

NORTHPORT - EAST NORTHPORT UNION FREE SCHOOL DISTRICT

OFFICE OF THE SUPERINTENDENT

158 Laurel Avenue  
Northport, New York  
Telephone (631) 262-6604  
Fax: (631) 262-6607

**Robert L. Banzer**  
*Superintendent of Schools*

October 6, 2023

Legislative Commission on the  
Future of the Long Island Power Authority  
1979 Marcus Avenue  
Lake Success, New York 11042

Re: April 17, 2023 Draft Report on Establishment of a Public Power Model for the  
Operation of the Long Island Power Authority

Dear Commissioners and Members of the Advisory Committee:

This letter is submitted on behalf of the Northport-East Northport Union Free School District (the "District") in connection with the proposed and developing action plan for implementing a public power model of the Long Island Power Authority ("LIPA") and in response to the Commission's April 17, 2023 Draft Report on Establishment of a Public Power Model for the Operation of the Long Island Power Authority ("Draft Report"). While the District is not taking a position as to whether LIPA should be fully municipalized or remain under a public-private management system, the District wishes to share its many concerns associated with any future legislation involving the re-organization or legal status of LIPA.

Accordingly, the purpose of this letter is to provide the Commission with relevant information and history related to LIPA, and the impact upon the District and its host community to date. In addition, the District wishes to point out certain areas of current and future legislation that must be considered and addressed to provide adequate protections to the District, its taxpayers and other municipalities as it relates to taxes, payments-in-lieu of taxes ("PILOTs"), and/or other forms of payment to the affected taxing jurisdictions, currently and in the future. Specifically, it is submitted that any proposed litigation related to the restructuring of LIPA must: (i) require and allow for the terms of any existing settlement agreements with LIPA to remain in full force and effect for the duration of the agreements as contemplated at the time entered; (ii) protect all existing and future PILOTs/payments related to LIPA's properties received by the District; and (iii) provide clear guidance as to the future of the existing power plant properties, any impact to the tax base as a result of LIPA's acquisition of any properties, and the measures to be put in place to mitigate the impact to the District and its taxpayers that result from significant changes in the tax base as a result. Opportunities may exist to mitigate reductions to the tax base and loss of revenue, including, but not limited to, implementing new projects within affected tax jurisdictions, including school districts. Measures that allow for an increase to the tax base and/or other source of revenue could further serve to lessen the impact on the District and its taxpayers. We urge that such opportunities be explored and extended to the Northport-East Northport community, as taxpayers and ratepayers, and as a host community of LIPA properties for over half a century.

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The Commission is charged with developing a plan for a public power model for LIPA. This Commission has stated its commitment to fulfilling its mandate so that “the legislature and governor can act this legislative session to fulfill LIPA’s original promise – to directly provide affordable, reliable, and accountable electricity service to the ratepayers of Long Island and the Rockaways” as highlighted in the cover letter to the Draft Report. Inherent in that promise is “realizing savings for the ratepayers and *taxpayers* in the service area.”<sup>1</sup> The Commission acknowledges the requirement to consider “taxation and payment in lieu of taxes (“PILOTs”)” and “the special needs of communities that are or have been impacted by the siting of power generating facilities.”<sup>2</sup> As an affected taxing jurisdiction, the District receives PILOTs from LIPA. In addition, the District and its community host the Northport Power Station, and numerous other LIPA properties located within the District’s geographical boundaries. The generating plant and other electric generating facilities and property contribute to the tax base of the District and the host community. The District urges the Commission to judiciously analyze the impact of any legislation related to LIPA upon the tax base and the effect upon municipalities, especially school districts.

As we are certain the Commission is aware, affected taxing jurisdictions, including the District, were signatories to agreements settling significant litigation questioning promises from LIPA not to cease the payment of taxes on the legacy power plant located within the District’s borders.

