



North Shore Schools

Discovering Your Dreams

Board of Education
www.northshoreschools.org

January 29, 2013

Statement by Carolyn Mazzu Genovesi, Esq.
President of the
North Shore School District Board of Education

Chairman Farrell, Chairman DeFrancisco, members of the Fiscal Committees, thank you for this opportunity to again present an issue relating to actions by the Long Island Power Authority (LIPA) that significantly impacts the tax base of our School District, the North Shore Central School District. On behalf of the District and the citizens who reside within the District, I am pleased and grateful for the opportunity to submit this written testimony to the joint fiscal committees of the New York State Legislature.

Since my testimony to the Joint Fiscal Committees last year, we have all seen how LIPA's actions and inactions, as well as exposing a lack of oversight, affected so many of us following Hurricane Sandy. LIPA decided in 2011 to move to ramp down the Glenwood Landing power plant located within the District's boundaries on the North Hempstead and Oyster Bay border in Nassau County. The District has been a host to this Power Plant for almost 100 years. We seek from you a legislative solution to address the District's problem of losing a significant contributor to its tax base with no lawful ability to prepare or adapt without making draconian cuts to core educational programs.

District Background

The North Shore School District is made up of five public schools, including Glen Head Elementary School, Glenwood Landing Elementary School, Sea Cliff Elementary School, North Shore Middle School and North Shore High School. The District serves a diverse mix of students whose academic performance is consistently high which enables us to maintain a position as one of the strongest public school systems in our

Nation. Notably, the North Shore High School has been recognized by the U.S. Department of Education as a High School of Excellence and by New York State as an Outstanding High School, and Learning Partnership School and the North Shore Middle School has been designated as a Model IIC Middle School by New York State, and the District has been named as a, "high achieving, gap closing district," by the New York State Department of Education.

The District's Financial Strength and the Comptroller Audits

Our District and our Board of Education are mindful of our fiscal responsibilities and duties and we take them very seriously. We are aware of the real fiscal problems that can arise and the scrutiny placed on issues surrounding school funding. I am proud to say that our Moody's Credit rating is Aa1. Out of 700 Schools that were audited by the NYS Comptroller, North Shore was noted to be "particularly well run, with well-developed financial controls and well managed operations. Additionally, by being creative and constructing our own transportation facility and contracting for an Energy Management program, we have saved our taxpayers over a million dollars a year.

The District is also mindful of the difficulties being faced by the Nation, the State and the localities during this fiscally challenging time. This year, again, the District will be under increasing pressure to do more with less. Our District continues to face the "perfect storm" – to wit: (1) State and Federal funding remains flat; (2) the impact of the new law, which imposed a cap on the tax levy places a material impact on the District's ability to raise revenue for its programs and operations; (3) Nassau County has eliminated the County Guarantee which, if upheld, will require the School District to issue refunds for the County's errors in its tax assessments; and notably, *the reason why we are here before the Legislature today*, (4) LIPA has unilaterally decided to ramp-down (close) the Glenwood Landing Power Plant, a utility that provides significant tax revenue to the District's annual budget.

The Glenwood Landing Power Plant Ramp-Down

LIPA and National Grid announced in June 2011 that they have reached an agreement to ramp-down the Glenwood Landing Power Plant. Despite this ramp-down, there will remain five peaking turbines on three acres of the Glenwood site, some of which are covered under existing PILOT agreements. The electric transmission and distribution facilities will stay in place to serve the remaining generation. Additionally, there are approximately three other acres of land on Hempstead Harbor, opposite Bar Beach, which is expected to be transferred to National

Grid after it dismantles the plant and cleans up the property. The time that it will take to remediate the property and the potential adverse environmental impact on the property and the adjacent waterways has yet to be determined.

The ramp-down of the Glenwood Landing plant will cause significant hardship for the North Shore School District. The District's annual budget for its operations and education of its students for the 2012-2013 school year is approximately \$88 million dollars with only 4.1% of its revenue derived from Federal and State Aid. The lion's share of the District's annual budget, over 92%, is derived from local tax revenues. The District receives over \$14 million annually in taxes from LIPA. The immediate loss of this significant tax base and revenue stream will be devastating to the District, its students, staff and the community as a whole. LIPA has stated that it will continue to make tax payments that it is obligated to make during the demolition process; however it has already commenced tax challenges to these same parcels. Without a solution in this year's State fiscal plan, the future of the District remains uncertain and the educational programs that it offers to its students are in jeopardy.

