinafter the "License");

Whereas, the underground gas transmission line and appurtenances were installed in the Licensed Area pursuant to said License;

Whereas, Grantor is willing to grant, and Grantee is willing to accept a non-exclusive, permanent and perpetual easement over, under, across, through and along a portion of the Site for the uses and purposes and on the terms and conditions herein set forth:

Now, therefore, the Parties hereto, intending to be legally bound do hereby agree as follows:

Grantor, for and in consideration of Forty-Seven Thousand Five Hundred Dollars (\$47,500.00) and other good and valuable consideration, does hereby grant unto Grantee and its successors and assigns, and Grantee does hereby accept, a permanent and perpetual easement and right-of-way, including the right to enter upon the premises hereinafter described ("Grant"), solely for the purpose of ingress and egress of bulldozers, front end loaders, trucks and other vehicles (the "Permitted Vehicles") to cross over the premises bounded and described in Exhibit "A," (survey map and/or legal description), attached hereto and incorporated by reference herein (hereinafter



referred to as the "Easement Area") to and from the Grantee's property adjacent to the east and west of the Easement Area (the "Approved Activities").

To Have and To Hold, unto Grantee and its successors and assigns, for so long as the Easement Area may be so used by Grantee, or its successors and assigns, in accordance with the foregoing and in compliance with the terms and conditions herein set forth. In the event of a violation by Grantee or its successors and assigns of any of the terms and conditions of this Grant, Grantor shall give written notice of such violation to Grantee, and Grantee shall be afforded a reasonable period of time following receipt of said written notice to resolve the violation. Upon cessation or abandonment of the uses and purposes of this Grant, as set forth herein for a period of more than two (2) consecutive years, or upon the unresolved violation by Grantee or its successors and assigns of any of the terms and conditions of this Grant for an unreasonable period of time following written notice received by Grantee, the Grant shall cease and terminate upon delivery to Grantee of written notice stating said cessation, abandonment or unresolved violation and be of no further force or effect whatsoever. Notwithstanding the foregoing, in the event that a legal action or proceeding has been commenced by either party to enforce a term, right or condition under this Grant, then the time used to measure the cessation of the uses and/or purposes or the abandonment of the Easement Area shall be tolled during the pendency of said legal action or proceeding and the time periods for determining a cessation or abandonment of the uses or purposes of the Easement Area by Grantee shall be extended or the rights and/or obligations of the Parties under the Grant may be determined by a Court in connection with the outcome or disposition of a pending action or proceeding.

This Grant is made and accepted upon the following terms and conditions:

1. Grantee has the right to conduct the Approved Activities upon a portion of the Easement Area and shall provide construction drawings, plans and specifications (collectively, the "Plans and Specifications") at Grantee's sole cost and expense for any proposed "Additional Activities" on the Easement Area, which shall include, but are not limited to, laying and/or maintaining of blue stone or a comparable material on the Easement Area. Grantee shall submit the Plans and Specifications to Grantor and Grantor shall have a reasonable opportunity to review and comment thereon. Grantee shall not commence any construction in connection with the Additional Activities, until Grantor's formal written approval of Grantee's plans have been received. Grantee shall provide Grantor at least fourteen (14) days notice prior to the commencement of any construction in connection with the Additional Activities. All construction and maintenance activities must comply with "Foreign Uses of LIPA Property Restrictions and Requirements," attached hereto as Exhibit "B" and made a part hereof.
2. Grantee's rights granted hereunder shall be subject to the License and any and all rights, encumbrances, liens, conditions, restrictions, and/or reservations subject to or under which National Grid holds the same. Except as set forth in the Plans and Specifications, Grantee shall maintain a 10' clearance from any Gas Facilities and all Permitted Improvements installed underground shall be installed with a minimum vertical clearance of 12" from any Gas Facilities.

