



Town Hall • 100 Main Street
Huntington, NY 11743-6991

Phone: (631) 351-3174
Fax: (631) 673-3379
ECook@HuntingtonNY.gov

EUGENE COOK
Councilman

August 6, 2019

Chairman John B. Rhodes
New York State Public Service Commission
Empire State Plaza
Agency Building
Albany, NY 12223-1350
john.rhodes@dps.ny.gov

RE: LIPA

Dear Chairman Rhodes,

I hope that this finds you well. "Tax equity" is Long Island Power Authority's position in the lawsuits they filed in New York Supreme Court. LIPA argues that they simply want to pay a "fair tax" for their Northport power plant. Unfortunately, LIPA has "unclean hands" in requesting the court compel such an equitable result. As every law student learns, if you argue for equity with "unclean hands", you rightly get nothing from a court of equity; New York Supreme Court is such a court.

At the July 24, 2019 meeting of the Board of Trustees of the Long Island Power Authority, Larry Kelly spoke at the Public Comment section of the meeting (2 hours and 2 minutes through 2 hours and 6 minutes of the video of the meeting). He indicated that in 2006 and 2007, Caithness Long Island won the contested bidding (out of 15 bidders) to be the locational power plant for Zone K on Long island. Caithness won the LIPA public bid by committing to build the power plant in an Enterprise Zone in North Bellport in Suffolk County. LIPA, in turn, committed to extensive work of up to \$100 million to build its own separate new facility at the site to ensure that the new power plant was not a "stranded asset" separated from gas supplies, LIPA transmission and distribution. The contract ensured Caithness would be a major player in power supply during the terms of the 20 year LIPA power purchase agreement and beyond. The cost of all construction at the site has been valued at \$1.6 billion.



Mr. Kelly's subject at the LIPA meeting was the largest tax fraud he had encountered in his thirty-five years of legal practice and LIPA was at the center of this misconduct. The victims of this fraud are the residents of the North Bellport "Enterprise Zone"; which is primarily made up of minorities. The children from North Bellport are part of the South Country School District; the school district as a whole is approximately 40% minority composition.

Under the law, Enterprise Zones are meant to renew vigor in the commercial and residential aspects of certain areas of the State of New York. In return for investing in these areas, the Enterprise Zone provided 100% tax reimbursement by the State of New York for up to ten years for legitimately established real property taxes. That ten year period for full reimbursement under the Enterprise Zone has now passed for the investment made by Caithness Long Island in the North Bellport area. Real property taxes for the power plant were never legitimately established. There was, as well, no revitalization of the area.

Caithness Long Island erected a power plant after winning a bid with the Long Island Power Authority. In 2008/2009, due to a short term excess of alternative power supply, LIPA paid Caithness Long Island \$104 million not to run the power plant during the first year of scheduled operation. Over the next decade, LIPA paid Caithness Long Island large sums including \$91.4 million in 2018 and \$91.3 million in 2017 for power produced. Caithness was also allowed to sell separate power production up to their full annual power capacity. In 2017, Caithness produced 2.4 million megawatt hours (MWh) of power.

It's my understanding is the 2.4 million MWh of power production for a new or relatively new power plant with a 20 year power production agreement with LIPA would result in a market valuation for the power plant toward the greater end of 2 to 4 times gross annual billings. Further explanation is that the gross annual billings for 2.4 million MWh in the NY ISO are at least \$500 million dollars. This would mean that the market value of the Caithness power plant from the original date of operation in 2008-2009 would be close to \$2 billion.

Under New York state law, a power plant is to be assessed in like manner to other members of the class, in this case the utility class. The only comparison property in Town of Brookhaven is the Port Jefferson power plant, which pays annual taxes of \$43 million. In Suffolk County, the other comparison power plant is Northport, which pays \$82 million. LIPA is challenging the taxes on these north shore power plants in Supreme Court. Their 2019 Property Tax Reduction efforts pamphlet on the LIPA website highlights the value of the Caithness plant (page 14) in contrast to Northport and Port Jefferson.

In order to avoid paying proper taxes to be assessed on the Caithness power plant, LIPA and Caithness, through some exercise of guile, inveigled the Town of Brookhaven Industrial Development Agency to provide a further benefit to the Caithness power plant. This additional benefit is a 25 year tax exemption. Having this tax exemption on top of the Enterprise Zone status of the property is without precedent. Since the purpose of Town IDAs is to attract



investment, providing this additional benefit to a winning bidder company already contractually bound to build the power plant in a specific location in the town appears to be senseless. In subsequent discussions at the Brookhaven IDA, it was disclosed that LIPA pushed the IDA for the additional benefit. This LIPA maneuver only makes sense if one understands that while the State of New York was bound to reimburse the properly assessed annual taxes in the first ten years of the power plant operation, LIPA was bound to pay the properly assessed taxes in years 11 through 20 of the power purchase agreement.

In the first year of the Caithness power plant (2008), while Caithness was being paid \$104 million by LIPA for not running the power plant under the provisions of the power purchase agreement, the South Country School District had the right to collect proper school district taxes on the \$2 billion valuation of the plant. Instead of receiving the approximately \$26 million school district share of the roughly \$40 million in real property taxes which would have been shared with the County, Fire District, Ambulance District and Library, the taxing districts were provided meager percentages of those amounts while being excluded from knowing the details of the power purchase agreement or the IDA process.

