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NICHOLAS R. CIAPPETTA, ESQ.
Town Attorney/Deputy Supervisor

April 22, 2020

VIA EMAIL AND OVERNIGHT MAIL

Evan Krinick, Esq.
Rivkin Radler LLP
926 RXR Plaza
Uniondale, New York 11553

Re: LIPA Tax Certiorari Litigation

Dear Mr. Krinick,

As you are aware, I am the Town Attorney for the Town of Huntington. I write at the direction of the Town Board concerning the status of the Long Island Power Authority's current litigation against the Town of Huntington regarding the assessment of the Northport Power Plant in light of recent events.

The worldwide coronavirus COVID-19 pandemic has unleashed a terrible public health crisis sickening hundreds of thousands and killing tens of thousands of Americans and has grounded the world's leading economy to a standstill. In the Town of Huntington, as well as in every other community throughout our country, non-essential businesses have been shuttered and employees have been laid off. According to recent statistics released by the United States Department of Labor, approximately 22 million Americans have filed initial jobless claims, or roughly 13% of the workforce. These numbers are staggering and amount to the most dramatic rise in jobless claims since the Department of Labor began tracking such data in 1967. Many of these workers live paycheck-to-paycheck and will be forced to exhaust any savings that they have in an effort to pay their bills and put food on the table for their families. In addition, many of our residents, including those that reside in the Northport-East Northport School District, are suffering severe economic consequences. Many of our residents are and will continue to be behind in their mortgages and we anticipate widespread defaults and foreclosures. Any outcome by the Court favorable to LIPA or any settlement at this time would be devastating and unsustainable. The consequence would have a significant effect not only in Huntington, but throughout Long Island.

While Governor Andrew Cuomo recently unveiled a blueprint to "un-pause" New York, no one can predict exactly when the plan will be implemented. And even when our economy begins to reopen, it will do so only in phases, and likely without a vaccine or effective therapeutic treatment for many months to come. In essence, we will be returning to a "new

normal” and the economic impact of the coronavirus is likely to be felt for many more months to come. It is not hyperbole to predict that the pandemic will significantly impact every sector of the Long Island economy. Thus, even those residents of the Town of Huntington that do not lose their jobs will be impacted by the economic damage inflicted by the coronavirus pandemic. In such uncertain times, the residents of the Town of Huntington simply cannot be asked to shoulder an increase in taxes as a result of a judgment in the Northport Power Plant litigation. Nor could they afford a settlement of the lawsuit, even on the most “favorable” of terms.

The coronavirus crisis will also financially strap our different levels of government for the foreseeable future. Our governments are spending billions of dollars on goods and services on the response to the coronavirus pandemic. According to a recent article in *The New York Times*, New York State projects the loss of between 9 and 15 billion dollars in tax revenue. The Town of Huntington has already lost a significant amount of revenue in permit and application fees and rental income. While every level of government faces a substantial revenue shortfall, they cannot balance these losses by reducing expenditures because nearly all of their employees are considered essential.

And, relevant to this litigation, the coronavirus will be particularly devastating to our local school districts. Our school districts have two primary sources of revenue – state aid and property tax revenue – and as one goes down, the other must increase, or painful cuts to staff or programs are required. For most school districts, the recently enacted Fiscal Year 2021 budget either kept state aid flat or resulted in a cut from the prior year’s aid. Typically, in New York State, the Governor proposes school aid for each district in the State in his Executive Budget. The Governor’s Executive Budget proposal is seen as the floor for school aid and the New York State Legislature then typically increases the pot of money available to schools. This year, the enacted Fiscal Year 2021 budget resulted in far less money than even the Governor’s proposal. Even worse, the budget bills authorize the State Budget Director to adjust general fund appropriations to maintain a balanced budget should a funding gap exist during any of the three measurement periods this year (April 1-30; May 1 – June 30; and July 1 – December 31). This situation is without parallel and could result in three deep cuts to school aid before the year is complete. As such, school districts are flying blindly in attempting to craft and adopt their 2020-2021 budgets without any idea as to the amount of state aid that they will actually receive. Further complicating matters, the collective bargaining agreements negotiated by most school districts contain automatic annual salary and “step” increases, meaning that school districts have no viable plan to offset the loss of state aid in the middle of its fiscal year (July 1 – June 30). And while the economy will hopefully recover, the losses already suffered in the stock market will impact school districts for years to come as their employee pension contributions are tied to the success, or lack thereof, of Wall Street. Moreover, every school district official expects that the coronavirus pandemic will also impact state aid for the 2021-2022 school fiscal year, if not beyond.

While this parade of horrors will be visited upon every school district in the State of New York, the Northport-East Northport School District faces an added threat in the pending tax certiorari litigation that hangs over its head like the proverbial sword of Damocles. While it will be extremely difficult for the School District to sustain its programs and staffing in response the loss of state aid due to the pandemic, it would be impossible for the School District to simultaneously adjust to an unfavorable decision from the Supreme Court, or even the most

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favorable settlement agreement. In blunt terms, the combination of two such extraordinary events would leave the School District unrecognizable in the short term and devastated for years to come.

Lastly, it is important to note that LIPA is a corporate municipal entity of the State of New York under New York Public Authorities Law § 1020(c). Public entities such as LIPA have a unique civic responsibility that set them apart from corporate entities and a moral obligation to avoid acts that would devastate communities such as the Northport-East Northport School District and the Town of Huntington. A court ordered judgment or settlement resulting in a substantial tax increase in the midst of a global public health crisis would simply be unconscionable.

For all these reasons, the Town of Huntington, like the Northport-East Northport School District, firmly believes that these extraordinary times call for a pause in the pending litigations regarding the Northport Power Plant. I respectfully request that your client agree to a stipulation delaying any proceedings pending before the New York State Supreme Court and the New York State Supreme Court, Appellate Division until at least July 1, 2022.

I look forward to receiving a response to this letter. Thank you for your consideration of this important matter.

Sincerely,



Nicholas R. Ciappetta, Esq.

NRC/kls

cc: Huntington Town Supervisor Chad A. Lupinacci, Esq. (via email)
Huntington Town Councilwoman Joan A. Cergol (via email)
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