3. Grantor reserves the right and privilege to enter upon and use the Site whenever it becomes necessary or desirable to do so in order for Grantor to carry on properly its duties, obligations, and operations, provided the exercise of such rights by Grantor shall not unreasonably interfere with Grantee's use of the Easement Area. Notwithstanding anything to the contrary set forth herein, should any environmental issues, facilities or equipment interference issues or electrical system emergencies arise, Grantor may require Grantee to temporarily cease the Approved Activities and/or the Additional Activities until further notice from Grantor.
4. Grantee shall construct and maintain the improvements in connection with the Additional Activities and all future improvements in the Easement Area at Grantee's expense in a good and workmanlike manner and shall restore and/or repair any damage to and maintain the Site as depicted upon the Plans and Specifications, while exercising all of its rights under this Grant, including without limitation, re-seeding, compacting and backfilling at Grantee's expense. Grantee and its employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors shall use the Easement Area for the Approved Activities or Additional Activities consistent with the purpose of this Grant. Grantee covenants that, in the event the surface of the Easement Area or the Site is disturbed at any time and from time to time by Grantee or any party acting on behalf of Grantee, then Grantee, at their sole cost and expense, within reasonable time, shall repair and restore the surface of the Easement Area or the Site to the condition as depicted upon the Plans and Specifications approved by the Grantor or as existed prior to any disturbance.
5. Grantee and its directors, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors shall indemnify and hold harmless Grantor, the Long Island Power Authority (the "Authority"), and their respective directors, trustees, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors from and against all liabilities, penalties, losses, costs, damages, claims, proceedings, suits, judgments, liens, encumbrances, or expenses of whatever form or nature, including reasonable attorneys' fees and other costs of legal defense and of investigating any proceeding commenced or threatened, whether direct or indirect, as a result of, arising out of or in any way connected with Grantee's activities under this Grant, whenever made or incurred. Grantor and the Authority shall have the right to demand that Grantee and its directors, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors undertake to defend any and all suits and to investigate and defend any and all claims, against Grantor, the Authority or their directors, trustees, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors or subcontractors related to Grantee's activities under this Grant. This Section shall survive the termination or expiration of this Grant.

6. Grantee shall procure and maintain the following minimum insurance coverages with insurance companies reasonably acceptable to Grantor, and "Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries" and "National Grid USA, it's affiliates, and subsidiaries" must be included as an additional insured under such policies:

(i) Workers' Compensation and Employers Liability insurance as required by the State in which the work activities under this Grant will be performed. The employer's liability limit shall be at least \$500,000 each per accident, per person disease, and disease by policy limit.

(ii) Commercial General Liability (CGL) Insurance, covering all operations to be performed by or on behalf of Contractor under or in connection with this Grant, with minimum limits of:

Bodily Injury (BI) - \$1,000,000 per occurrence

Property Damage (PD) - \$ 500,000 per occurrence

OR

Combined Single Limit - \$1,000,000 per occurrence

OR

BI & PD per Occurrence - \$1,000,000

General Aggregate &

Product Aggregate - \$2,000,000 each

- Coverage shall include: contractual liability (with this Grant, and any associated verbal agreements, being included under the definition of "Insured Contract" thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U).

- If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Grant and coverage shall be maintained continuously for the duration of this Grant and for at least two years thereafter.

- Additional Insured as required.

- The policy shall contain a separation of insureds condition.

- A liability insurance policy containing an annual aggregate limit of liability shall be amended to reflect that the annual aggregate limit applies on a per project basis.
- Contractor's protective (Independent Contractors) coverage in all cases where subcontractors are to perform any of the operations, work and services to be performed by or on behalf of the Contractor under or in connection with this Grant.

(iii) Automobile Liability, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of Contractor under or in connection with this Grant with minimum limits of:

Bodily Injury - \$500,000 per occurrence; 1,000,000 aggregate
Property Damage - \$500,000 per occurrence

OR

Combined Single Limit - \$1,000,000 per occurrence

(iv) Umbrella Liability or Excess Liability coverage, with a minimum per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in section (ii) above, shall apply excess of the required automobile, CGL and employer's liability coverage required in this section, and shall provide additional insured status.

(v) Contractor's Pollution Liability - In the case of a contract involving environmentally regulated substances or hazardous material exposure(s), Grantee's contractor shall provide Contractor's Pollution Liability Insurance with respect to the work and activities of the Grantee's contractor or its subcontractors, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall have limits of liability specifically written for this contract in the amount of at least \$5,000,000. The contractor shall comply with all federal, state, and/or local laws, rules and regulations and shall obtain any additional coverages required by federal, state, or local government agencies. The Contractor's Pollution Liability Insurance shall be in effect from the time this Grant is executed by the Parties and delivered to Grantee.

- This insurance shall name the following entities as additional insured's: Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries.

- This insurance may be supplied by the Grantee's subcontractor performing the work, if the Grantee's contractor is not performing any of the relevant work and providing all applicable additional insureds are named.
- The Grantee's contractor or its subcontractor performing the work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Grantor.
- In the event that the Grantee's contractor or its subcontractors transport across the Site hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the MCS-90 Endorsements shall be attached to the auto liability policy. The CA9948 (03/06) endorsement or equivalent is also required if transporting to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. Both shall be furnished on a primary basis with limits of liability of at least \$5,000,000 per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the \$5,000,000 limits.
- Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the work should be provided to the Grantor.

Prior to the commencement of any construction activities, Grantee shall provide Grantor with Certificates of Insurance indicating the coverages noted above. Grantee will not be permitted to access the Site until Grantor receives acceptable Certificates of Insurance. The Certificate Holder of Insurance shall be "Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries." Such policies shall contain a provision whereby Grantor shall receive not less than thirty (30) days written notice prior to the cancellation or material modification of such policies. In the event that such insurance is available only on a claims-made basis, then the dates of coverage, including the retroactive date and the time period within which any claim can be filed, shall be stated in the Certificate of Insurance, and Grantee shall be obligated to ensure that no gaps in coverage occur.