The impact on the homeowner in the District will be staggering. As a result of the changes to the Plant, when the school portion of the tax payments shift from the utility to the average residential home owner - in just one year it is estimated that an average home that is currently paying \$9,243.00 in property taxes would see an increase of 24%. The result would be an increase of the school tax portion of their tax bill from between \$2,000-\$12,000 per home, per year. This shift, if permitted, will dramatically change the face of the District and the landscape of the community.

The District's taxpayers, including the special fire and library taxing districts, will be disproportionately impacted by these tax challenges, causing a tremendous hole in their tax base as a result of LIPA and National Grid's actions. The sudden loss of millions of dollars of real property tax revenue presents an unprecedented danger to the local districts' ability to deliver services.

Hurricane Sandy & the Moreland Commission

The Moreland Commission was established to investigate LIPA following Hurricane Sandy. It found that authority over and regulation and auditing of LIPA was not always utilized and was lacking consistency. The Commission recommended, in its interim report, that the Governor and Legislature weigh the findings and considerations and take appropriate action.

The Commission found that there are several specific oversight processes on the books

that limit LIPA's ability to operate without checks. The Commission found what the District pointed out to this Committee at last year's fiscal hearings. LIPA is required to secure approval from the Public Authorities Control Board (PACB) prior to taking any action that would cause the issuance of bonds, significantly modify the use of an asset valued at more than one million dollars.

The Public Authorities Control Board (PACB)

This LIPA ramp-down is not the only matter impacting the taxpayers on Long Island and New York City. LIPA has also decided to ramp down the Far Rockaway Power Plant and has instituted a number of property tax challenges across Long Island where it has real property holdings, including challenges in the Towns of Huntington and Brookhaven in Suffolk County.

The Public Authorities Law was drafted for there to be some oversight when LIPA commences "projects" that have a material impact on the tax base of a single or group of localities it serves. It provides such powers to the Public Authorities Control Board (PACB) to weigh the issues and stop LIPA from making adverse decisions about where local property taxes should be raised as a result of their actions. We believe that when taken in totality of LIPA's actions across downstate, this ramp-down project is the exact type of issue the Legislature considered when it created this oversight board.

The law provides the PACB with the power to review, and ultimately reject, LIPA proposals that adversely affect real property taxes in the service area or otherwise adversely affect overall real property taxes in other areas of the State. I am providing you with a copy of the legal analysis prepared by the District's special counsel on behalf of the District that specifically addresses the PACB issue in detail.

LIPA's broad powers were circumscribed by the Legislature through a 1995 amendment of section 1020-f of the Public Authorities Law. The PACB was given review power over "projects" undertaken by LIPA. N.Y. Pub. Auth. Law § 1020-f (aa).

The Long Island Power Authority Act (the Act) specifically defines the term "project" to include an action which:

[s]ignificantly modifies the use of an asset valued at more than one million dollars owned by the authority, or involves the sale, lease or other disposition of such an asset, or . . . commits the authority to a contract or agreement with a total consideration of greater than \$1 million and does not involve the day-to-day operation of the authority.
N.Y. Pub. Auth. Law § 1020-b (12-a).

Notably, the Act provides that the PACB shall only approve a project proposed by LIPA upon a determination that: (1) the project is financially feasible; (2) ***the project does not materially adversely affect overall real property taxes in the service area***; (3) the project is anticipated to result generally in lower utility rates in the service area; and (4) the project will not materially adversely affect overall real property taxes or utility rates in other areas of the state of New York. N.Y. Pub. Auth. Law § 1020-f(aa) (emphasis added).

A review of the legislative history for this amendment to the Act shows that the goal was to provide for “greater oversight regarding major decisions of the authority...” By using the standards contained in the bill, the [PACB] will provide an independent evaluation of whether proposed actions of the Authority are financially feasible, do not materially adversely affect overall real property taxes, will result in lower utility costs to customers in the service area, and will not materially adversely affect real property taxes and utility rates outside the LILCO service area.” Memorandum in Support, 1995 McKinney's Session Laws of NY at 2199.

It is clear that the Legislature intended the PACB to have the power to review, and ultimately reject, LIPA proposals for projects that adversely affect overall real property taxes in the service area or otherwise adversely affect overall real property taxes in other areas of the state. *See, e.g., Suffolk County v. Long Is. Power Auth.*, 177 Misc. 2d 208 (Sup Ct, Nassau County 1998); *see also, AEP Res. Serv. Co. v. LIPA*, 179 Misc. 2d 639 (illustrating that the PACB plays a substantial role in the approval of “projects,” specifically describing PACB’s role in LIPA's acquisition of the Long Island Lighting Company and the conditions the PACB imposed upon LIPA in approving that project.)

