

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of Central Hudson Gas & Electric Corporation For a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the A and C Line Rebuild Project, Approximately 10.85 miles of 115 Kilovolt Transmission Lines in the Towns of Pleasant Valley, LaGrange, Wappinger, and East Fishkill, in Dutchess County

Case No.: 13-T-0469

**CENTRAL HUDSON GAS & ELECTRIC CORPORATION
A AND C LINE REBUILD PROJECT**

**EXHIBIT 7
LOCAL ORDINANCES**

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EXHIBIT 7 – LOCAL ORDINANCES

7.1 Introduction

Pursuant to 16 NYCRR § 86.8, this Exhibit identifies the local ordinances, laws and regulations that are applicable or potentially applicable to this project, and the status of compliance thereto. Pursuant to Section 130 of the Public Service Law, no state agency, municipality or any agency thereof may require any approval, permit or consent for the construction or operation of a facility subject to Article VII approval unless otherwise required by the Commission. The Commission has the responsibility of either waiving (at the request of the Applicant) or applying the requirements of the local municipalities where the Project is sited.

As described in Exhibit 2, CHG&E proposes to re-build and operate an approximately 10.8-mile electric transmission line located between the Towns of Pleasant Valley and East Fishkill in Dutchess County. This Project will be located in one county, four towns, and no villages. Towns crossed by the electric transmission line are the Towns of Pleasant Valley, LaGrange, Wappinger, and East Fishkill in Dutchess County.

The Applicant researched and directly inquired about local laws, ordinances and regulations that may pertain to this project. To determine the existence of ordinances for municipalities within the Project ROW, the Applicant contacted the town clerks or code enforcement officers, other appropriate officials, or the published ordinances for the above-referenced municipalities. Each of the four towns has local land use regulations in the form of a zoning ordinance that may apply to Project activities.

Section 126(1)(f) of the Public Service Law requires that the Commission find “that the location of the facility as proposed conforms to the applicable state and local laws and regulations...” To the extent the project does not conform to such laws, CHG&E has provided the justification for the Commission to refuse to apply such provisions to which the project cannot comply by explaining why such provision is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality. In doing so, the Applicant has evaluated whether changes in the facility location or design could result in compliance with the specific law in question. A summary of these local ordinances and the project’s anticipated compliance is provided in Table 7-1, below.

7.1.1 Compliance Summary

The compliance summary contained in Table 7-1 below lists every substantive local legal provision potentially applicable to the Project. The table identifies whether the Applicant can or will comply with such potentially applicable local laws or where a waiver is being requested.

Table 7-1: Project Compliance Summary

MUNICIPALITY	APPLICABLE ORDINANCE	PROJECT COMPLIANCE STATUS
Town of Pleasant Valley	Chapter 39, Building Construction	Will Comply Except as Noted
	Chapter 39, §39-4, Stop-work Orders	Waiver Requested
	Chapter 46, Driveways and Highway Permits	Will Comply
	Chapter 48, Fire Prevention	Will Comply Except as Noted
	Chapter 48, §48-6(B), Firesafety and property maintenance inspections [re: local inspections]	Waiver Requested
	Chapter 50, Flood Damage Prevention	Will Comply Except as Noted
	Chapter 50, Article III §50-11 – Floodplain Development Permit	Waiver Requested
	Chapter 50, Article III §50-13(F) – Duties and Responsibilities of Local Administrator [re: stop-work orders]	Waiver Requested
	Chapter 53, Wetland, Water Body, and Watercourse Protection	Will Comply Except as Noted
	Chapter 53, Article III §50-8, Prohibited Activities [re: local enforcement]	Waiver Requested
	Chapter 57, Refuse Collection, Storage, and Disposal	Will Comply
	Chapter 60, Illicit Discharges, Activities and Connections	Will Comply
	Chapter 74, Stormwater Management and Erosion and Sedimentation Control	Will Comply
Chapter 93, Vehicles and Traffic	Will Comply	

MUNICIPALITY	APPLICABLE ORDINANCE	PROJECT COMPLIANCE STATUS
	Chapter 98, Zoning	Will Comply Except as Noted
	Chapter 98, Article III §98-11 – General Regulations, Schedule of Permitted Uses [re: local site plan review requirements]	Waiver Requested
	Chapter 98, Article III §98-12 – General Regulations, Schedule of Area and Bulk Requirements [re: setbacks, height restrictions]	Waiver Requested
	Chapter 98, Article IV §98-44 – Supplementary Regulations, Public Utility Facility [re: screening requirements]	Waiver Requested
Town of LaGrange	Chapter 83, Building Construction Administration and Enforcement	Will Comply Except as Noted
	Chapter 83, §83-9, Stop-work Orders	Waiver Requested
	Chapter 103, Dumps and Dumping	Will Comply
	Chapter 107, Electrical Inspection	Will Comply Except as Noted
	Chapter 107, §107-3(C), Stop-work Orders	Waiver Requested
	Chapter 120, Flood Damage Prevention	Will Comply Except as Noted
	Chapter 120, §120-14(F) – Duties and Responsibilities of Local Administrator [re: stop-work orders]	Waiver Requested
	Chapter 120, §120-15 – General Construction Standards [re: local permit requirements]	Waiver Requested
	Chapter 124, Freshwater Wetlands, Watercourses, and Water Bodies	Will Comply Except as Noted
	Chapter 124, §124-15 Permit Procedure– [re: local enforcement]	Waiver Requested
	Chapter 140, Illicit Discharges to Storm Sewers	Will Comply
	Chapter 162, Noise	Will Comply
	Chapter 195, Solid Waste	Will Comply

MUNICIPALITY	APPLICABLE ORDINANCE	PROJECT COMPLIANCE STATUS
	Chapter 197, Stormwater Management and Erosion and Sediment Control	Will Comply
	Chapter 199, Streets and Sidewalks	Will Comply
	Chapter 226, Vehicles and Traffic	Will Comply
	Chapter 240, Zoning	Will Comply Except as Noted
	Chapter 240, Article II §240-27 – Establishment and Designation of Districts, Schedule of Permitted Uses and Special Use Permits [re: local site plan review requirements]	Waiver Requested
	Chapter 240, Article II §240-28 – Establishment and Designation of Districts, Schedule of Bulk Regulations and Coverage Limitations [re: setbacks, height restrictions]	Waiver Requested
	Chapter 240, Article III §240-31 – Special Zoning District Provisions, Preservation Overlay Zones [re: setbacks, height restrictions]	Waiver Requested
Town of Wappinger	Chapter 80, Blasting	Will Comply
	Chapter 85, Building Code Administration	Will Comply Except as Noted
	Chapter 85, §85-10, Inspections; Notification of Fire or Explosion; Operating Permits [re: local inspections]	Waiver Requested
	Chapter 85, §85-12, Stop-Work Orders	Waiver Requested
	Chapter 117, Environmental Quality Review	Will Comply
	Chapter 133, Flood Damage Prevention	Will Comply Except as Noted
	Chapter 133, §133-13(F) – Duties and Responsibilities of Code Enforcement Officer and Zoning Administrator [re: stop-work orders]	Waiver Requested
	Chapter 133, §133-14(B) – General Standards, Encroachment [re: local permit requirements]	Waiver Requested
	Chapter 137, Freshwater Wetland, Waterbody, and Watercourse Protection	Will Comply
	Chapter 166, Noise	Will Comply

MUNICIPALITY	APPLICABLE ORDINANCE	PROJECT COMPLIANCE STATUS
	Chapter 206, Soil Erosion and Sediment Control	Will Comply
	Chapter 210, Solid Waste	Will Comply
	Chapter 213, Stormwater Management	Will Comply Except as Noted
	Chapter 213, §213-11, Enforcement [re: stop-work orders]	Waiver Requested
	Chapter 230, Vehicles and Traffic	Will Comply
	Chapter 240, Zoning	Will Comply Except as Noted
	Chapter 240, Article VI §240-37, Attachments 1 and 2– District Regulations, Schedule of Use Regulations [re: local site plan review and special permit requirements]	Waiver Requested
	Chapter 240, Article VI §240-37, Attachments 3 and 4 – District Regulations, Schedule of Dimensional Regulations [re: setbacks, height restrictions]	Waiver Requested
	Chapter 240, Article VII §240-44, Special Permit Uses, General Standards [re: site plan and operational requirements]	Waiver Requested
Chapter 240, Article IX §240-83, Site Development Plan Approval [re: site plan approval requirements]	Waiver Requested	
Town of East Fishkill	Chapter 80, Building Construction and Fire Prevention	Will Comply Except as Noted
	Chapter 80, §80-10, Stop-Work Orders	Waiver Requested
	Chapter 108, Flood Damage Prevention	Will Comply Except as Noted
	Chapter 108, Article III §108-13(F), Duties and Responsibilities of Local Administrator [re: stop-work orders]	Waiver Requested
	Chapter 108, Article III §108-14, General Standards [re: local permit requirements]	Waiver Requested
	Chapter 110, Freshwater Wetlands, Water Bodies, and Watercourses	Will Comply Except as Noted
	Chapter 110, §110-7(C), Permit Limitations, Certificate of Completion [re: stop-work orders]	Waiver Requested