Such insurance shall not relieve or release Grantee or its employees, affiliates, agents, licensees, invitees, representatives, contractors and subcontractors from, or limit their respective liability as to, any and all obligations arising under this Grant. Grantee shall immediately notify Grantor, initially by telephone, and thereafter in writing, of any and all accidents arising out of the activities

performed by Grantee or its employees, affiliates, agents, licensees, invitees, representatives, contractors and subcontractors on the Site. Such notice shall not relieve nor release Grantee from any of their obligations arising under this Grant. This Section shall survive the termination or expiration of this Grant.

In addition to the insurance requirements set forth above, Grantee shall procure and maintain on a continuous basis the following minimum surety coverages with certified surety companies reasonably acceptable to Grantor, and "Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries" and "National Grid USA, it's affiliates, and subsidiaries" must be included as additional insureds:

(i) a surety bond in the amount of \$100,000 for the benefit of Grantor, to the extent that Grantor may deem necessary, to cover the probable expense to Grantor of completing or removing, at Grantor's option, Grantee's improvements on the Easement Area and restoring the Site to a condition acceptable to Grantor, repairing or replacing any Grantor facilities and to guarantee the performance by Grantee as to any and all obligations under this Grant. Grantee shall at all times maintain and renew as required the surety bond until termination of this Grant. Grantor shall receive at least 30 days prior written notice of the cancellation of a bond and Grantee shall provide proof of replacement bond to avoid a lapse in coverage.

(ii) a surety bond in the amount of \$900,000 for the benefit of National Grid, to the extent that National Grid may deem necessary, to cover the probable expense to National Grid of completing or removing, at National Grid's option, Grantee's improvements on the Easement Area and restoring the Site to a condition acceptable to both Grantor and National Grid, repairing or replacing any National Grid facilities and to guarantee the performance by Grantee as to any and all obligations under this Grant. Grantee shall at all times maintain and renew as required the surety bond until termination of this Grant. National Grid shall receive at least 30 days prior written notice of the cancellation of a bond and Grantee shall provide proof of replacement bond to avoid a lapse in coverage.

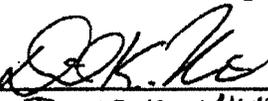
7. This Grant shall commence and become effective upon the execution thereof by both of the Parties, and compliance by Grantee with the provisions of Paragraph "5," herein and shall continue thereafter until terminated as hereinabove set forth.
8. Grantor, its employees, agents, invitees, contractors and subcontractors will perpetually and at Grantor's discretion have full and open access to its electric and other facilities and the right to construct, reconstruct, relocate, operate, maintain, expand, modify, and remove its electric and other facilities. Grantor has the right to permit the installation of wires and other facilities of public utility companies or others and to convey an interest with respect to Grantor's property interest. Grantor shall maintain responsibility for and be in full control of any tree trimming, brush control, and scheduling matters on the Site.

9. Grantee's activities on the Easement Area and any structures, facilities, or improvements installed in, on, over or under the Easement Area, shall be performed, constructed and maintained in such a manner, location and condition as will avoid damage to or interference with the Gas Facilities and Grantor's present and future underground or overhead electric fixtures and facilities on the Site, and Grantee shall, upon notice from Grantor, make such changes or modifications to its improvements and facilities as may be reasonably necessary, including the installation of suitable barriers or other devices to protect the Gas Facilities and Grantor's present or future fixtures and facilities, at Grantee's own cost and expense. Grantee acknowledges and agrees that the height of the Permitted Vehicles shall not exceed twenty-two (22) feet and Grantee shall not park any Permitted Vehicles or store any equipment or materials on the Easement Area.

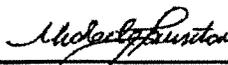
10. Grantee's improvements shall be constructed and maintained, at Grantee's cost and expense, in a good and workmanlike manner, using generally accepted construction standards and in compliance with all laws, statutes, ordinances, rules or regulations which may be applicable. Grantee's contractors shall observe and comply with all safety rules and other requirements which may be imposed by Grantor. The Easement Area shall be adequately controlled, supervised, cleaned, and policed by Grantee during construction and maintenance activities, as reasonably requested by Grantor, to prevent unauthorized or improper use thereof. Any complaints resulting from Grantee's activities on the Easement Area shall be resolved by Grantee to Grantor's satisfaction at Grantee's cost and expense.

IN WITNESS WHEREOF, the Parties have executed this Grant as of the day and year first written above.