Reserve Limitations

Representatives of LIPA and National Grid told the District in 2011 that they should have been aware of the power plant ramp-down, and thus should have put District reserve funds aside in anticipation of the ramp down of the Plant. They base this premise on a 2009 draft energy report, which recommended the ramp-down of Glenwood Landing. However, this body, I'm sure is aware that our District is a creature of statute and is not permitted by law to put funds aside or into a reserve for a "potential" closing of a power plant. There is no such available legal mechanism under which the District could have prepared for the decision made by LIPA in June of 2011, or even today. This exacerbates the reason why this ramp down will have such a significant impact on the property tax base, because the District has no reserve, nor could it create a reserve or put aside its precious and decreasing funds to address this change in the tax base.

Nassau County Guarantee Litigation

An emerging fiscal issue that the Fiscal Committees also should be made aware which, if implemented will materially impact the District's ability to serve its students, is the elimination of the Nassau County Guarantee. Since 1948, when a Nassau County property owner successfully challenged a property tax assessment and was awarded a tax refund because of errors made by the County, because of its unique taxing system and its assessment functions, Nassau County has always made the payment in full. This "County Guarantee" has been in place and has been the law in Nassau County since 1948. However, a decision was issued by the State Supreme Court that upheld County legislation eliminating the County's responsibility to reimburse school districts for tax certiorari judgments. If upheld at the appellate levels, the District would be responsible for the District portion of the tax the refund that resulted from the County's errors - this would add an additional burden to the already over-burdened School District tax base. The elimination of the County Guarantee will cost Nassau County school districts tens of millions of dollars (or \$80-\$100 million) each year and at least \$1,000,000 annually for the North Shore School District.

Tax Cap

Long Islanders and suburban New Yorkers are asked to carry an extraordinary local property tax burden. This while our State aid as a share of expenses continues to remain flat or decrease. The implementation of the 2% tax levy cap legislation leaves our Board of Education with the accountability for preserving the fiscal and educational integrity of our communities' schools, but strips us of the ability to fulfill that responsibility. On the issue of mandates, we, as local governments are now forced to grapple with the same fixed costs which the State government must confront. We are eager to work with you to reach our mutual goals.

Legislative Solution

There is the potential for the District to save and shelter its students and its core programs and it rests with the State Legislature. Since LIPA remains a State agency, I urge the members of the Fiscal Committees to hold LIPA accountable. We believe there is a legislative available. Once the land is transferred, it would become more difficult to ease the burden that is being forced upon the North Shore Central District who has served as the host to this power plant for a century.

The Governor acknowledged this problem in his State of the State address. He called for New York to optimize our use of the proceeds that result from the auction of emission credits. Reducing the cap will provide an additional \$100 to 150 million to, among other

things, assist communities that lose a big part of their tax base when power plants are retired.

Also, Senator Marcellino has proposed legislation that would provide for a "glide path" rather than a "cliff" in relation to the forecasted property tax Joss. It would allow for a phase-in of tax cuts for the property over a period of ten years, while a payment in lieu of taxes (PILOT) continues to help the District better manage the cuts.

Finally, there was a third proposal that would help the District. Senator Maziarz introduced a bill at the end of last session, which would use proceeds from the sale of certain NYPA properties. This sale would reap approximately \$500 million, where a portion of the proceeds would be dedicated to helping distressed municipalities with power plant closings.

These policies would be a win – win in that the taxpayers would not see a significant impact on the local property tax base while the ratepayers would continue to see rate reductions during this same period. These reasonable policy proposals should be explored and added to into the State's fiscal plan so that our School District and any others throughout the State who face a utility's closure would not have the burden of addressing a significant tax loss all at once.

Thank you for your consideration. I am ready to answer any questions you may have.

Memorandum

TO: Members of the NYS Senate and NYS Assembly

FROM: Jeffrey H. Pearlman
Mark F. Glaser

DATE: August 22, 2011

RE: PACB's Oversight of LIPA "Projects" and the Glenwood Landing Power Facility

INTRODUCTION

In an attempt to purportedly reduce costs, the Long Island Power Authority (LIPA) and National Grid have agreed to close portions of the Glenwood Landing Power Facility, a power plant in northern Nassau County that was one of the original Long Island Lighting Company (LILCO) generating assets transferred upon LIPA's creation. The proposed action contemplates the demolition of the great majority of this generating asset. As a result of the proposed action, the North Shore Central School District (NSCSD), as well as the Town of North Hempstead and the County of Nassau, will see substantial decreases to the local tax base. In addition, the impact to many residents of the Town of Oyster Bay should not be discounted. For the reasons described below, LIPA is obligated to obtain the approval of the New York State Public Authorities Control Board (PACB) before the proposed action may proceed.