Initially, the District is concerned as to what impact future legislation may have on existing and future PILOTs due to the District and other taxing jurisdictions. This remains unclear to the District after reviewing the Draft Report. The Commission first notes that the transition to public power “*will not in any way change LIPA’s tax and PILOT payments to local governments.*” (*emphasis added*).<sup>3</sup> However, thereafter, the report states that the transition to a public power model “would have a *minimal* impact on local taxation and PILOTs.” (*emphasis added*).<sup>4</sup> The report again states “transition to a fully integrated public power model will *not* create *any* changes in LIPA’s PILOT payments.” (*emphasis added*).<sup>5</sup> Yet, the Commission states, “restructuring of LIPA would not *substantially* alter its property tax or PILOT obligations” and that “the impact on local taxation and PILOTs would be *minimal*.” (*emphasis added*).<sup>6</sup> In light of this, the District seeks clarification as to what impact, even if minimal, there may be. Further analysis and communication should be sought with the local taxing authorities, including school districts, prior to the implementation of *any* legislation to better understand the impact and determine if such impact is, in fact, “minimal”. Please note that the above referenced settlement agreement already has reduced LIPA’s tax burden by scores of millions of dollars.

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<sup>1</sup> N.Y. Pub. Auth. Law § 1020-a.

<sup>2</sup> See Draft Report, Executive Summary, page i.

<sup>3</sup> See Draft Report, Cover Letter, page 2.

<sup>4</sup> See Draft Report, Executive Summary, page xvi.

<sup>5</sup> See Draft Report, page 59.

<sup>6</sup> See, *id.*, page 64.

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To better appreciate the need for further analysis and consideration of the impact to the tax base, the District offers the following brief relevant history and shares concerns relative to it.

As this Commission is well aware, LIPA has a long history, including various legislative acts that have had significant and lasting impact on local municipalities, including school districts like the District. In 1986, New York State enacted the Long Island Power Authority Act, which created LIPA, a not-for-profit public authority to replace the private investor-owned Long Island Lighting Company (“LILCO”).

LIPA and LILCO entered into a Power Supply Agreement, dated June 26, 1997 (the “PSA”). At the time, LIPA and related entities represented to municipalities and school districts, including the District, that they would not bring property tax challenges on the generating facilities and sites located in their taxing jurisdictions, except under limited circumstances as prescribed by the PSA.

Legislative action was taken to put certain protections in place to shield affected municipalities, including school districts, from significant shifts in their tax base and to provide stability for the localities and the taxpayers. By way of example, Public Authorities Law section 1020-q, originally enacted in 1986, required LIPA to make PILOT payments on any property previously owned by LILCO, a private entity, and acquired by LIPA, that is removed from the tax rolls by virtue of such acquisition. PILOT payments to municipalities and school districts were to be “equal to the taxes and assessments which would have been received from year to year by each such jurisdiction if such acquisition had not occurred.”<sup>7</sup> In 2013, as part of the LIPA Reform Act, section 1020-q was amended to place a limit on the increase of LIPA’s PILOTs, capping any increase to 2% per year.

Pursuant to the Amended and Restated Power Supply Agreement between LIPA and National Grid, dated October 10, 2012 (“APSA”), LIPA purchases electricity and ancillary services produced from certain generating facilities on Long Island owned by National Grid. National Grid is a private entity and therefore, its properties are subject to real property taxes. Under the APSA, LIPA is required to reimburse National Grid for all costs, including property taxes assessed by each taxing jurisdiction. Currently, the APSA is set to expire on April 30, 2028.

As noted above and in the Commission’s report, LIPA’s PILOTs and National Grid’s property taxes have been the subject of litigation for many years. LIPA and National Grid challenged the tax assessments of each of the four fossil-fueled legacy power plants owned by National Grid.<sup>8</sup> After protracted litigation, the parties, including the District and the tax assessing

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<sup>7</sup> N.Y. Pub. Auth. Law § 1020-q(1).

<sup>8</sup> See Draft Report, page 33.

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authority, entered into various settlement agreements. The settlement agreements provided for certain sums to be paid to local municipalities and, specifically, to the District.