Grantee: Brookhaven Eastern Holdings, LLC

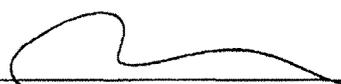
By: 
Name: DANIEL K. MILLER
Title: CFO

Grantor: Long Island Lighting Company d/b/a LIPA

By: 
Name: MICHAEL J. PAWSON
Title: CFO

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

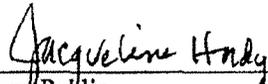
On the 8 day of July in the year 2013 before me, the undersigned, personally appeared Daniel K. Miller, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

ANDREW KULPA NOTARY PUBLIC - MICHIGAN OAKLAND COUNTY ACTING IN THE COUNTY OF <u>Oakland</u> MY COMMISSION EXPIRES 08-17-2018
--

STATE OF New York)
) SS:
COUNTY OF Nassau)

On the 27th day of August in the year 2013 before me, the undersigned, personally appeared Michael J. Tavn For, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

Jacqueline Hardy
Notary Public State of New York
No. 02HA6265069
Qualified in Nassau County
Commission Expires July 09, 2016

Exhibit A
(To be attached)

Exhibit B

**Foreign Uses of LIPA Property
Restrictions and Requirements**

Job Description: LIPA ROW Parcel 256

<u>Applicable</u>	<u>No.</u>	<u>Item</u>
<u> X</u>	1	Any grade changes shall be submitted to Transmission and Distribution Engineering (T&D) for approval prior to implementation.
<u> X</u>	2	Grantee must maintain a 20 ft. clearance between construction equipment and any LIPA conductor or structure.
<u> X</u>	3	Complete Construction drawings shall be submitted to T&D Engineering for approval prior to start of construction.
<u> X</u>	4	The counterpoise (or grounding system) in addition to all other LIPA facilities are to be protected from damage. In the event of damage, repairs shall be made by LIPA at the expense of Grantee.
<u> X</u>	5	Mr. Larry Ferrandiz (631-348-6013) shall be notified at least two weeks prior to construction start. Also, Mr. Ferrandiz shall be kept advised of any matters affecting the maintenance of the R.O.W. and his approval shall be required as to site conditions before the contractor leaves the site.
<u> X</u>	6	LIPA shall have access at all times for repair or maintenance of its facilities.
<u> X</u>	7	LIPA's underground rights shall be maintained.
<u> X</u>	8	Patrol routes shall be kept clear for LIPA patrolling vehicles.
<u> X</u>	9	A site plan shall be submitted to Manager, Survey Division, to allow for the protection of, or changes to, survey monumentation at the site. Any survey work will be paid for by Grantee.
<u> X</u>	10	Any temporary structures erected near LIPA wires must be approved by T&D Engineering before their erection.

*Counterpoise wires are bare, 3/8" diameter, copper colored, and are usually buried 18" below grade, one wire on each side of the tower or pole line running from structure to structure.

Interwoven\2847327.5

EXHIBIT B

EASEMENT

THIS INDENTURE, made this 27th ^{August} day of ~~July~~, 2013, by and between **Long Island Lighting Company d/b/a LIPA ("LIPA")**, a New York corporation and wholly-owned subsidiary of the Long Island Power Authority, a corporate municipal instrumentality and political subdivision of the State of New York, with principal offices at 333 Earle Ovington Boulevard, Uniondale, Nassau County, New York 11553 (hereinafter referred to as "Grantor"), and **Brookhaven Eastern Holdings, LLC**, having its principal place of business at 38955 Hills Tech Drive, Farmington Hills, Michigan 48331 (hereinafter referred to as ("Grantee")). Grantor and Grantee are herein collectively referred to as the "Parties".

WITNESSETH:

Whereas, Grantor is the owner in fee simple absolute of a certain parcel of land and all the estate therein, which parcel is approximately 10,800+/- square feet and part of the LIPA Right-of-Way Parcel No. 256, lying to the east of Sills Road (CR 101), to the South of the Long Island Expressway South Service Road and north of the Long Island Railroad, and being situate in Yaphank, Town of Brookhaven, County of Suffolk, State of New York; and is designated as part of Suffolk County Tax Map Number:

District 0200 Section 663.00 Block 03.00 Lot 028.000 (hereinafter called the "Site")

Whereas, Keyspan Gas East Corporation d/b/a National Grid ("National Grid") received a license from Grantor dated July 22, 2008, over a portion of the Easement Area as hereinafter defined (the "Licensed Area"), to construct, maintain, repair and replace an underground gas transmission line and appurtenances thereto (the "Gas Facilities"), which license is to convert into a permanent easement upon the granting of an easement by Grantor to National Grid (hereinafter the "License");

Whereas, the underground gas transmission line and appurtenances were installed in the Licensed Area pursuant to said License;