DISCUSSION

1. LIPA and PACB Oversight

Admittedly, LIPA has broad authority to engage in business activities related to its purpose of providing electric energy to Long Islanders. LIPA may "make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority including contracts with any person, firm, corporation, municipality, state agency or other entity." N.Y. PUB. AUTH. LAW § 1020-f(h). It is empowered "[t]o apply to the appropriate agencies and officials of the federal and state governments, for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable, and to accept such licenses, permits or approvals as may be tendered to it by such agencies or officials, upon such terms and conditions as it may deem appropriate." N.Y. PUB. AUTH. LAW § 1020-g. Should LIPA fail to obtain any license, permit or approval it deems necessary or advisable, it may "institute suit, or apply to any legislative body for legislation, or take such other action as it may deem necessary or advisable in the furtherance of the purposes of [the Act] and for the protection of its rights." *Id.* Finally, to facilitate the accomplishment of its goals,

LIPA was made tax exempt and was afforded the ability to issue tax-exempt bonds. N.Y. PUB. AUTH. LAW §§ 1020-p, 1020-k.

Yet, in 1995, LIPA's broad powers were circumscribed by the Legislature through its amendment of section 1020-f of the Public Authorities Law. The PACB was thereby given review power over "projects" undertaken by LIPA. N.Y. PUB. AUTH. LAW § 1020-f (aa). While "project" may seem a fairly limited term, the legislature deliberately gave this term an expansive definition to include many actions beyond those which a "project" intuitively would be thought to mean.

The Long Island Power Authority Act (the Act) specifically defines the term "project" to include an action which:

[s]ignificantly modifies the use of an asset valued at more than one million dollars owned by the authority, or involves the sale, lease or other disposition of such an asset, or . . . commits the authority to a contract or agreement with a total consideration of greater than \$1 million and does not involve the day-to-day operation of the authority.

N.Y. PUB. AUTH. LAW § 1020-b (12-a). Notably, the Act provides that the PACB shall only approve a project proposed by LIPA upon a determination that: (1) the project is financially feasible; (2) ***the project does not materially adversely affect overall real property taxes in the service area***; (3) the project is anticipated to result generally in lower utility rates in the service area; and (4) the project will not materially adversely affect overall real property taxes or utility rates in other areas of the state of New York. N.Y. PUB. AUTH. LAW § 1020-f (aa) (emphasis added).

A review of the legislative history for this amendment to the Act shows that the goal was to provide for "greater oversight regarding major decisions of the authority By using the standards contained in the bill, the [PACB] will provide an independent evaluation of whether proposed actions of the Authority are financially feasible, do not materially adversely affect overall real property taxes, will result in lower utility costs to customers in the service area, and will not materially adversely affect real property taxes and utility rates outside the LILCO service area." Memorandum in Support, 1995 McKinney's Session Laws of NY at 2199.

Based on the foregoing, it is clear that the Legislature intended the PACB to have the power to review, and ultimately reject, LIPA proposals that adversely affect overall real property taxes in the service area or otherwise adversely affect overall real property taxes in other areas of the state. *See, e.g., Suffolk County v. Long Is. Power Auth.*, 177 Misc 2d 208 (Sup Ct, Nassau County 1998); *see also, AEP Res. Serv. Co. v. LIPA*, 179 Misc. 2d 639 (illustrating that the PACB plays a substantial role in the approval of "projects," specifically describing PACB's role in LIPA's acquisition of the Long Island Lighting Company and the conditions the PACB imposed upon LIPA in approving that project.)

2. LIPA's Current Arrangement with National Grid Requires PACB Approval

LIPA has entered into a contract with National Grid to ramp down and close portions of the Glenwood Landing Facility in Nassau County. This agreement would remove two turbines from the Glenwood Landing power plant from their current Power Supply Agreement (PSA) and result in the demolition of a substantial portion of the generating assets and related facilities of the power plant. As part of this proposal, LIPA will upgrade its transmission facilities. According to LIPA, consistent with PSAs' in the industry, LIPA pays for the plants to be available when needed to meet statewide and local system reliability requirements, regardless of whether the plants actually operate. LIPA claims that the net savings associated from the removal of the plants is approximately \$76 million through 2015. LIPA also touts potential environmental benefits from the transaction. This removal of the plants, however, would subsequently cost the North Shore School District, which encompasses portions of the Towns of Oyster Bay and North Hempstead, approximately \$8 million in reduced tax revenue annually beginning in 2013, for an impact of approximately \$16 million through 2015. The Town of North Hempstead and the County of Nassau will also incur significant losses in tax revenues. Despite the fact that this arrangement may have beneficial consequences for LIPA, its impact on the local community could be devastating. Clearly, this is the type of "project" that the Legislature envisioned must be reviewed by the PACB.

When changes to the energy infrastructure place a material impact to the local tax base it should be considered more than a day-to-day operation. Since LIPA would be engaging in transactions that include a ramp down of two turbines, the relocation and upgrading transmission and distribution at the site as well as the demolition of the ramped down portion of the site, it is clear that this is not a day-to-day operation. It is beyond argument that such actions effect a significant modification to the contract for the purchase of power as well as a significant change to the source of electric energy to be supplied to Long Islanders. It should also be noted that as a result of this plant closure, as well as others contemplated in the proposed amendment to the PSA, LIPA will be forced to obtain even more power from sources outside of Long Island. These actions, as well as the demolition of two generators, with a devastating tax impact on the localities, are matters that the PACB should review.

A. The LIPA Proposal is a Project for Purposes of the Act

Article 11 of the PSA provides LIPA with the right to reduce the amount of capacity it purchases from National Grid by specified amounts up to an aggregate maximum of 1500 MW over the term of the agreement. The ramp down option is designed to enable LIPA to eliminate the obligation to purchase capacity that LIPA says it no longer needs or can procure less expensively.¹ As a result, LIPA and National Grid have agreed to enter into an amendment to the PSA (the "Eighth Amendment") that would provide for extraordinary changes to facilitate this capital change.

¹ Power Supply Agreement between LIPA and LILCO (6/26/97)

For example, LIPA's new principal obligations under the amendment include completing certain transmission system upgrades to allow the units to be retired by National Grid; continuing to pay the monthly capacity charges for the Units through the original term of the PSA (May 27, 2013) and to bear the same risk of loss and liabilities until completion of the transmission upgrades; and, agreeing not to ramp down the Barrett 1 & 2 and Port Jefferson 3 & 4 power plants.

Moreover, National Grid's obligations under the Eighth Amendment include paying LIPA \$18.3 million; continuing to operate the Units until such time as the transmission upgrades are completed; and, remaining solely responsible for the costs of retiring and demolishing the Units.² Thus, the Eighth Amendment makes substantial policy choices, the consideration for which well exceeds the one million dollar threshold for PACB review. In addition, these changes will result in "material" negative tax consequences for the affected localities. Moreover, these material obligations result in a major change to a generating asset that has been a key part of LIPA's infrastructure since its inception. There can be no debate that such changes, when taken together, constitute a "project." This contract amendment significantly modifies the use of a generating facility; the facility is valued at more than one million dollars; and LIPA is committed to an agreement, the consideration for which is almost \$20 million. Thus, as provided for in the Public Authorities Law, LIPA should not be permitted to proceed with this agreement until it first is considered by the PACB.

B. PACB Review is Essential

Despite LIPA's assertions that the agreement to close down this plant will have both positive financial and environmental impacts, this contract will also have the unintended consequence of reducing the funding available for educational programs in Nassau County. Notably, the taxpayers of the North Shore School District, as well as other local special taxing districts and the Town of North Hempstead, will be disproportionately impacted by this ramp down and closing, causing a tremendous hole in their tax base as a result of this project. This is on top of the newly implemented 2% cap on all homeowners' property taxes. The sudden loss of millions of dollars of real property tax revenue presents an unprecedented danger to the local districts' ability to deliver services. Although the school district is ranked as one of the best school districts in the United States, the local quality of life and the quality of the education that will be provided to residents will be severely impaired if North Shore is financially unable to maintain its commitment to outstanding public educational services. In fact, the North Shore School Board determined that LIPA's announcement may cause an immediate \$8 to \$10 million loss in tax revenue. The school district would have to seek to recover this loss in revenue in some manner, or take draconian measures to cut its budget, likely resulting in a material change to the local tax scheme or quality of education. For this reason, pursuant to section 1020-f(aa) of the Public Authorities Law, PACB must review this project.

² "Eighth Amendment; Agreement and Waiver (3/22/07)

CONCLUSION

For all of the above mentioned reasons, this matter regarding the Glenwood Landing facility ramp down is a "project" that is required to be reviewed by, and receive the approval of, the PACB prior to such project becoming effective.

ALB 128928V2