MUNICIPALITY	APPLICABLE ORDINANCE	PROJECT COMPLIANCE STATUS
	Chapter 127, Littering	Will Comply
	Chapter 154, Steep Slope Protection	Will Comply
	Chapter 156, Storm Sewers	Will Comply
	Chapter 157, Stormwater Management and Erosion and Sediment Control	Will Comply
	Chapter 177, Vehicles and Traffic	Will Comply
	Chapter 194, Zoning	Will Comply Except as Noted
	Chapter 194, Article V §194-16, Attachment 2– Schedules of Regulations, Schedule of Permitted Uses [re: prohibition of uses not specifically permitted]	Waiver Requested
	Chapter 194, Article V §194-17, Attachment 3– Schedules of Regulations, Schedule of Bulk Regulations [re: setbacks, height restrictions]	Waiver Requested

7.2 Town of Pleasant Valley

Project activities in the Town of Pleasant Valley would include the removal of 12 electric transmission structures, to be replaced by the construction of 4 double pole structures and 8 single pole structures associated with approximately 1.25 miles of the A and C Lines Rebuild Project.

7.2.1 Chapter 39, Building Construction

Chapter 39 and Chapter 48 (see below) implement the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code.

The Applicant will comply with the requirements of Chapter 39. However, the Applicant requests that the Commission refuse to apply local stop-work order provisions granted in subsection §39-14, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of

the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs. In addition, the Applicant requests that the Commission refuse to apply local inspection provisions granted in subsection 39-4(B); as the Project is a rebuild of an existing high-voltage transmission line, the Applicant does not envision the need for local building inspection.

7.2.2 Chapter 46, Driveways and Highway Permits

Chapter 46, §46-1 requires the issuance of a highway work permit for any improvements made within a Town right-of-way.

The Applicant will comply with the requirements of Chapter 46, although the need for a local highway work permit is preempted by PSL §130. The proposed Project will require overhead crossings of Plass Road and Niagara Road.

7.2.3 Chapter 48, Fire Prevention

Chapter 48 and Chapter 39 (see above) implement the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code.

The applicant will comply with the requirements of Chapter 48. However, the Applicant requests that the Commission refuse to apply local inspection provision granted in subsection §48-6(B); as the Project is a rebuild of an existing high-voltage transmission line, the Applicant does not envision the need for local building inspection.

7.2.4 Chapter 50, Flood Damage Prevention

Chapter 50 implements the National Flood Insurance Program. Chapter 50, §50-6 identifies a special flood hazard area within the Town, pursuant to Flood Insurance Rate Maps created by the Federal Emergency Management Agency. Floodplains associated with Wappinger Creek in the Town of Pleasant Valley crossed by a portion of the proposed Project are included in this special flood hazard area. Subsection §50-11 establishes the local floodplain development permit requirement as follows: "A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake

any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 50-6, without a valid floodplain development permit.”

Chapter 50 also details requirements for construction within special flood hazard areas, including general standards (§50-14).The construction standards detailed in subsection §50-14 are applicable to “new development, including new and cumulative substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in §50-6.” Development is defined within §50-4 as “any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials”, which would appear to apply to the Project. Subsection §50-14(B) requires applicants to demonstrate that encroachments within special flood hazard areas will not cause increases in flood levels during flood events. Chapter 50, §50-13(F) authorizes the local zoning administrator to issue stop-work orders for floodplain development found ongoing without a development permit, or for that which is found noncompliant with the provisions of Chapter 50.

The Applicant requests that the Commission refuse to apply the provisions of Chapter §50-11 of the Town of Pleasant Valley's flood damage prevention ordinance that require all structures within the floodplain to go through a local permitting process. The ordinance is designed to regulate the construction of primarily residential, commercial, and industrial structures, as opposed to the transmission facilities included in the proposed Project. The transmission facilities proposed to be located within the special flood hazard area include poles C2 and C3 in the 100-year floodplain and C4 in the 500-year floodplain. The Project would convert existing two-pole structures to monopole structures. Transmission structures such as these are not prone to flood damage in the same way that residential, commercial, or industrial structures are. In addition, the proposed Project will not alter the floodplain, and will not increase flood hazards to adjacent properties. As proposed, the new transmission towers would replace three existing structures (consisting of six individual poles) that are currently located within the special flood hazard area. For these reasons, Chapter 50 of the Code of the Town of Pleasant Valley is unduly restrictive in view of existing technology.

The Applicant further requests that the Commission refuse to apply Chapter §50-13(F) of the ordinance which includes local stop-work order provisions, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public

Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

7.2.5 Chapter 53, Wetland, Water Body, and Watercourse Protection

Pursuant to §53-1, "it is declared to be the public policy of the Town of Pleasant Valley to preserve, protect and conserve freshwater wetlands, watercourses and water bodies and to regulate development in such wetlands and protect such watercourses and water bodies in order to secure the natural benefits derived therefrom consistent with the general welfare and the beneficial economic, social and agricultural development of the Town". According to §53-1, the areas subject to regulation under Chapter 53 are as follows:

- All wetlands identified on the map entitled "Town of Pleasant Valley, Dutchess County, N.Y." prepared by the Dutchess County Environmental Management Council, GIS Lab, and dated March 2001, as amended, and any other wetlands as yet unmapped exceeding 1/2 acre in area that will meet the definition provided in § 24-0107(1) of the New York State Freshwater Wetlands Act as amended and updated.
- All water bodies, natural or created, having an area of a 1/2 acre or more.
- All lands lying within:
 - Twenty-five feet of wetlands and water bodies of 1/2 acre to one acre in size;
 - Fifty feet of wetlands and water bodies of one acre to two acres in size;
 - Seventy-five feet of wetlands and water bodies of two acres to three acres in size; and
 - One-hundred feet of wetlands and water bodies of three acres or more in size.
- All lands lying within 100 feet of the normal stream bank of the Wappingers Creek, Little Wappingers Creek, Great Spring Creek, and any other perennial watercourse or tributary to these named streams. A twenty-five-foot-wide natural buffer shall be maintained from the normal stream bank for all activities except for those dependent upon the passive recreational use of the stream or as a source of water for emergency purposes or agriculture in accordance with Agricultural Best Management Practices.
- Wetlands located on property that is the subject of a subdivision application pursuant to Chapter 82 shall also be subject to the provisions of § 82-18 and to any requirements that may be imposed by the Planning Board in the application process.

Chapter 53, §53-4 identifies six regulated activities, including the erection "of any structure, construction of roads, driving of pilings or placing of any other obstructions, whether or not changing the ebb and flow of the water" . This definition would include the proposed Project, as the proposed transmission towers may be located within a regulated proximity to a delineated wetland.

Chapter 53, §53-5 identifies three prohibited activities. These activities are as follows:

- Placement or deposit of any chemical waste, hazardous waste, or storage of any materials that could result in the contamination of any wetland, water body or watercourse.
- Introduction of fluids or other materials with sufficiently high temperature to cause injurious or other harmful ecological effects in any wetland, water body, watercourse or buffer area.
- Such activities which may cause substantial damage or destruction to wetlands.

Potential construction activities have the potential to result in contamination or damage to wetlands, water bodies or other watercourse. The potential as well as detailed construction measures to prevent such occurrences are described in Exhibit 4 of this application and the project's EM&CP.