Whereas, Grantor is willing to grant, and Grantee is willing to accept a non-exclusive, permanent and perpetual easement over, under, across, through and along a portion of the Site for the uses and purposes and on the terms and conditions herein set forth:

Now, therefore, the Parties hereto, intending to be legally bound do hereby agree as follows:

Grantor, for and in consideration of **Forty-Seven Thousand Five Hundred Dollars (\$47,500.00)**, and other good and valuable consideration, does hereby grant unto Grantee and its successors and assigns, and Grantee does hereby accept, a permanent and perpetual easement and right-of-way, including the right to enter upon the premises hereinafter described ("Grant") to install, construct, reconstruct, repair, replace, operate, maintain and at Grantee's pleasure remove, in accordance with the Plans and Specifications as hereinafter defined, improvements and appurtenances over, under, across, through and along the premises bounded and described in



BRT00068

Exhibit "A," (survey map and/or legal description), attached hereto and incorporated by reference herein (hereinafter referred to as the "Easement Area").

To Have and To Hold, unto Grantee and its successors and assigns, for so long as the Easement Area may be so used by Grantee, or its successors and assigns, in accordance with the foregoing and in compliance with the terms and conditions herein set forth. In the event of a violation by Grantee or its successors and assigns of any of the terms and conditions of this Grant, Grantor shall give written notice of such violation to Grantee, and Grantee shall be afforded a reasonable period of time following receipt of said written notice to resolve the violation. Upon cessation or abandonment of the uses and purposes of this Grant, as set forth herein for a period of more than two (2) consecutive years, or upon the unresolved violation by Grantee or its successors and assigns of any of the terms and conditions of this Grant for an unreasonable period of time following written notice received by Grantee, the Grant shall cease and terminate upon delivery to Grantee of written notice stating said cessation, abandonment or unresolved violation and be of no further force or effect whatsoever. Notwithstanding the foregoing, in the event that a legal action or proceeding has been commenced by either party to enforce a term, right or condition under this Grant, then the time used to measure the cessation of the uses and/or purposes or the abandonment of the Easement Area shall be tolled during the pendency of said legal action or proceeding and the time periods for determining a cessation or abandonment of the uses or purposes of the Easement Area by Grantee shall be extended or the rights and/or obligations of the Parties under the Grant may be determined by a Court in connection with the outcome or disposition of a pending action or proceeding.

This Grant is made and accepted upon the following terms and conditions:

1. Grantee has submitted to Grantor and Grantor hereby acknowledges receipt of Grantee's construction drawings, plans and specifications as provided in Grantee's Development Plan attached hereto as Exhibit "B" and made a part hereof (collectively, the "Plans and Specifications") and Grantor, having had a reasonable opportunity to review and comment thereon, hereby grants formal approval of Grantee's Plans and Specifications and the improvements and appurtenances depicted thereon (hereinafter referred to as the "Permitted Improvements"), and Grantee shall construct the Permitted Improvements on the Easement Area in accordance with the agreed upon Plans and Specifications. Upon receipt of the executed Grant of Easement from Grantor, Grantee may commence the construction of the Permitted Improvements. All construction and maintenance activities on the Easement Area must comply with "Foreign Uses of LIPA Property Restrictions and Requirements," attached hereto as Exhibit "C" and made a part hereof.
2. In the event that Grantee wishes to make any modifications to the Permitted Improvements or propose additional improvements on the Easement Area, Grantee shall provide additional construction drawings, plans and specifications of similar detail and scope as provided in Exhibit "B" attached hereto (collectively, the "New Plans and Specifications") at Grantee's sole cost and expense and submit the New Plans and Specifications to Grantor and Grantor shall have a reasonable opportunity to review and comment thereon. Grantee shall not modify the Permitted

Improvements or construct any additional improvements on the Easement Area, and shall not commence any construction activities in connection with the New Plans and Specifications until Grantor's formal written approval of Grantee's New Plans and Specifications has been received by Grantee, which approval shall not be unreasonably withheld or delayed. Grantee shall provide Grantor at least fourteen (14) days advance notice prior to the commencement of any construction activities in connection with the New Plans and Specifications. All construction and maintenance activities must comply with "Foreign Uses of LIPA Property Restrictions and Requirements," attached hereto as Exhibit "C" and made a part hereof.