School districts, like other municipalities, rely on tax revenue for the majority of their operating budgets. Further, PILOTs are generally designed to compensate for the lost tax revenue when certain properties are designated as tax-exempt and removed from the tax roll. Given the District's reliance on current and future contractual and statutory payments from LIPA to provide its community with the highest quality instructional and educational support programs and to help mitigate the already significant loss of its tax base, the District emphasizes this Commission's responsibility to consider the impact any future legislation would have upon the District, as well as school districts and local municipalities generally. Any further reduction in tax revenues associated with the power plants, as well as for the LIPA-owned distribution system and related utility properties, will have devastating impact on school districts across Long Island, and particularly where power generating plants are located.

First, the District asks the Commission to ensure that any proposed or future legislation require LIPA to be left undisturbed for the term of any existing settlement agreement with LIPA, so those agreements remain in full force and effect for the duration of the agreement as contemplated at the time entered. The Draft Report discusses the "State Pledge" as codified by Public Authorities Law section 1020-o, which states in relevant part that "the state of New York does hereby pledge to and agree with [...] the parties to any contracts with the authority hereunder that the state will not limit or alter the rights hereby vested in the authority until such obligations together with the interest thereon are fully met and discharged and/or such contracts are fully performed on the part of the authority." However, the Commission appears to only consider the State Pledge in relation to LIPA's bond covenants and contracts with the holders of bonds and notes of LIPA<sup>9</sup>. In its Summary of Legislative Changes that are Necessary for LIPA to Become a True Public Utility, and again in the context of bonds, the Commission notes:

While no legislation is explicitly required, the Legislature should ensure that the State Pledge remains effective upon LIPA's transition to a fully integrated public power model. This could include confirmatory language in either the Public Authorities Law or Public Service Law.<sup>10</sup>

It is the District's position that further legislation must not disturb the existing agreements with the District or other municipalities. Clear language should be added to any proposed legislation to preserve and protect the rights of school districts and municipalities and to ensure LIPA's compliance with its obligations under all existing settlement agreements, which came as a result of long and hard-fought litigation and at the expense of affected communities.

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<sup>9</sup> See Draft Report, pages 30-31.

<sup>10</sup> See, *id.*, page 127.

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Second, the District asks the Commission to ensure that all existing and future PILOTs related to the transmission and distribution properties acquired by LIPA continue to be provided to the District and other municipalities, pursuant to Public Authorities Law section 1020-q. Issues surrounding LIPA's PILOTs and tax payments have been subject to years of litigation and in some respects, remain unclear and uncertain to date. As such, the District posits that amendment and modification to section 1020-q may be necessary to adequately allow for a more precise and predictable understanding of LIPA's obligations and avoidance of uncertainty for school districts and other municipalities. There should be a clear schedule for the payment and receipt of PILOT funds. In addition, beyond the statutory cap for increase of PILOT payments, there should similarly be a statutory floor for the minimum amount of PILOT payment to be received by taxing jurisdictions, or alternatively, a fixed predictable schedule for purposes of municipal budgeting and planning. During the January 20, 2023 LIPA Commission Hearing for the East End, Assemblyman Fred W. Thiele, Jr. acknowledged prior proposed legislation regarding section 1020-q which had not moved forward. Laverne Tennenberg, elected assessor for the Town of Riverhead, testified to difficulties in the billing and collection of PILOT payment from LIPA. The District believes that this is now ripe for reconsideration for the adoption of updated, clear policies for LIPA PILOTs in light of the Commission's current task relating to the future of LIPA. As a stakeholder to any PILOT, the District respectfully requests that it and other affected taxing jurisdictions be consulted regarding any proposed modifications to this section of the Public Authorities Law or other legislation relating to the tax or PILOT provisions associated with LIPA.