Chapter 53, §53-6 establishes a requirement for obtaining local permits for undertaking these activities within regulated areas, noting that "Anyone proposing to undertake a regulated activity within a freshwater wetland, watercourse or water body, or its buffer, shall apply for and receive a permit from the Town before commencing such regulated activity." In addition, according to §53-8, "Any person or entity found to be in violation of this chapter shall be ordered and required to cease and desist the violating activity."

The Applicant will comply with Chapter 53. However, the Applicant requests that the Commission refuse to apply local enforcement authority as described in §53-8, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Cease and desist orders and fines pursuant to local authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

7.2.6 Chapter 57, Refuse Collection, Storage, and Disposal

Chapter 57 outlines restrictions regarding the collection, storage, and disposal of refuse material. Industrial refuse may be stored in portable waste-storage compactors, dumpsters, or similar devices. Equipment used for the collection of refuse must provide suitable coverage of the refuse to prevent littering. The Town of Pleasant Valley refuse disposal facility will not accept that which has originated outside of Town boundaries.

The applicant will comply with the requirements of Chapter 57.

7.2.7 Chapter 60, Illicit Discharges, Activities and Connections

Together with Chapter 74, Chapter 60 regulates discharges into the Town of Pleasant Valley municipal separate storm sewer system, per the requirements of the Town's SPDES General Permit.

The applicant will comply with the requirements of Chapter 60.

7.2.8 Chapter 74, Stormwater Management and Erosion and Sediment Control

Chapter 74 regulates development within the Town of Pleasant Valley with regard to erosion control measures. Per §74-4(D), all land development activities other than those regulated by the Town of Pleasant Valley Subdivision law (§82) are required to submit a stormwater pollution prevention plan to the Town Stormwater Management Officer. Eleven categories of activity are granted exemption per §74-5, including the "installation of fence, sign, telephone, and electric poles and other kinds of posts and poles". The ordinance does not make a clear distinction between electric poles and transmission towers.

The Applicant will comply with Chapter 74, although local permitting requirements are preempted per PSL §130.

Construction activities for the proposed Project will entail soil disturbances of greater than one acre. Absent an Article VII certificate, storm water discharge(s) from the construction site(s) are required to be covered under a State Pollutant Discharge Elimination System (SPDES) General Permit issued in accordance with the New York Environmental Conservation Law (ECL) Article 17. The approved EM&CP will include as an appendix a Stormwater Pollution Prevention Plan that will satisfy the requirements of General Permit No. GP-0-10-001 dated January 29, 2010.

7.2.9 Chapter 93, Vehicles and Traffic

Chapter 93 describes traffic and vehicle ordinances for the purposes of preventing obstruction of Town roads and highways. Chapter 93, §93-2 outlines specific parking regulations relative to winter parking on Town roads and Highways between November 1 and April 1.

The applicant will comply with the requirements of Chapter 93.

7.2.10 Chapter 98, Zoning

Chapter 98 describes 15 zoning districts, including one overlay district, within the Town of Pleasant Valley. The proposed Project is located within the Rural Residential (RR) and Medium Density Residential (MDR) zoning districts, as well as the Special Flood Hazard (SFH) overlay district. Per Attachment 1 of Chapter 98 and §98-11, each of these districts allows for “public utility facilities” as a permitted use subject to site plan review. Article X of Chapter 98 defines such facilities as an “installation used by a public agency or a specially franchised public utility to supply or transmit electric, gas, water, sewage disposal, cable television, telephone service, or other utility service, excluding electric power plants and gas wells” .

Attachment 2 of Chapter 98 (§98-12) identifies dimensional requirements relative to each zoning district, as follows (N/A dimensional or other requirements are not listed):

- Rural Residential (RR):
 - o Average density: 3.5 acres
 - o Minimum road frontage: 50 feet
 - o Minimum front yard setback: 70 feet
 - o Minimum side yard setback: 30 feet
 - o Minimum back yard setback: 50 feet
 - o Minimum lot width at primary building line: 200 feet
 - o Maximum impervious coverage: 20%
 - o Maximum building footprint per nonresidential establishment: 4,000 sq. feet
 - o Maximum height: 35 feet
- Medium Density Residential (MDR):
 - o Average density: 1 acre
 - o Minimum road frontage: 50 feet
 - o Minimum front yard setback: 50 feet
 - o Minimum side yard setback: 20 feet
 - o Minimum back yard setback: 30 feet
 - o Minimum lot width at primary building line: 100 feet
 - o Maximum impervious coverage: 25%
 - o Maximum building footprint per nonresidential establishment: 4,000 sq. feet
 - o Maximum height: 35 feet
- Special Flood Hazard (SFH):
 - o Minimum road frontage: 50 feet

- Allowed uses in the SFH district shall conform to the most restrictive adjoining zoning area and bulk requirements
- Other requirements as per Chapter 50 of the Code of Ordinances, Flood Damage Prevention.

Per Chapter 98, Article IV §98-44, public utility facilities are required to provide adequate screening to mitigate detrimental impacts on neighboring properties. According to the supplementary regulations associated with public utilities, "in order to protect neighboring properties from any associated facility noises, facility lighting and/or detriments to the visual qualities of the surrounding area, adequate screening of the facility and sound barriers consisting of landscaping and/or fencing shall be provided if the need for such additional protection is determined necessary by the Planning Board in the site plan review process" .

Given that layout and design of the proposed facilities are being reviewed and approved pursuant to Article VII, the Applicant requests that the Commission refuse to apply subsection §98-11 that requires local site plan review and approval.

The Applicant requests that the Commission refuse to apply the dimensional requirements described within subsection §98-12. The proposed Project is a permitted use within each zoning district, and will be constructed wholly within an existing ROW, where transmission lines are currently strung along existing towers. Both the existing ROW and the proposed tower locations have been and will be sited according to technical specifications regarding clearance, reliability criteria, span lengths, and directional requirements. The area and bulk requirements detailed within subsection §98-12 are not designed to accommodate these specifications. For these reasons, compliance with dimensional requirements are either not applicable, or are being reviewed pursuant to Article VII.

The proposed Project will provide screening, landscaping, and/or fencing in accordance with any applicable conditions of the issued Certificate of Environmental Compatibility and Public Need and the approved EM&CP. Such screening, landscaping, and fencing must also comply with the National Electrical Safety Code (NESC). The Applicant cannot determine whether the screening, landscaping, and/or fencing provided in accordance with the Certificate and EM&CP satisfies the supplementary regulations described in §98-44, as the latter would be a matter of local Planning Board discretion and a product of the site plan review process from which the Applicant has requested relief. Therefore, the Applicant requests that the Commission refuse to apply the provisions of §98-44.

7.3 Town of LaGrange

Project activities in the Town of LaGrange would include the removal of 66 electric transmission structures, to be replaced by the construction of 13 double pole structures and 53 single pole structures associated with approximately 6.75 miles of the A and C Line Rebuild Project.

7.3.1 Chapter 83, Building Construction Administration and Enforcement

Chapter 83 implements the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code.

The Applicant will comply with Chapter 83. However, the Applicant requests that the Commission refuse to apply local stop-work order provisions granted in subsection §83-9, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs. In addition, the Applicant requests that the Commission refuse to apply local inspection provisions granted in subsection §83-4(B); as the Project is a rebuild of an existing high-voltage transmission line, the Applicant does not envision the need for local building inspection.

7.3.2 Chapter 103, Dumps and Dumping

Chapter 103 regulates waste disposal and transport within the Town. The use of private or public lands for the purpose of waste disposal or dumping is prohibited. All garbage, industrial waste, or refuse transported within the Town is required to be handled and covered so it cannot be accessible to rodents, flies, or other insects, or create a nuisance.

The applicant will comply with the requirements of Chapter 103.

7.3.3 Chapter 107, Electrical Inspections

Chapter 107 outlines the roles of the Electrical Inspector for the Town. According to subsection §107-3(A), it is a violation for any person, firm or corporation to install or alter electrical wiring for light, heat or power without first filing an application for inspection with the local Electrical Inspector. According to §107-3(B), it is also a violation to connect electrical wiring in or on properties for light, heat, or power to any source of electrical energy supply

prior to the issuance of a temporary certificate or certificate of compliance by the local Electrical Inspector. Per §107-3(C), the Electrical Inspector has stop work authority should they determine that any section of this chapter has been violated.

The Applicant will comply with Chapter 107, although local permitting requirements are preempted per PSL §130.

Because local permitting requirements are preempted, the Applicant requests that the Commission refuse to apply local stop-work order provisions granted in subsection §107-3(C), which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs. In addition, the Applicant requests that the Commission refuse to apply local inspection provisions granted in subsection §107-2; as the Project is a rebuild of an existing high-voltage transmission line, the Applicant does not envision the need for local electrical inspection.

7.3.4 Chapter 120, Flood Damage Prevention

Chapter 120 implements the National Flood Insurance Program. Chapter 120, §120-6 identifies a special flood hazard area within the Town, pursuant to Flood Insurance Rate Maps created by the Federal Emergency Management Agency. Floodplains associated with Wappinger Creek and Sprout Creek in the Town of LaGrange crossed by a portion of the proposed Project are included in this special flood hazard area. Subsection §120-12 establishes the local floodplain development permit requirement as follows: "A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and ensuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in §120-6, without a valid floodplain development permit."

Chapter 120 also details requirements for construction within special flood hazard areas, including general construction standards (§120-15). The construction standards detailed in subsection §120-15 are applicable to "new development, including new and substantially improved structures, in the areas of special flood hazard

shown on the Flood Insurance Rate Map designated in §120-6.” Development is defined within subsection §120-4 as “any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials”, which would appear to apply to the Project. Subsection §120-15(B) requires applicants to demonstrate that encroachments within special flood hazard areas will not cause increases in flood levels during flood events. Chapter 120, §120-14(F) authorizes the local zoning administrator to issue stop-work orders for floodplain development found ongoing without a development permit, or for that which is found noncompliant with the provisions of Chapter 120.

The Applicant requests that the Commission refuse to apply the provisions of subsection §120-15 of the Town of LaGrange’s flood damage prevention ordinance. The ordinance is designed to regulate the construction of primarily residential, commercial, and industrial structures, as opposed to the utility facilities included in the proposed Project. The transmission facilities proposed to be located within the special flood hazard area include poles C16 and C33, both in the 500-year floodplain. The Project would convert existing two-pole structures to monopole structures. The transmission facilities proposed to be located within the special flood hazard area are not prone to flood damage in the same way that residential, commercial, or industrial structures are. In addition, the proposed Project will not alter the floodplain, and will not increase flood hazards to adjacent properties. As proposed, the new transmission towers would replace two existing structures (consisting of four individual poles) that are currently located within the special flood hazard area, or overhead transmission lines would traverse them. For these reasons, subsection §120-15 of the Code of the Town of LaGrange is unduly restrictive in view of existing technology.

The Applicant further requests that the Commission refuse to apply local stop-work order provisions granted in subsection §120-14(F) , which the Applicant believes to be unduly restrictive in relation to project cost and the needs of utility ratepayers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

7.3.5 Chapter 124, Freshwater Wetlands, Watercourses, and Water Bodies

Pursuant to Chapter §124-2, “it is declared to be the public policy of the Town of LaGrange to preserve, protect and conserve freshwater wetlands, watercourses and water bodies and the benefits derived therefrom; to

prevent despoliation and destruction of freshwater wetlands, watercourses and water bodies; and to regulate development in such wetlands and protect such watercourses and water bodies in order to secure the natural benefits derived therefrom consistent with the general welfare and the beneficial economic, social and agricultural development of the Town" (Town of LaGrange, 2002). According to Chapter 124, the boundaries of wetlands shall be determined by field investigation.

Chapter 124, §124-7(C) identifies eight activities that are subject to regulation, including the erection of "any structures or roads, the driving of pilings or placing of any other obstructions, whether or not changing the ebb and flow of the water" (Town of LaGrange, 2002). Chapter 124, §124-5 defines structure as "anything constructed or erected, the use of which requires location on or within the ground or attachment to something having location on the ground, including but not limited to buildings, tennis courts, swimming pools, as examples." This definition would include the proposed Project, as the proposed transmission towers may be located within a regulated proximity to a delineated wetland.

The Applicant will comply with Chapter 124 and Article 24, although local permitting requirements and those of Article 24 of the ECL are preempted per PSL §130.

However, the Applicant requests that the Commission refuse to apply local enforcement authority as described in §124-15, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Penalties and appearance tickets pursuant to local authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

7.3.6 Chapter 140, Illicit Discharges to Storm Sewers

Chapter 140 regulates discharges into the Town of LaGrange municipal separate storm sewer system, per the requirements of the Town's SPDES General Permit.

The applicant will comply with the requirements of Chapter 140.

7.3.7 Chapter 162, Noise

Chapter 162 delineates permitted noise levels within the Town of LaGrange. Chapter 162, §162-4 states that “no person shall make, continue or cause or permit to be made or continued any unnecessary noise” (Town of LaGrange, 2002). Chapter 162, §162-2 defines such noises as “any excessive or unusually loud sound or any sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a person or which causes injury to animal life or damages to property or business” (Town of LaGrange, 2002). The standard by which unnecessary noise shall be judged includes a consideration regarding “whether the sound source is temporary” (Town of LaGrange, 2002). The ordinance does not state whether this standard applies specifically to construction-related noises, nor is the term “temporary” defined within the ordinance.

The list of prohibited acts in §162-5 includes construction-related noises between the hours of 9:00 p.m. and 6:30 a.m., pump or fan-related noises between 11:00 p.m. and 7:00 a.m., and the loading and unloading of vehicles or materials between the hours of 11:00 p.m. and 7:00 a.m. within 300 feet of a residentially zoned area.

The list of permitted noises in §162-10 include sounds created by public utilities in carrying out the operations of their franchise.

Sounds created by public utilities are allowed pursuant to subsection §162-10. The construction process will include the use of motorized equipment during transportation, excavation, and erection of the proposed transmission towers. Temporary noises produced by such equipment are unavoidable given the nature of the activities. Industry-standard noise mitigation techniques will be employed as part of the project.

Construction hours of operation will be determined by the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Construction hours are anticipated to be in compliance with the requirements of §162-5.

7.3.8 Chapter 195, Solid Waste

Chapter 195 regulates local garbage disposal and collection. According to §195-2, only residents and business owners may utilize the Town dump facilities.

The applicant will comply with the requirements of Chapter 195.

7.3.9 Chapter 197, Stormwater Management and Erosion and Sediment Control

Chapter 197 regulates development within the Town of LaGrange with regard to erosion control measures. Unless otherwise exempted, all land development activities are required to submit stormwater pollution prevention plans to the Town's Stormwater Management Officer. Eleven categories of activity are granted exemption per §197-6, including the "installation of fence, sign, telephone, and electric poles and other kinds of posts and poles" (Town of LaGrange, 2002). The ordinance does not make a clear distinction between electric poles and transmission towers; however, it is assumed that towers such as those included in the proposed Project are not exempted in §197-6.

Article IV of Chapter 197 outlines the requirements of stormwater pollution prevention plans to be submitted in support of land development activities. In addition, any land development activity disturbing more than one acre (with exceptions for single-family residences and agricultural activities) must provide additional information with regard to each post-construction stormwater management practice per the requirements of §197-9.

The Applicant will comply with Chapter 197. However, stormwater management and sediment control requirements will be determined by conditions of the Certificate of Environmental Compatibility and Public Need, the approved EM&CP, and a Stormwater Pollution Prevention Plan (SWPPP).

Construction activities for the proposed Project will entail soil disturbances of greater than one acre. Absent an Article VII certificate, storm water discharge(s) from the construction site(s) are required to be covered under a State Pollutant Discharge Elimination System (SPDES) General Permit issued in accordance with the New York Environmental Conservation Law (ECL) Article 17. The approved EM&CP will include as an appendix a Stormwater Pollution Prevention Plan that will satisfy the requirements of General Permit No. GP-0-10-001 dated January 29, 2010.

7.3.10 Chapter 199, Streets and Sidewalks

Chapter 199, §199-52 requires the issuance of a work permit for any excavations made within a Town right-of-way.

The proposed Project will require overhead crossings of the following roads within the Town of LaGrange:

- *Rombout Road*
- *Overlook Road/County Route 46*
- *Frost Hill Road*
- *Cramer Road*
- *Vervalen Drive*
- *Freedom Plains Road/State Route 55*
- *Bushwick Road*
- *Croft Hill Road*
- *Old Noxon Road*
- *Noxon Road/County Route 21*
- *Pine Ridge Road*
- *Diddell Road*

The Applicant will comply with Chapter 199, although local permitting requirements are preempted per PSL §130.

7.3.11 Chapter 226, Vehicles and Traffic

Chapter 226 outlines regulations related to vehicular movement on roadways within the Town. Article II of Chapter 226 regulates stop and yield intersections, and Article IV regulates parking, stopping, and standing.

The applicant will comply with the requirements of Chapter 226.

7.3.12 Chapter 240, Zoning

Chapter 240 describes 12 zoning districts within the Town of LaGrange. The proposed Project is located within the Moderate Density Residential (R-40/60/80), Low Density Residential (R-80), and Rural Residential (R-120) districts. Per Schedule A of §240-27 (the Schedule of Permitted Uses and Special Use Permits), each of these districts allows for “essential services” as a permitted use subject to project development plan review. Article XI, §240-112 of Chapter 240 defines essential services as “the erection, construction, alteration, or maintenance by public utilities or the Town or other governmental agencies of underground, surface or overhead electrical, gas or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories, in connection therewith reasonably necessary for the furnishing of adequate service by such public

utilities or Town or other governmental agencies or for the public health or safety or general welfare, but not including buildings" (Town of LaGrange, 2002).

Article VII of Chapter 240 outlines requirements for the project development plan review process. Per Schedule A of Chapter 240, only site plan approval would be required. Schedule A of Chapter 240 also notes that such reviews are a prerequisite for the development of essential services within the R-40/60/80, R-80, and R-120 districts, the applicability of the process for such uses is unclear per the requirements of Article VII. Chapter 240, §240-72 notes the following:

"Project development plan approval by the Planning Board in accordance with this section is required for the proposed use or changes in use of land, buildings, and other structures for:

(a) All special use permits in R-120, R-80, and R-40/60/80 Districts.

(b) In all other districts, new principal uses, accessory uses and special permit uses and any expansion or reconstruction of existing uses." (Town of LaGrange, 2002)

Dimensional requirements are detailed in Schedule B of §240-28, the Schedule of Bulk Regulations and Coverage Limitations. Dimensional requirements for the R-40/60/80, R-80, and R-120 districts are as follows:

- Moderate Density Residential (R-40/60/80):
 - o Minimum single-family residential lot area:
 - With public water and sewer: 40,000 square feet
 - With public water or sewer: 60,000 square feet
 - Without private well and septic system: 80,000 square feet
 - o Minimum width of lot along building line: 150 feet
 - o Minimum width of lot at any point:
 - On 40,000 square foot lots: 50 feet
 - On 60,000 square foot lots: 75 feet
 - On 80,000 square foot lots: 100 feet
 - o Minimum dimension of building square on lot: 150 feet
 - o Minimum lot frontage on Town right-of-way:
 - On 40,000 square foot lots: 50 feet
 - On 60,000 square foot lots: 50 feet
 - On 80,000 square foot lots: 75 feet
 - o Minimum lot frontage on County or State highway:
 - On 40,000 square foot lots: 125 feet
 - On 60,000 square foot lots: 125 feet

- On 80,000 square foot lots: 200 feet
 - Maximum height of a building or structure: 35 feet
 - Minimum yard depth:
 - Front yard from County/State road: 90 feet
 - Front yard from Town road: 55 feet (from lot line) and 80 feet (from road centerline)
 - Rear yard: 20 feet
 - Side yard: 20 feet
 - Maximum total lot coverage as a percent of lot area (buildings, structures, outdoor deposit, paving):
 - On 40,000 square foot lots: 30%
 - On 60,000 square foot lots: 25%
 - On 80,000 square foot lots: 20%
- Low Density Residential (R-80):
 - Minimum single-family residential lot area: 80,000 square feet
 - Minimum width of lot along building line: 200 feet
 - Minimum width of lot at any point: 100 feet
 - Minimum dimension of building square on lot: 200 feet
 - Minimum lot frontage on Town right-of-way: 75 feet
 - Minimum lot frontage on County or State highway: 200 feet
 - Maximum height of a building or structure: 35 feet
 - Minimum yard depth:
 - Front yard from County/State road: 90 feet
 - Front yard from Town road: 55 feet (from lot line) and 80 feet (from road centerline)
 - Rear yard: 30 feet
 - Side yard: 30 feet
 - Maximum total lot coverage as a percent of lot area (buildings, structures, outdoor deposit, paving): 20%
- Rural Residential (R-120):
 - Minimum single-family residential lot area: 120,000 square feet
 - Minimum width of lot along building line: 200 feet
 - Minimum width of lot at any point: 150 feet
 - Minimum dimension of building square on lot: 200 feet
 - Minimum lot frontage on Town right-of-way: 100 feet
 - Minimum lot frontage on County or State highway: 225 feet

- Maximum height of a building or structure: 35 feet
- Minimum yard depth:
 - Front yard from County/State road: 90 feet
 - Front yard from Town road: 55 feet (from lot line) and 80 feet (from road centerline)
 - Rear yard: 40 feet
 - Side yard: 40 feet
- Maximum total lot coverage as a percent of lot area (buildings, structures, outdoor deposit, paving): 15%

In addition to the conventional zones described above, Article III of Chapter 240 (§240-31) identifies six overlay zones, as follows: Stream Corridor; Farmland Preservation; Historic; Scenic; Ridgeline Protection; and Groundwater Protection. Per zone descriptions provided in §240-31, as well as the Town of LaGrange Overlay Zone Maps illustrating the locations where such overlays apply, proposed Project facilities would be located within the Ridgeline and Groundwater Protection Overlay Zones.

The Ridgeline Protection Overlay Zone requires that all new construction or development within that zone obtain a special permit from the Town Planning Board, and that such development constitutes a Type I action pursuant to the State Environmental Quality Review Act. Standards for development within this zone are described in §240-31(F)(4), as follows:

- Maximum building or structure height shall not exceed 35 feet;
- Maximum cleared area shall be no more than 50 feet in extent from the outer edge of the primary structure's footprint, and during construction only the minimum amount of existing vegetation shall be cleared;
- 25-foot buffer strips are required at the outer edge of cleared areas
 - these strips shall be planted with vegetation of sufficient height and density as determined by the Planning Board, and
 - these strips shall be free of any man-made structures, including but not limited to fences, facilities, and roads; and
- Proposed yard setbacks from the property line must be no less than 1.5 times the height of the proposed structure or the setback requirements in the existing zoning regulations, whichever are greater.

The general provisions of the Groundwater Protection Overlay Zone, as detailed in §240-13(G)(4), do not apply to facilities such as those included in the proposed Project.

Given that layout and design of the proposed facilities are being reviewed and approved pursuant to Article VII, the Applicant requests that the Commission refuse to apply subsection §240-72 that requires local site plan review and approval.

The Applicant requests that the Commission refuse to apply the dimensional requirements described within subsections §240-28 and §240-31 of the Code of the Town of LaGrange. The proposed Project is a permitted use within each zoning district, and will be constructed wholly within an existing ROW, where transmission lines are currently strung along existing towers. Both the existing ROW and the proposed tower locations have been and will be sited according to technical specifications regarding clearance, reliability criteria, span lengths, and directional requirements. The area and bulk requirements detailed within subsections §240-28 and §240-31 are not designed to accommodate these specifications. For these reasons, compliance with dimensional requirements are either not applicable, or are being reviewed pursuant to Article VII.

7.4 Town of Wappinger

Project activities in the Town of Wappinger would include the removal of 31 electric transmission structures, to be replaced by the construction of 8 double pole structures and 23 single pole structures associated with approximately 2.8 miles of the A and C Line Rebuild Project.

7.4.1 Chapter 80, Blasting

Chapter 80 requires the issuance of a blasting permit for any use of explosives within the Town of Wappinger. Per §80-6, the use of explosives shall be governed by the provisions of the following regulations:

- Article 16 of the New York State Labor Law;
- 12 NYCRR Part 39;
- Title 19 of NYCRR, Chapter XXXIII, Subchapter A, the Uniform Fire Prevention and Building Code of New York State;
- 27 CFR 55;
- 29 CFR 1926, Subpart U;
- Title 49 of the Code of Federal Regulations;
- NFPA No. 495-1973; and
- Generally recognized criteria and accepted industry standards for the manufacture, sale, transportation, storage, handling or use of explosives.

Blasting permits are issued by the Town of Wappinger Fire Inspector, and subject to standard requirements detailed in §80-8. Blasting hours are limited to the period between 8:30 a.m. and 3:00 p.m., Monday through Friday. Blasting is prohibited on Saturdays, Sundays, and legal holidays, unless otherwise approved by the Town.

Local permitting requirements are preempted per PSL §130. The Applicant will comply with Chapter 80 in the event that blasting is required; however, the Applicant does not anticipate that blasting will be necessary.

7.4.2 Chapter 85, Building Code Administration

Chapter 85 implements the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code.

The Applicant will comply with Chapter 85. However, the Applicant requests that the Commission refuse to apply local stop-work order provisions granted in §85-12, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs. In addition, the Applicant requests that the Commission refuse to apply local inspection provisions granted in subsection §85-10; as the Project is a rebuild of an existing high-voltage transmission line, the Applicant does not envision the need for local building or fire inspection.

7.4.3 Chapter 117, Environmental Quality Review

Chapter 117 outlines Type I, Type II, and Exempt Actions within the Town of Wappinger, pursuant to Part 617 of Title 6 of the NYCRR.

The proposed Project is identified within §117-6(A) as an Exempt Action, as it requires a Certificate of Environmental Compatibility and Public Need under Article VII of the PSL.

7.4.4 Chapter 133, Flood Damage Prevention

Chapter 133 implements the National Flood Insurance Program. Chapter 133, §133-6 identifies a special flood hazard area within the Town, pursuant to Flood Insurance Rate Maps created by the Federal Emergency Management Agency. Floodplains associated with Sprout Creek in the Town of Wappinger crossed by a portion of the proposed Project are included in this special flood hazard area. Subsection §133-11 establishes the local floodplain development permit requirement as follows: "A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 133-6, without a valid floodplain development permit."

Chapter 133 also details requirements for construction within special flood hazard areas, including general construction standards (§133-14). The construction standards detailed in subsection §133-14 are applicable to "new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in §133-6." Development is defined within subsection §133-4 as "Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials", which would appear to apply to the project. Subsection §133-14(B) requires applicants to demonstrate that encroachments within special flood hazard areas will not cause increases in flood levels during flood events. Chapter 133, §133-13(F) authorizes the local zoning administrator to issue stop-work orders for floodplain development found ongoing without a development permit, or for that which is found noncompliant with the provisions of Chapter 133.

The Applicant requests that the Commission refuse to apply the provisions of subsection §133-14 of the Town of Wappinger's flood damage prevention ordinance. The ordinance is designed to regulate the construction of primarily residential, commercial, and industrial structures, as opposed to the utility facilities included in the proposed Project. The transmission facilities proposed to be located within the special flood hazard area include poles A59, A60, and A61 in the 100-year floodplain and A31, A32, and A34 in the 500-year floodplain. The Project would convert existing two-pole structures to monopole structures. Transmission structures such as these are not prone to flood damage in the same way that residential, commercial, or industrial structures are. In addition, the proposed Project will not alter the floodplain, and will not increase flood hazards to adjacent properties. As proposed, the new transmission towers would replace six existing structures (consisting of twelve

individual poles) that are currently located within the special flood hazard area. For these reasons, subsection §133-14 of the town code is unduly restrictive in view of existing technology.

The Applicant further requests that the Commission refuse to apply local stop-work order provisions granted in subsection §133-13(F), which the Applicant believes to be unduly restrictive in relation to project cost and the needs of utility ratepayers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

7.4.5 Chapter 137, Freshwater Wetland, Waterbody and Watercourse Protection

Per Chapter 137, §137-2 “it is declared to be the public policy of the Town of Wappinger to preserve, protect and conserve freshwater wetlands, waterbodies and watercourses and the benefits derived therefrom and to prevent the despoliation and destruction of such freshwater resources by regulating activities with potential impacts to such resources in order to secure their natural benefits consistent with the general health, safety and welfare of the public, and with the beneficial economic, social and agricultural development of the Town of Wappinger”.

Chapter 137, §137-6(A) identifies 14 activities that are subject to regulation if they occur within a freshwater wetland or 100-foot buffer around such wetland, including the “placement or construction of any structure”. This statement would include the proposed Project, as the proposed transmission towers may be located within a delineated wetland.

The Applicant will comply with Chapter 137 and Article 24, although local permitting requirements, as well as those of Article 24 of the ECL, are preempted per PSL §130.

7.4.6 Chapter 166, Noise

Chapter 166 restricts certain noise sources within the Town of Wappinger. Per §166-2, “no person shall cause or permit to be caused any noise which can be heard by a person with normal hearing beyond the boundaries of property owned, leased or otherwise controlled by him”. Construction and demolition-related noises are prohibited between the hours of 7:00 p.m. and 7:00 a.m. Subsection §166-5(J) exempts “sound generated by the normal operation of utilities”.

The Applicant considers the Project to be consistent with the exemption granted in subsection §166-5(J). The construction process will include the use of motorized equipment during transportation, excavation, and erection of the proposed transmission towers. Temporary noises produced by such equipment are unavoidable given the nature of the activities and the brevity of the construction season. Industry-standard noise mitigation techniques (e.g. properly maintained equipment) will be employed as part of the project.

Construction hours of operation will be determined by the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Construction hours are anticipated to be in compliance with the requirements of §166-7(C).

7.4.7 Chapter 206, Soil Erosion and Sediment Control

Chapter 206 regulates development within the Town of Wappinger with regard to erosion control measures. According to §206-8, no land development activities (e.g. grading, stripping, cutting, filling, excavation, or other site preparation) shall be conducted “without a grading permit issued by the Zoning Administrator, [...or], for anything other than a one-family dwelling, without site plan approval from the Planning Board, pursuant to §240-83”.

Article IV of Chapter 206 outlines the requirements of erosion and sediment control structures. In addition, it authorizes the local Zoning Administrator to issue cease and desist orders for any work that is not consistent with relevant applications, grading permits, and approved plans.

The Applicant will comply with Chapter 206, although local permitting requirements are preempted per PSL §130.

7.4.8 Chapter 210, Solid Waste

Chapter 210 regulates the storage and disposal of garbage and debris. The Town dump facility may not be used to dispose of garbage or debris that has originated from outside of the Town of Wappinger. Use of other private or public land for storage and/or disposal of garbage and debris are prohibited. In addition, §210-14 describes requirements for large refuse receptacles that are typically associated with construction-related activities. In general, the ownership of large receptacles must be clearly identifiable, the receptacles must be securely closed and free of leakage, and the area around the receptacle must be kept free of debris and spillage.

The applicant will comply with the requirements of Chapter 210.

7.4.9 Chapter 213, Stormwater Management

Chapter 206 regulates development within the Town of Wappinger with regard to stormwater management. Per §213-3, these standards are applicable to “all land development activities... including, but not limited to, land development activities subject to review and approval by the Town Board, the Planning Board or the Zoning Board of Appeals of the Town under subdivision, site plan, special permit, wetland permit, grading permit and/or other environmental permit regulations”. Applicants must submit stormwater pollution prevention plans to the local Stormwater Management Officer, complete with details as enumerated in §213-6. However, per §213-4 (H), the installation of fence, sign, telephone and electric poles and other kinds of posts or poles are exempt from this review. Per §213-11, the Town may issue a stop-work order for land development activities that are inconsistent with permits issued by the Town.

Article II of Chapter 113 also prohibits illicit discharges into the local storm sewer system.

The Applicant will comply with Chapter 213, although local permitting requirements are preempted per PSL §130.

The Applicant requests that the Commission refuse to apply local stop-work order provisions granted in subsection §213-11, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

Construction activities for the proposed Project will entail soil disturbances of greater than one acre. Absent an Article VII certificate, storm water discharge(s) from the construction site(s) are required to be covered under a State Pollutant Discharge Elimination System (SPDES) General Permit issued in accordance with the New York Environmental Conservation Law (ECL) Article 17. The approved EM&CP will include as an appendix a Stormwater Pollution Prevention Plan that will satisfy the requirements of General Permit No. GP-0-10-001 dated January 29, 2010.

7.4.10 Chapter 230, Vehicles and Traffic

Chapter 230 outlines regulations related to vehicular movement on roadways within the Town. Article II of Chapter 226 outlines all traffic regulations, and Article III regulates parking, stopping, and standing specifically.

The applicant will comply with the requirements of Chapter 230.

7.4.11 Chapter 240, Zoning

Chapter 240 outlines requirements relative to 25 zoning districts within the Town of Wappinger. Of these, the proposed Project intersects four: 1-Family Residence District R-3A, 1-Family Residence District R-40, 1-Family Residence District R-40/80, and Conservation Commercial District CC. Per the Schedule of Use Regulations (Attachments 1 and 2 of Chapter 240, as referenced in §240-37), public utility uses are allowed within the each of these districts, subject to special permits.

Dimensional requirements are detailed in Attachments 3 and 4 of Chapter 240. Dimensional requirements for each of the four districts listed above are as follows:

- 1- Family Residential District R-3A:
 - o Minimum lot size: 3 acres
 - o Minimum lot width: 225 feet
 - o Minimum lot depth: 300 feet
 - o Minimum lot frontage: 50 feet
 - o Minimum front yard from:
 - County/State highway: 75 feet
 - Center line of other street: 75 feet
 - Front lot line of other street: 75 feet
 - o Minimum side yard: 50 feet
 - o Minimum rear yard: 50 feet
 - o Maximum building height: 35 feet (transmission towers are exempt from building height restrictions, per §240-22) (B)
 - o Maximum lot coverage: 7%
- 1- Family Residential District R-40:
 - o Minimum lot size: 40,000 square feet
 - o Minimum lot width: 125 feet
 - o Minimum lot depth: 125 feet

- Minimum lot frontage: 50 feet
- Minimum front yard from:
 - County/State highway: 75 feet
 - Center line of other street: 75 feet
 - Front lot line of other street: 50 feet
- Minimum side yard: 25 feet
- Minimum rear yard: 50 feet
- Maximum building height: 35 feet (transmission towers are exempt from building height restrictions, per §240-22)
- Maximum lot coverage: 12%
- 1- Family Residential District R-40/80:
 - Minimum lot size:
 - With public water and sewer: 40,000 square feet
 - With public water or sewer: 60,000 square feet
 - Without public water and sewer: 80,000 square feet
 - Minimum lot width:
 - On 40,000 square foot lots: 125 feet
 - On 60,000 square foot lots: 150 feet
 - On 80,000 square foot lots: 200 feet
 - Minimum lot depth:
 - On 40,000 square foot lots: 125 feet
 - On 60,000 square foot lots: 150 feet
 - On 80,000 square foot lots: 200 feet
 - Minimum lot frontage: 50 feet
 - Minimum front yard: 50 feet (conflicting minimum front yard requirements exist; see below)
 - Minimum front yard from:
 - County/State highway: 75 feet
 - Center line of other street: 75 feet
 - Front lot line of other street: 50 feet
 - Minimum side yard: 40 feet (conflicting minimum side yard requirements exist; see below)
 - Minimum side yard:
 - On 40,000 square foot lots: 25 feet
 - On 60,000 square foot lots: 30 feet
 - On 80,000 square foot lots: 40 feet

- Minimum rear yard: 50 feet
- Maximum building height: 35 feet (transmission towers are exempt from building height restrictions, per §240-22)
- Maximum lot coverage: 10%
- Conservation Commercial District CC:
 - Minimum lot size: 1 acre
 - Minimum lot width: 100 feet
 - Minimum lot depth: 100 feet
 - Minimum lot frontage: 100 feet
 - Minimum front yard from:
 - County/State highway: 75 feet
 - Center line of other street: 75 feet
 - Front lot line of other street: 50 feet
 - Minimum side yard: 10 feet
 - Minimum rear yard: 30 feet
 - Maximum building height: 35 feet (transmission towers are exempt from building height restrictions, per §240-22)
 - Maximum building coverage: 20%
 - Maximum impervious surface: 40%
 - Minimum landscaped open space: 60%
 - Minimum parking setback from front, side, and rear lot lines: 20, 10, and 10 feet, respectively.

Article VII of Chapter 240, §240-44 describes four general standards for special use permits, as follows:

- The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
- The location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
- Operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, illumination or other characteristics, than would be the operations of any permitted use not requiring a special permit.

- Parking areas will be of adequate size for the particular use, will be properly located and suitably screened from adjoining residential uses and the entrance and exit drives shall be laid out so as to achieve maximum safety.

In addition to these standards, applicants for special use permits are required to submit site development plans for review by the Planning Board. This process requires the assessment of 16 project components for their compatibility with standards as defined in Chapter 240, §240-86. These standards require adequate site access, on-site circulation, landscaping and buffering, lighting, protection of natural resources, and drainage, as well as other requirements that may or may not apply to utility structures (e.g. building design, signage, etc.).

Per Article XI of Chapter 240, §240-101 "no business or industrial use shall hereafter be maintained, established, altered, moved or expanded" unless it complies with a series of performance standards. Neither Article XI nor Article II (Zoning- Definitions) indicates whether utility uses such as the proposed Project would be regulated as an industrial use. The noise-related performance standards enumerated in §240-13 provide an exemption for construction-related noise between 8:00 a.m. and sunset.

Given that layout and design of the proposed facilities are being reviewed and approved pursuant to Article VII, the Applicant requests that the Commission refuse to apply subsection §240-83 that requires local site plan review and approval.

The Applicant requests that the Commission refuse to apply the dimensional requirements described within Attachments 3 and 4 of Chapter 240. Special use permits and local site plan review requirements are preempted per PSL §130. The general standards under §240-44 and compatibility standards under §240-86 are considerations the commission will make, where applicable, in making its findings under PSL §126.

Both the existing right-of-way and the proposed tower locations have been and will be sited according to technical specifications regarding clearance, reliability criteria, span lengths, and directional requirements. The requirements detailed within Attachments 3 and 4 of Chapter 240 are not designed to accommodate these specifications. For these reasons, the bulk requirements described therein are unduly restrictive in view of existing technology.

7.5 Town of East Fishkill

Project activities in the Town of East Fishkill would include the removal of 3 electric transmission structures and the construction of 2 double pole structures and 1 single pole structure associated with approximately 0.2 mile of the A and C Line Rebuild Project.

7.5.1 Chapter 80, Building Construction and Fire Prevention

Chapter 80 implements the New York State Uniform Fire Prevention and Building Code.

The Applicant will comply with Chapter 80, although local permitting requirements are preempted per PSL §130.

The Applicant requests that the Commission refuse to apply local stop-work order provisions granted in subsection §80-10, which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs. In addition, the Applicant requests that the Commission refuse to apply local inspection provisions granted in subsection §80-9; as the Project is a rebuild of an existing high-voltage transmission line, the Applicant does not envision the need for local building inspection.

7.5.2 Chapter 108, Flood Damage Prevention

Chapter 108 implements the National Flood Insurance Program. Chapter 108, §108-6 identifies a special flood hazard area within the Town, pursuant to Flood Insurance Rate Maps created by the Federal Emergency Management Agency. Floodplains associated with Sprout Creek in the Town of East Fishkill crossed by a portion of the proposed Project are included in this special flood hazard area. Subsection §108-11 establishes the local floodplain development permit requirement as follows: "A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in §108-6, without a valid floodplain development permit."

Subsection §108-14 details general standards for construction within special flood hazard areas. The construction standards detailed in subsection §108-14 are applicable to “new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in §108-6.” Development is defined within subsection §108-4 as “any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials”, which would appear to apply to the Project. Subsection §108-14(B) requires applicants to demonstrate that encroachments within special flood hazard areas will not cause increases in flood levels during flood events. Chapter 108, §108-13(F) authorizes the local zoning administrator to issue stop-work orders for floodplain development found ongoing without a development permit, or for that which is found noncompliant with the provisions of Chapter 108.

The Applicant requests that the Commission refuse to apply the provisions of subsection §108-14 of the Town of East Fishkill's flood damage prevention ordinance. The ordinance is designed to regulate the construction of primarily residential, commercial, and industrial structures, as opposed to the utility facilities included in the proposed Project. The transmission facilities proposed to be located within the special flood hazard area include pole A63 in the 500-year floodplain. The Project would convert existing two-pole structures to monopole structures. Transmission structures such as these are not prone to flood damage in the same manner as residential, commercial, or industrial structures are. In addition, the proposed Project will not alter the floodplain, and will not increase flood hazards to adjacent properties. As proposed, the new transmission towers would replace one existing structure (consisting of two individual poles) that is currently located within the special flood hazard area. For these reasons, subsection §108-14 of the town code is unduly restrictive in view of existing technology.

The Applicant further requests that the Commission refuse to apply local stop-work order provisions granted in subsection 108-13(F), which the Applicant believes to be unduly restrictive in relation to project cost and the needs of utility ratepayers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

7.5.3 Chapter 110, Freshwater Wetlands, Water Bodies, and Watercourses

Chapter 110 regulates development within and around wetlands, water bodies, and watercourses, including the following:

- Ponds, lakes, reservoirs, marshes, swamps, bogs, vernal pools or other area of permanent water retention, regardless of origin.
- All natural drainage systems, including rivers, streams and brooks which contain water at least three months of the year and the associated floodplains of such watercourses. (Town of East Fishkill, 2001).

Chapter 110, §110-3(B) identifies 15 activities that are subject to regulation if they occur within such areas, including the “erecting or enlarging any building or structure of any kind, roads, driveways, the driving of pilings, digging of wells or placing of any obstructions, whether or not they change the ebb and flow of the water” (Town of East Fishkill, 2001). This definition (which would fall within the definition of structure) would include the proposed Project, as the proposed transmission towers may be located within a wetland or floodplain.

Chapter 110, Chapter 110, §110-4(K) identifies 11 activities that are permitted by right within freshwater wetlands, water bodies and watercourses. These include activities within wetlands under the jurisdiction of the federal or state government for which a permit has been obtained from the appropriate agency provided that a copy of the permit is filed with the approval authority or if none, the Town Clerk. Per this chapter the proposed project would be an exempt activity since the activity is authorized under an existing U.S. Army Corps of Engineers Nationwide Permit.

The Applicant will comply with Chapter 110 although local permitting requirements are preempted per PSL §130.

The Applicant requests that the Commission refuse to apply local stop-work order provisions granted in subsection §110-7(C) , which the Applicant believes to be unduly restrictive in relation to project cost and the needs of customers. Construction activities will meet the conditions and requirements of the Certificate of Environmental Compatibility and Public Need and the approved EM&CP, and will be monitored by the New York State Public Service Commission and the staff of the New York State Department of Public Service. Local stop-work authority could potentially disrupt construction, resulting in adverse impacts to the construction schedule as well as increased Project costs.

7.5.4 Chapter 127, Littering

Chapter 127 prohibits the deposition of garbage or debris on or about any street, lawn, vacant lot, or in any building, public place, culvert, or stream within the Town.

The applicant will comply with the requirements of Chapter 127.

7.5.5 Chapter 154, Steep Slope Protection

Chapter 154 requires local permits for disturbances occurring on any area with greater than 3:1 slope or 33.33% grade. Per §154-3, disturbances include "excavation or fill or any combination which changes the existing ground surface by more than two feet, or any removal of trees and/or vegetation and shall include the conditions resulting from any excavation or fill" (Town of East Fishkill, 2001). The standards for approval of such permits are enumerated in §154-6.

The Applicant will comply with Chapter 154, although local permitting requirements are preempted per PSL §130. .

Construction activities for the proposed Project will entail soil disturbances of greater than one acre. Absent an Article VII certificate, storm water discharge(s) from the construction site(s) are required to be covered under a State Pollutant Discharge Elimination System (SPDES) General Permit issued in accordance with the New York Environmental Conservation Law (ECL) Article 17. Based on past experience and guidance provided by New York State Department of Public Service Staff, Central Hudson understands that this project's EM&CP and associated erosion control measures will fulfill the NYSDEC's erosion and sediment control requirements and that a separate SWPPP will not be required. Concurrent with the EM&CP filing, Central Hudson will provide the NYSDEC with the required Notice of Intent for coverage of this Project under General Permit No. GP-0-10-001 dated January 29, 2010 for Stormwater Discharges from Construction Activities. The required Notice of Termination of such General Permit coverage will be provided to the NYSDEC following completion of the Project.

7.5.6 Chapter 156, Storm Sewers

Together with Chapter 157, Chapter 156 regulates discharges into the Town of Pleasant Valley municipal separate storm sewer system, per the requirements of the Town's SPDES General Permit.

The Applicant will comply with Chapter 156, although permitting requirements are preempted per PSL §130.

7.5.7 Chapter 157, Stormwater Management and Erosion and Sediment Control

Chapter 157 regulates development within the Town of East Fishkill with regard to erosion control measures. Per §157-7(A), all land development activities are required to submit a stormwater pollution prevention plan to the Town. Nine categories of activity are granted exemption per §157-6, including the “installation of fence, sign, telephone, and electric poles and other kinds of posts and poles” (Town of East Fishkill, 2001). The ordinance does not make a clear distinction between electric poles and transmission towers; however, for purposes of preparing Exhibit 7, it is assumed that towers such as those included in the proposed Project are not exempted in §157-6.

The Applicant will comply with Chapter 80, although local permitting requirements are preempted per PSL §130.

Construction activities for the proposed Project will entail soil disturbances of greater than one acre. Absent an Article VII certificate, storm water discharge(s) from the construction site(s) are required to be covered under a State Pollutant Discharge Elimination System (SPDES) General Permit issued in accordance with the New York Environmental Conservation Law (ECL) Article 17. The approved EM&CP will include as an appendix a Stormwater Pollution Prevention Plan that will satisfy the requirements of General Permit No. GP-0-10-001 dated January 29, 2010.

7.5.8 Chapter 177, Vehicles and Traffic

Chapter 177 outlines regulations related to vehicular movement on roadways within the Town. Article I of Chapter 177 outlines parking regulations relative to public roads, specifically no-parking zones and seasonal parking restrictions.

The applicant will comply with the requirements of Chapter 177.

7.5.9 Chapter 194, Zoning

Zoning regulations are described in Chapter 194 of the Town Code. The proposed Project would be located in only one of the 17 existing districts, specifically the R-1 residential district. Public utility uses are not identified within the Schedule of Permitted Uses (§194-16 and Attachment 2) as a permitted use within the R-1 district, and are therefore not permitted per §194-8.

The Schedule of Bulk Regulations (§194-17 and Attachment 3) sets forth the following dimensional requirements for the R-1 residential district:

- Minimum lot size: 1 acre
- Minimum lot frontage: 50 feet
- Minimum lot width: 125 feet
- Minimum lot depth: 150 feet
- Minimum front yard: 50 feet
- Minimum side yard: 25 feet
- Minimum rear yard: 50 feet
- Maximum lot coverage: 12%
- Maximum building height: 35 feet

Per Chapter 194, §194-110, all power and communication lines shall be installed underground in the manner prescribed by regulations of the governmental agency or utility company having jurisdiction. However, where site or other environmental considerations would cause undue hardship, the appropriate reviewing agency shall have authority to waive this requirement.

Per Chapter 194, §194-161, the construction or modification of public utility structures, including the construction or use of overhead lines or other structures used for public utility purposes and subject to the jurisdiction of the Public Service Commission of the State of New York is a permitted use in the Industrial districts within the Town.

The Applicant requests that the Commission refuse to apply the use and dimensional requirements described within subsection §194-17 and Attachment 3.

The proposed Project will be constructed wholly within an existing right-of-way, where transmission lines are currently strung along existing towers, and will connect to an existing substation within the R-1 district. Both the existing right-of-way and the proposed tower locations have been and will be sited according to technical specifications regarding clearance, reliability criteria, span lengths, and directional requirements. The requirements detailed within §194-17 and Attachment 3 are not designed to accommodate these specifications. For these reasons, the bulk requirements described therein are unduly restrictive in view of existing technology.

7.6 References

Town of East Fishkill, New York. 2001. Code of the Town of East Fishkill. Published by General Code, as amended through June 23, 2011. Available at: <http://ecode360.com/EA0495>. Accessed January, 2013.

Town of LaGrange, New York. 2002. Code of the Town of LaGrange. Published by General Code, as amended through November 14, 2012. Available at: <http://ecode360.com/LA0563>. Accessed January, 2013.

Town of Pleasant Valley, New York. 1978. Code of the Town of Pleasant Valley. Published by General Code, as amended through April 11, 2012. Available at: <http://ecode360.com/PL0575>. Accessed January, 2013.

Town of Wappinger, New York. 1999. Code of the Town of Wappinger. Published by General Code, as amended through April 9, 2012. Available at: <http://ecode360.com/WA0691>. Accessed January, 2013.