3. Grantee's rights granted hereunder shall be subject to the License and any and all rights, encumbrances, liens, conditions, restrictions, and/or reservations subject to or under which National Grid holds the same. Except as set forth in the Plans and Specifications, Grantee shall maintain a 10' clearance from any Gas Facilities and all Permitted Improvements installed underground shall be installed with a minimum vertical clearance of 12" from any Gas Facilities.
4. Grantor reserves the right and privilege to enter upon and use the Site whenever it becomes necessary or desirable to do so in order for Grantor to carry on properly its duties, obligations, and operations, provided the exercise of such rights by Grantor shall not unreasonably interfere with Grantee's use of the Easement Area as approved by Grantor.
5. Grantee shall construct and maintain the Permitted Improvements and all future improvements in the Easement Area at Grantee's expense in a good and workmanlike manner and shall restore and/or repair any damage to and maintain the Site as depicted upon the Plans and Specifications and any New Plans and Specifications, while exercising all of its rights under this Grant, including, without limitation, re-seeding, compacting and backfilling at Grantee's expense. Grantee, and its employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors shall use the Easement Area in accordance with the Plans and Specifications for all uses consistent with the purpose of the Grant. Grantee covenants that, in the event the surface of the Easement Area or the Site is disturbed at any time and from time to time by Grantee or any party acting on behalf of the Grantee, then Grantee, at their sole cost and expense, within reasonable time, shall repair and restore the surface of the Easement Area or the Site to the condition as depicted upon the Plans and Specifications and any New Plans and Specifications approved by the Grantor or as existed prior to any disturbance.
6. Grantee and its directors, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors shall indemnify and hold harmless Grantor, the Long Island Power Authority (the "Authority"), and their respective directors, trustees, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors from and against all liabilities, penalties, losses, costs, damages, claims, proceedings, suits, judgments, liens, encumbrances, or expenses of whatever form or nature, including reasonable attorneys' fees and other costs of legal defense and of investigating any

proceeding commenced or threatened, whether direct or indirect, as a result of, arising out of or in any way connected with Grantee's activities under this Grant, whenever made or incurred. Grantor and the Authority shall have the right to demand that Grantee and its directors, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors and subcontractors undertake to defend any and all suits and to investigate and defend any and all claims, against Grantor, the Authority or their directors, trustees, officers, employees, affiliates, agents, licensees, invitees, assigns, successors, representatives, contractors or subcontractors related to Grantee's activities under this Grant. This Section shall survive the termination or expiration of this Grant.

7. Grantee shall procure and maintain the following minimum insurance coverages with insurance companies reasonably acceptable to Grantor, and "Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries" and "National Grid USA, it's affiliates, and subsidiaries" must be included as additional insureds under such policies:

(i) Workers' Compensation and Employers Liability insurance as required by the State in which the work activities under this Grant will be performed. The employer's liability limit shall be at least \$500,000 each per accident, per person disease, and disease by policy limit.

(ii) Commercial General Liability (CGL) Insurance, covering all operations to be performed by or on behalf of Contractor under or in connection with this Grant, with minimum limits of:

Bodily Injury (BI)	-	\$1,000,000 per occurrence
Property Damage (PD)	-	\$500,000 per occurrence
OR		
Combined Single Limit	-	\$1,000,000 per occurrence
OR		
BI & PD per Occurrence	-	\$1,000,000
General Aggregate & Product Aggregate	-	\$2,000,000 each

- Coverage shall include: contractual liability (with this Grant, and any associated verbal agreements, being included under the definition of "Insured Contract" thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U).

- If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Grant and coverage shall be maintained continuously for the duration of this Grant and for at least two years thereafter.
- Additional Insured as required.
- The policy shall contain a separation of insureds condition.
- A liability insurance policy containing an annual aggregate limit of liability shall be amended to reflect that the annual aggregate limit applies on a per project basis.
- Contractor's protective (Independent Contractors) coverage in all cases where subcontractors are to perform any of the operations, work and services to be performed by or on behalf of the Contractor under or in connection with this Grant.

(iii)Automobile Liability, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of Contractor under or in connection with this Grant with minimum limits of:

Bodily Injury - \$500,000 per occurrence; 1,000,000 aggregate

Property Damage - - \$500,000 per occurrence

OR

Combined Single Limit - \$1,000,000 per occurrence

(iv)Umbrella Liability or Excess Liability coverage, with a minimum per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in section (ii) above, shall apply excess of the required automobile, CGL and employer's liability coverage required in this section, and shall provide additional insured status.

(v) Contractor's Pollution Liability – In the case of a contract involving environmentally regulated substances or hazardous material exposure(s), Grantee's contractor shall provide Contractor's Pollution Liability Insurance with respect to the work and activities of the Grantee's contractor or its subcontractors, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall have limits of liability specifically written for this contract in the amount of at least \$5,000,000. The contractor shall comply with all federal, state, and/or local laws, rules and regulations and shall obtain any additional coverages required by federal, state, or local government agencies. The Contractor's Pollution Liability

Insurance shall be in effect from the time this Grant is executed by the Parties and delivered to Grantee.

- This insurance shall name the following entities as additional insured's: Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries.

- This insurance may be supplied by the Grantee's subcontractor performing the work, if the Grantee's contractor is not performing any of the relevant work and providing all applicable additional insureds are named.