Third, we do not believe it was the intent of the legislature then or now to make sweeping changes to the tax base of any Long Island community that could negatively impact school districts and their respective taxpayers. In that regard, the District has significant concern and asks the Commission to take particular note of the potential consequence of the expiration of the APSA, in light of the prospect of LIPA becoming fully public. The Commission notes that LIPA was "granted authority to acquire real or personal property through purchase, grant, bequest, or by the exercise of eminent domain."<sup>11</sup> Further, the report notes that "the LIPA Act authorized LIPA to provide and maintain generating, transmission, and resource recovery waste to energy facilities."<sup>12</sup>

The District seeks clarification as to the future of existing generating plants after the expiration of the settlement agreements and if there is an intention for LIPA to maintain and operate these plants itself. In such event, the Commission should consider the imposition of statutory PILOTs, similar to the acquisition of LILCO properties, or other legislative action to stabilize the tax base and provide protections from any unintended consequence to affected jurisdictions and the taxpayers in the service area. Should LIPA take ownership of such properties either through acquisition, eminent domain or otherwise, the removal of such properties from the

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<sup>11</sup> See Draft Report, page 3; N.Y. Pub. Auth. Law § 1020-h.

<sup>12</sup> See Draft Report, page 3; N.Y. Pub. Auth. Law § 1020-g.

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tax roll and the loss of such tax revenue would have a devastating, long lasting impact on the municipalities, from which they may not recover due to existing tax cap legislation. LIPA should not have the ability to automatically convert the generating plants or other property to it as a non-taxable entity, evading real property taxes at the expense of the taxpayers and municipalities, school districts in particular. The report contends that “direct management by LIPA would ensure that the utility reflected the values and *priorities of the Long Island community*.”<sup>13</sup> Exemption of significant tax generating properties, without a doubt, would have a negative impact on the taxpayers and the municipalities that serve them. This cannot and should not be the intent of the legislature.

Under the Climate Leadership and Community Protection Act, the State has contemplated the significant impact upon the hosting communities of power plant closures and established an electric generation facility cessation mitigation program.<sup>14</sup> The cessation fund is intended to provide assistance to local government entities, including school districts, that experience a reduction in the amount owed in real property taxes and/or PILOTs as a direct result of an electric generation facility ceasing to operate.<sup>15</sup> To the extent that the municipalization of LIPA, absent ceased operation or closure of a plant, significantly impacts the PILOTs or tax revenue due to the District, intended or not, the District seeks clarification as to whether the State would provide similar protections and additional support, aid, funding, or other grants to make up for such loss and ensure the District can continue to function, operate and provide its educational services to the children of its community.

The District believes the Commission now has an opportunity to correct the unintended consequences of prior legislation related to LIPA. In that regard, it would be prudent of the Commission and the State legislature to consult with school districts and other municipalities about any further potential consequences arising from further modifications to the Long Island Power Authority Act, particularly section 1020-q, or any new proposed legislation. This consultation provides an opportunity to preemptively address potential negative impacts and ensure the financial stability and ability of continued operations of all local municipalities. In line with the promise of the legislature in creating LIPA, this is the time to ensure the adequate protections are put in place, while existing protections remain in effect, to safeguard the interests of the taxpayers and the taxing jurisdictions impacted by such legislative changes.

The District again urges the Commission to take the foregoing concerns into careful consideration before making any final action or recommendation to the State. We respectfully request that the concerns herein, which we believe are shared with our surrounding municipalities, be addressed by the Commission.

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<sup>13</sup> See Draft Report, page 43.

<sup>14</sup> See Draft Report, page 74.

<sup>15</sup> <https://esd.ny.gov/electric-generation-facility-cessation-mitigation>.

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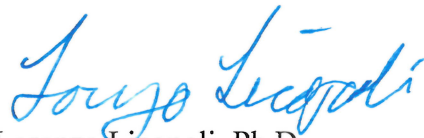
We thank the Commission for its time. If the Commission should have any questions regarding the contents of this submission or the concerns raised by the District, please do not hesitate to contact us. We welcome the opportunity to have an open discussion regarding these concerns and any proposed legislation regarding LIPA.

Sincerely,

Northport-East Northport Union Free School District



Robert Banzer  
Superintendent of Schools



Lorenzo Licopoli, Ph.D.  
President, Board of Education