In the ten years of operation of the Caithness power plant, employment at Caithness North Bellport location has allegedly held steady at between eight and sixteen full time employees. Taxes to the South Country School District have remained a small fraction of the \$26 million annually properly due and owing for the school district. For every full time employee actually employed at the Caithness plant, then, the South Country School District has lost over a million dollars annually in properly assessed tax revenue. Rather than the \$400 million the local taxing authorities had the right to receive from the Enterprise Zone property in the first decade of operation, the local IDA distributed less than 20% of that amount. It was that lesser amount which was, in the first ten years, thereafter fully reimbursed to Caithness by the State of New York (under the Enterprise Zone) and subsequently, according to Caithness, then handed over to LIPA.

In sum, not only did LIPA inveigle the Town of Brookhaven IDA to bar the computation and billing of properly assessed annual taxes from the South Country School District, Suffolk County and the local fire district, ambulance district and library, but LIPA was thereafter awarded for their misconduct by a bonus "reimbursement" of \$70 to \$80 million in the first ten years.

Newsday did a series of stories documenting how a group of political insiders (including partners at a Uniondale law firm which includes LIPA's former General Counsel and a former LIPA trustee) had formed a limited liability company owning the option to purchase the North Bellport Enterprise Zone location prior to Caithness partnering with those political insiders.

With the new direction being taken in Albany, perhaps it is time for this Public Service Commission to provide oversight and come to the assistance of this next generation of students in the South Country School District. The last ten years have been, unfortunately, a lost decade; IEPs which could have reshaped lives were not funded or even explored. Opportunities available in the Port Jefferson and Northport East Northport School systems, well-funded by the



local power plant, were denied students in the school district hosting Zone K's most productive new power plant.

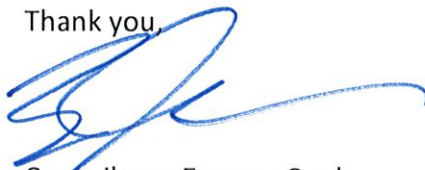
The only difference in the outcomes seems to be the economic status of the families of those students, and the difference in political power employed on their behalf in the last decade. It is well past time for this New York State Public Service Commission to explore why that is and how it happened. It is within your mandate to change the future of the kids left in the embattled South Country school district by ensuring that LIPA observes "tax equity" on the south shore of Suffolk County to the same extent it is advocating for it on the north shore and in New York Supreme Court in Riverhead.

These, among countless other reasons, are why LIPA should never be allowed rate making responsibilities with which they either use to cover their sins or pursue political agendas that deny the rights of the consumers.

I request the Public Service Commission review LIPA's misconduct herein, and request the PSC review and forcibly address the issue of LIPA's manipulation of the real property tax system in systematically under funding the South Country School District from 2008 and through 2028, the entire contractual period of the LIPA power purchase agreement with Caithness Long Island. I also request the PSC review LIPA's "unclean hands" in the Northport filings, and the impact that should have on LIPA's continued operations.

Thank you in advance for your assistance, it is greatly appreciated. Please do not hesitate to contact me at 631 351 3174, to discuss this further.

Thank you,



Councilman Eugene Cook
Town of Huntington
631 351 3174

CC: Honorable Tracey A. Edwards, Commissioner
New York State Public Service Commission
Empire State Plaza
Agency Building
Albany, NY 12223-1350
Tracey.Edwards@dps.ny.gov



Honorable James S. Alesi, Commissioner
New York State Public Service Commission
Empire State Plaza
Agency Building
Albany, NY 12223-1350
james.alesi@dps.ny.gov

Commissioner Diane X. Burman
New York State Public Service Commission
Empire State Plaza
Agency Building
Albany, NY 12223-1350
diane.burman@dps.ny.gov

Commissioner John B. Howard,
New York State Public Service Commission
Empire State Plaza
Agency Building
Albany, NY 12223-1350

Honorable Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350
secretary@dps.ny.gov

Mr. Robert Banzer
Superintendent of Schools
Northport-East Northport Union Free School District
W. J. Brosnan Building
158 Laurel Avenue
Northport, New York 11768

Mr. Robert Howard
Assistant Superintendent for Business
Northport-East Northport Union Free School District
W. J. Brosnan Building
158 Laurel Avenue
Northport, New York 11768



Honorable David Badanes, President
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768

Honorable Allison Noonan, Vice President
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768

Honorable Victoria Buscareno, Trustee
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768

Honorable Larry Licopoli, Trustee
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768

Honorable Thomas Loughran, Trustee
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768

Honorable Donna McNaughton, Trustee
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768

Honorable David Stein, Trustee, District Clerk
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768



Ms. Beth Nystrom, District Clerk
Northport-East Northport Union Free School District
Board of Education
158 Laurel Avenue
Northport, N.Y. 11768

Dr. Joseph Giani
Superintendent of Schools
South Country Central School District
189 Dunton Avenue
East Patchogue, NY 11772
Jgiani@southcountry.org

Dr. Sam Gergis
Assistant Superintendent for Finance and Management Services
South Country Central School District
189 Dunton Avenue
East Patchogue, NY 11772

Honorable E. Anne Hayes, President
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
ahayes@southcountry.org

Honorable Jack Nix, Vice President
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
jnix@southcountry.org

Honorable Melissa Aruta, Trustee
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
maruta@southcountry.org



Honorable Lisa Di Santo, Trustee
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
ldisanto@southcountry.org

Honorable Clyde Parker, Trustee
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
cparker@southcountry.org

Honorable Chris Picini, Trustee
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
cpicini@southcountry.org

Honorable Cameron Trent, Trustee
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
ctrent@southcountry.org

Ms. Christine Flynn, District Clerk
South Country Central School District
Board of Education
189 Dunton Avenue
East Patchogue, NY 11772
cflynn@southcountry.org