- The Grantee's contractor or its subcontractor performing the work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Grantor.

- In the event that the Grantee's contractor or its subcontractors transport across the Site hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the MCS-90 Endorsements shall be attached to the auto liability policy. The CA9948 (03/06) endorsement or equivalent is also required if transporting to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. Both shall be furnished on a primary basis with limits of liability of at least \$5,000,000 per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the \$5,000,000 limits.

- Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the work should be provided to the Grantor.

Prior to the commencement of any construction activities, Grantee shall provide Grantor with Certificates of Insurance indicating the coverages noted above. Grantee will not be permitted to access the Site until Grantor receives acceptable Certificates of Insurance. The Certificate Holder of Insurance shall be "Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries." Such policies shall contain a provision whereby Grantor shall receive not less than thirty (30) days written notice prior to the cancellation or material modification of such policies. In the event that such insurance is available only on a claims-made basis, then the dates of coverage, including the retroactive date and the time period within which any claim can be filed, shall be stated in the Certificate of Insurance, and Grantee shall be obligated to ensure that no gaps in coverage occur.

Such insurance shall not relieve or release Grantee or its employees, affiliates, agents, licensees, invitees, representatives, contractors and subcontractors from, or limit their respective liability as to, any and all obligations arising under this Grant. Grantee shall immediately notify Grantor, initially by telephone, and thereafter in writing, of any and all accidents arising out of the activities performed by Grantee or its employees, affiliates, agents, licensees, invitees, representatives, contractors and subcontractors on the Site. Such notice shall not relieve nor release Grantee from any of their obligations arising under this Grant. This Section shall survive the termination or expiration of this Grant.

In addition to the insurance requirements set forth above, Grantee shall procure and maintain on a continuous basis the following minimum surety coverages with certified surety companies reasonably acceptable to Grantor, and "Long Island Lighting Company d/b/a LIPA, the Long Island Power Authority, and their respective affiliates and subsidiaries" and "National Grid USA, its affiliates, and subsidiaries" must be included as additional insureds:

(i) a surety bond in the amount of \$100,000 for the benefit of Grantor, to the extent that Grantor may deem necessary, to cover the probable expense to Grantor of completing or removing, at Grantor's option, Grantee's improvements on the Easement Area and restoring the Site to a condition acceptable to Grantor, repairing or replacing any Grantor facilities and to guarantee the performance by Grantee as to any and all obligations under this Grant. Grantee shall at all times maintain and renew as required the surety bond until termination of this Grant. Grantor shall receive at least 30 days prior written notice of the cancellation of a bond and Grantee shall provide proof of replacement bond to avoid a lapse in coverage.

(ii) a surety bond in the amount of \$900,000 for the benefit of National Grid, to the extent that National Grid may deem necessary, to cover the probable expense to National Grid of completing or removing, at National Grid's option, Grantee's improvements on the Easement Area and restoring the Site to a condition acceptable to both Grantor and National Grid, repairing or replacing any National Grid facilities and to guarantee the performance by Grantee as to any and all obligations under this Grant. Grantee shall at all times maintain and renew as required the surety bond until termination of this Grant. National Grid shall receive at least 30 days prior written notice of the cancellation of a bond and Grantee shall provide proof of replacement bond to avoid a lapse in coverage.

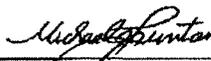
8. This Grant shall commence and become effective upon the execution thereof by both of the Parties, and compliance by Grantee with the provisions of Paragraph "7", herein and shall continue thereafter until terminated as hereinabove set forth.
9. Grantor, its employees, agents, invitees, contractors and subcontractors will perpetually and at Grantor's discretion have full and open access to its electric and other facilities and the right to construct, reconstruct, relocate, operate, maintain,

expand, modify, and remove its electric and other facilities. Grantor has the right to permit the installation of wires and other facilities of public utility companies or others and to convey an interest with respect to Grantor's property interest. Grantor shall maintain responsibility for and be in full control of any tree trimming, brush control, and scheduling matters on the Site.

10. Grantee's activities on the Easement Area and any structures, facilities, or improvements installed in, on, over or under the Easement Area shall be performed, constructed and maintained in such a manner, location and condition as will avoid damage to or interference with the Gas Facilities and Grantor's present and future underground or overhead electric fixtures and facilities on the Site, and Grantee shall, upon notice from Grantor, make such changes or modifications to its improvements and facilities as may be reasonably necessary, including the installation of suitable barriers or other devices to protect the Gas Facilities and Grantor's present or future fixtures and facilities, at Grantee's own cost and expense.
11. Grantee's improvements shall be constructed and maintained, at Grantee's cost and expense, in a good and workmanlike manner, using generally accepted construction standards and in compliance with all laws, statutes, ordinances, rules or regulations which may be applicable. Grantee's contractors shall observe and comply with all safety rules and other requirements which may be imposed by Grantor. The Easement Area shall be adequately controlled, supervised, cleaned, and policed by Grantee during construction and maintenance activities, as reasonably requested by Grantor, to prevent unauthorized or improper use thereof. Any complaints resulting from Grantee's activities on the Easement Area shall be resolved by Grantee to Grantor's satisfaction at Grantee's cost and expense.

