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Via Electronic Filing

Honorable Elizabeth Hazlitt Emerson
Supreme Court, State of New York
Commercial Division, Part 44, Suffolk County
210 Center Drive
Riverhead, New York 11901

**Re: Board of Education of the Island Park Union Free School District v. Long Island
Power Authority, et al.
Index No. 001252/2018**

Dear Justice Emerson:

We represent Plaintiff Board of Education of the Island Park Union Free School District (“Island Park”) in the above-noted action. In its Complaint, Island Park is seeking, *inter alia*, declaratory relief that the Defendants may not legally challenge the real property tax assessments of the Barrett Power Plant located within Island Park. As more fully set forth below, an alternative theory has been advanced in a subsequently filed case pending before Your Honor that we believe is relevant to Island Park’s pending summary judgment motion.

Motions and cross motions for summary judgment were submitted to the Court in the above-noted action (as well as in the companion actions that the Court held together for administrative convenience) and oral argument on these motions was heard by the Court on July 18, 2018. Thereafter, by Short Form Orders issued in August 2018, Your Honor granted Defendants’ motions for summary judgment in the Town of Huntington case (Index No. 15186-11) and the Northport-East Northport School District and Port Jefferson School District case (Index No. 15194-11). To date, no decision with respect to the parties’ motions for summary judgment has been issued within the Island Park case. It is also important to note that Island Park was not a party to the tax certiorari case between the Town of Huntington and Defendants. Thus, the decisions of this Court and the Appellate Division involving the Town of Huntington have no collateral estoppel or res judicata effect against Island Park. By Order dated June 8, 2020, this Court referred the pending summary judgment motions in the Island Park case for further oral argument.

It is within this procedural context that we are writing in regard to a declaratory judgment action that was filed on March 10, 2020 (Index No. 0604663-20) by Huntington Town Council member Eugene Cook against LIPA, National Grid and the Town of Huntington seeking a judicial ruling that LIPA and National Grid lack standing to file tax certiorari challenges because the PSAs under which they had been operating were never approved by the applicable regulatory agency, the New York State Public Authorities Control Board (PACB). The Defendants' motion to dismiss this action has been fully submitted to Your Honor and is pending decision.

On behalf of Island Park, we are notifying the Court that we wish to incorporate Councilman Cook's legal argument as an alternative theory in support of its summary judgment motion. We believe that there is much merit to this argument, and that should the Court find in Plaintiff's favor and declare that LIPA had no standing pursuant to the PSA to commence tax certiorari proceedings due to a fatal administrative procedural defect, this ruling should be applied equally to Island Park as dispositive of its pending summary judgment motion.

As asserted by Councilman Cook in his Memorandum of Law in Opposition to Defendants' Motion to Dismiss (page 11), the Supreme Court Nassau County's decision in AEF Resources Service Co. v. Long Island Power Authority, 179 Misc. 2d 639, 686 N.Y.S.2d 664 (1999), appears to be on point in holding that a contract that is a "project" within the meaning of Public Authorities Law § 1020-b, which does not involve LIPA's day-to-day operations, requires PACB review and approval. It is respectfully submitted that there is at least a genuine issue of fact precluding a summary determination and requiring a hearing within the Councilman's case as to whether or not the PSAs constitute a "project" not involving LIPA's day-to-day operations.

In sum, we respectfully request that the Court accept this letter as a supplemental submission to Island Park's pending summary judgment motion. A copy of this letter has been simultaneously transmitted to counsel for Defendants in the Island Park action, as well as the attorney for Councilman Cook.

Respectfully submitted,



Robert H. Cohen

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1307213

cc: Michael P. Versichelli, Esq. (via ECF)
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