IN WITNESS WHEREOF, the Parties have executed this Grant as of the day and year first written above.

Grantor: Long Island Lighting Company d/b/a LIPA

By: 
Name: MICHAEL J. PANSOW
Title: CFO

Grantee: Brookhaven Eastern Holdings, LLC

By: 
Name: DANIEL K. MILLER
Title: CFO

STATE OF New York)
) SS:
COUNTY OF Nassau)

On the 27th day of August in the year 2013 before me, the undersigned, personally appeared Michael J. Tavoron, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Jacqueline Hardy
Notary Public

Jacqueline Hardy
Notary Public State of New York
No. 02HA6265069
Qualified in Nassau County
Commission Expires July 09, 2014

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

On the 5 day of July in the year 2013 before me, the undersigned, personally appeared Daniel K. Miller, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public

ANDREW KULPA
NOTARY PUBLIC - MICHIGAN
OAKLAND COUNTY
ACTING IN THE COUNTY OF DuSable
MY COMMISSION EXPIRES 08-17-2014

Exhibit A
(To be attached)

Exhibit B
(To be attached)

Exhibit C

**Foreign Uses of LIPA Property
Restrictions and Requirements**

Job Description: LIPA ROW Parcel 256

<u>Applicable</u>	<u>No.</u>	<u>Item</u>
<u>X</u>	1	Any grade changes shall be submitted to Transmission and Distribution Engineering (T&D) for approval prior to implementation.
<u>X</u>	2	Grantee must maintain a 20 ft. clearance between construction equipment and any LIPA conductor or structure.
<u>X</u>	3	Complete Construction drawings shall be submitted to T&D Engineering for approval prior to start of construction.
<u>X</u>	4	The counterpoise (or grounding system) in addition to all other LIPA facilities are to be protected from damage. In the event of damage, repairs shall be made by LIPA at the expense of Grantee.
<u>X</u>	5	Mr. Larry Ferrandiz (631-348-6013) shall be notified at least two weeks prior to construction start. Also, Mr. Ferrandiz shall be kept advised of any matters affecting the maintenance of the R.O.W. and his approval shall be required as to site conditions before the contractor leaves the site.
<u>X</u>	6	LIPA shall have access at all times for repair or maintenance of its facilities.
<u>X</u>	7	LIPA's underground rights shall be maintained.
<u>X</u>	8	Patrol routes shall be kept clear for LIPA patrolling vehicles.
<u>X</u>	9	A site plan shall be submitted to Manager, Survey Division, to allow for the protection of, or changes to, survey monumentation at the site. Any survey work will be paid for by Grantee.
<u>X</u>	10	Any temporary structures erected near LIPA wires must be approved by T&D Engineering before their erection.

*Counterpoise wires are bare, 3/8" diameter, copper colored, and are usually buried 18" below grade, one wire on each side of the tower or pole line running from structure to structure.

Interwoven\2831631.1

Interwoven\2831631.3

EXHIBIT C

Wood, Karen J.

From: ecf_bounces@nyed.uscourts.gov
Sent: Friday, June 13, 2014 4:30 PM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 2:14-cv-02286-GRB Town of Brookhaven v. Sills Road Realty LLC et al Order on Motion to Strike

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 6/13/2014 at 4:30 PM EDT and filed on 6/13/2014

Case Name: Town of Brookhaven v. Sills Road Realty LLC et al

Case Number: 2:14-cv-02286-GRB

Filer:

Document Number: No document attached

Docket Text:

ELECTRONIC ORDER granting [60] Motion to Strike ; denying [62] Motion for Preliminary Injunction. Plaintiff's letter dated June 11, 2014, DE [59], is stricken from the record and will not be used in connection with the pending preliminary injunction motion. Plaintiff's motion for an Order to Show Cause to reopen the preliminary injunction hearing is DENIED. Ordered by Magistrate Judge Gary R. Brown on 6/13/2014. (Demosthenous, Constantina)

2:14-cv-02286-GRB Notice has been electronically mailed to:

Kevin Patrick Mulry kmulry@farrellfritz.com, courtnotifications@farrellfritz.com

Robert M. Calica rcalica@rcblaw.com

Judah Serfaty jserfaty@rcblaw.com

Yonaton Aronoff yaronoff@foley.com, amccarthy@foley.com

2:14-cv-02286-GRB Notice will not be electronically mailed to: