

TERMS OF LIPA PROPOSAL

July 2, 2020

- 1) Goal: To resolve the property tax challenges on the Northport Power Station (“premises”)¹ for the 2010/11 through 2019/20 final assessment rolls (2010/11 – 2019/20 Tax Years (“Tax Years”)) in a manner that eliminates refunds for said Tax Years and minimizes the Property Tax impact on the affected school district and local taxing jurisdictions (together, “Taxing Jurisdictions”) by lowering the assessed value (AV) for the premises over time, such that the total tax bills paid on the premises (“taxes”) for all Taxing Jurisdictions in the 2026/27 tax year do not exceed \$46 million, in accordance with Schedule A attached hereto (“settlement period”). LIPA’s agreement to pay \$46 million in the 2026/27 tax year, which is greater than 50% of the 2019/20 taxes, is expressly conditioned on the Town and affected school district withdrawing their appeals, as set forth in paragraph 17.
- 2) Schedule A provides the agreed target annual tax payment, as defined in paragraph 4 below, for each year of the settlement period.
- 3) Subject to the provisions of paragraphs 9 and 10, LIPA agrees to waive any claim for refund of property taxes previously paid by it or National Grid for the premises and that are subject to pending tax certiorari proceedings.
- 4) Beginning with the 2020/21 final assessment rolls and for each ensuing final assessment rolls through and including the 2026/27 final assessment rolls (“settlement period”), the Assessor will reduce the AV such that the total taxes paid for the premises are no higher than the amount reflected for each applicable tax year in Schedule A (“target annual tax payment”), plus or minus \$500,000 (as provided for in Paragraph “5”, below). If the total tax bill paid equals the target annual tax payment, plus or minus \$500,000, then no adjustment shall be made in the target annual tax payment in succeeding years.
- 5) If the total taxes paid for any tax year do not equal the target annual tax payment, plus or minus \$500,000, then the target annual tax payment for the succeeding tax year shall be adjusted to reflect the difference between the prior year’s total taxes actually paid and the prior year’s target annual tax payment, plus or minus \$500,000. Notice shall be provided by LIPA to the Town of any adjustment in the target annual tax payment for the following year as soon as practicable. For example purposes only:
 - a) If for the 2020/21 tax year, the target annual tax payment is \$72,000,000, but total taxes paid are \$72,700,000, then for the 2021/22 tax year, the target annual tax payment will be reduced by \$200,000. Thus, if the 2021/22 target annual tax payment is \$66,500,000, the adjusted 2021/22 target annual tax payment would be \$66,300,000, plus or minus \$500,000.

¹ The tax parcel number for the premises are as follows: (i) 0400-007.00-03.00-001.000; (ii) 0400-007.00-02.00-004.000; (iii); 0401-008-00-01.00-030.004; (iv) 0400-010.00-01.00-002.000; (v) 0400-010.00-01.00-003.002; and (vi) 0400-010.00-01.00-005.000.

LIPA's failure to provide the notice required by this paragraph is not a material breach of the agreement and does not impact any of the Town's obligations under this agreement.

- 6) LIPA will provide notice to the Town no later than January 2027 whether it intends to renew the Amended and Restated Power Supply Agreement ("A&R PSA") as it relates to the Northport facility, or otherwise purchase power from National Grid from the Northport facility after the term of A&R PSA. If LIPA is no longer purchasing power in any amount from National Grid from the Northport facility, pursuant to a power supply agreement or other similar agreement, then this Agreement shall terminate in 2027, except for the following provision that shall survive the termination. If the total tax bill for the 2026/27 tax year exceeds the target annual tax payment by more than \$500,000, any difference will be the subject of a consent order and judgment between the parties, to be entered into within sixty days after the due date for the payment of the first-half of the tax bill, reducing the assessed valuation so as to result in a refund for the difference between the total tax bill and the target annual tax payment, plus \$500,000. If the total tax bill for the 2026/27 tax year is less than the target annual tax payment by more than \$500,000, then National Grid (funded by LIPA) shall make payment to the Town of the difference between the target annual tax payment, less \$500,000 and the total tax bill.
- 7) If the A&R PSA is renewed for the same net generation capacity as presently contracted for at the premises (1500MW) and the agreement is thus extended, then, such excess or shortfall in the target annual tax payment of \$46 million (plus or minus \$500,000) shall be adjusted in the target annual tax payment for the subsequent tax year as set forth in Paragraph "5", above.
- 8) On or before November 1 of each year, the Assessor shall provide LIPA sufficient information to allow LIPA to review the proposed assessed valuation of the premises so as to achieve the target annual tax payment in Schedule A. Should the Town not provide the information described above by November 1 of each year, the parties agree that such failure shall not be a material breach of the settlement agreement. Following the finalization of the equalization rate and School Tax Rates, the Assessor shall issue a notice revising the assessed value to facilitate achieving the target annual tax payment.
- 9) At or about the closing of this Agreement, LIPA will execute individual stipulations of discontinuance with prejudice for each of the tax certiorari proceedings commenced by LIPA or by National Grid (all of which have been or will be assigned to LIPA, and which LIPA will not re-assign to National Grid while the Settlement Agreement is in effect and not breached by the Town) for tax years 2010/11 through 2019/20 and LIPA (or its counsel) shall hold each such stipulation in escrow. For each of the years during the settlement period that the actual tax bills for all Taxing Jurisdictions meet the target annual tax payment, plus or minus \$500,000, LIPA will file a stipulation of discontinuance with the Suffolk County Supreme Court Clerk's Office pursuant to Schedule B attached hereto. LIPA will file such stipulations of discontinuance no later than February 10 of each year. If the Town does not issue tax bills that meet the target annual tax payment plus \$500,000, and does not cure such deficiency in the following tax year (as provided in paragraph 5 above), then LIPA may prosecute all of its remaining tax certiorari proceedings and seek refunds for all tax years for which a stipulation of discontinuance has not previously been filed. However, prior to LIPA prosecuting any of its tax

certiorari proceedings pursuant to this paragraph, LIPA shall provide the Town with written notice of the Town's breach which notice shall allow the Town to cure the breach within thirty (30) days of the date of the written notice.

- 10) LIPA will continue to have the right to file annual tax challenges for each final assessment and tax year comprising the settlement period and the extension period (if it is paying taxes during the extension period pursuant to paragraphs 11 and 13 below) and will discontinue each such annual challenge no later than February 10 if the total actual tax bills for that tax year are within \$500,000 (plus or minus) of the target annual tax payment. LIPA will direct National Grid to discontinue any tax challenges filed by National Grid during the settlement and extension period upon LIPA's determination that the Town has complied with the settlement agreement as set forth in the attached side agreement between LIPA and National Grid.
- 11) If LIPA continues to purchase power from National Grid or a successor entity pursuant to a power supply agreement or other similar agreement for all of the net generation capacity at the premises (1500 MW) that is presently under contract, LIPA will agree to pay annual taxes of \$46 million, plus or minus \$500,000, per tax year for up to five tax years ("extension period"); unless the power supply agreement or other similar agreement extension is less than five full tax years ("extension years"), then, only for the term of the extension so that the extension period ends at the end of the tax year immediately before the contract expiration date. If the total tax bill paid for any tax year during the extension years does not equal \$46 million, plus or minus \$500,000, then the target annual tax payment for the succeeding tax year shall be adjusted to reflect the difference between the total actual tax payments and \$46 million, plus or minus \$500,000, as set forth in Paragraph "5", above.
- 12) If the total tax bill for the final year of the extension years exceeds the target annual tax payment by more than \$500,000, any difference will be the subject of a consent order and judgment between the parties, to be entered into within sixty days after the due date for the payment of the first-half of the tax bill, reducing the assessed valuation so as to result in a refund for the difference between the total tax bill and the target annual tax payment, plus \$500,000. If the total tax bill for the final year of the extension years is less than the target annual tax payment by more than \$500,000, then National Grid (funded by LIPA) shall make payment to the Town of the difference between the target annual tax payment, less \$500,000 and the total tax bill.
- 13) Subject to paragraph 19, if LIPA continues to purchase power from National Grid or a successor entity beyond the current A&R PSA expiration date pursuant to a power supply agreement or other similar agreement, for less than all of the four power plant units at the premises that are presently under contract, either prior to or during the extension years:
 - A. LIPA will provide notice to the Town contemporaneous with its notice to National Grid, as required under the A&R PSA or subsequent contract, each time LIPA intends to contract for less than all of the power plant units at the premises that are presently under contract.
 - B. Within 90 days of receipt of notice from LIPA or by April 1, 2026, whichever is later, the Town shall notify LIPA that:

1. It will negotiate with LIPA an assessment of the entire premises (based on the removal of one or more power plant units from the extended agreement) or
2. It will implement the procedure set forth in 13(B)(4) below.
3. Under 13(B)(1) above:
 - a) If the parties agree on the revised assessment, that valuation will be applied to the final tax assessment rolls for the premises and shall remain the agreed upon assessment for the balance of the extension years, unless LIPA provides additional notice as provided in paragraph 13(A).
 - b) If the parties do not agree on the revised assessment, then the Assessor may issue such assessment as it deems appropriate under the Real Property Tax Law, subject to administrative and legal challenge by LIPA and National Grid, both of which are admitted to have legal standing, which admission applies only to the tax challenges subject to this agreement.
4. Under 13(B)(2) above:
 - a) LIPA and the Town will negotiate as to the amount of the downward adjustment of the target annual tax payment based on the following ranges:
 - i. If one power plant is no longer under contract, the target annual tax payment shall be reduced no less than 15.25% and no more than 23.5% of the previous year target annual tax payment;
 - ii. If two power plants are no longer under contract, the target annual tax payment shall be reduced cumulatively with any prior reduction no less than 32.5% and no more than 47% of the previous year target annual tax payment;
 - iii. If three power plants are no longer under contract, the target annual tax payment shall be reduced cumulatively with any prior reduction no less than 50.75% and no more than 71% of the previous year target annual tax payment;
 - iv. If four power plants are no longer under contract, then LIPA shall have no obligations under this agreement. The Town shall negotiate with National Grid in regard to any remaining tax obligations on the premises. However, National Grid will have the right to file administrative and legal challenges to any assessment on the premises.
 - b) If the negotiations in the preceding paragraph do not result in an agreement as to the appropriate downward adjustment of the target annual tax payment, then LIPA and the Town agree to binding arbitration, as set forth in paragraph 15 below. The arbitration can only result in a downward adjustment in the assessment of the premises at the beginning of the extension period such that the target annual tax payment will fall within the ranges set forth above and the arbitration shall not have any authority to reach any other result.

14) A. The parties recognize that the Northport Power Station may require changes, including maintenance, upkeep, rehabilitation or replacement of equipment, during the settlement period or the extension years (if applicable). The annual target tax payments set forth in Schedule A may be increased for any improvements that increase the capacity at Northport Power Station by at least 75MW or decrease heat rate by 5% or more. In the event that LIPA makes improvements that increase the capacity at the site by 75MW or more, or decreases heat rate by 5% or more during the initial settlement period or during the extension years, LIPA shall give the Town Assessor and Town

Attorney at least one year's notice thereof. The improvements referenced above shall include but not be limited to the erection of battery storage structures and dense heat packs but shall not include maintenance, upkeep, rehabilitation or replacement equipment to meet regulatory requirements. LIPA shall also provide the Town Assessor and Town Attorney with copies of public filings or applications made to any agency having jurisdiction with respect to such improvements within 60 days of the filing or application.

B. If LIPA erects a new material structure at the Northport Power Station unrelated to electric production, LIPA will provide the Town with 90 days notice.

C. Upon receipt of notice in (A) and/or (B) above, the parties shall meet to negotiate in good faith an amendment to Schedule A to account for improvements resulting in such increased capacity or improved efficiency, or any new structures by LIPA as described in B above. If the parties cannot agree following negotiations, either party shall have the right upon 60 days notice, to elect final and binding arbitration in accordance with paragraph 15.

15) The following arbitration provision shall govern paragraphs 13 and 14:

- a. The Town and LIPA agree to submit disputes arising out of paragraphs 13 and 14 to binding arbitration.
- b. In order to serve as an arbitrator/appraiser ("qualified person") pursuant to this section, the selected person must:
 1. Have more than ten years of experience in the valuation of generation plants or as an appraiser of electric generation assets; and
 2. Been qualified in a court of law in the United States as an expert in the valuation of electric generation facilities; and
 3. Have a demonstrated understanding of generation plant operations and knowledge of electricity pricing; and
 4. Not have a conflict of interest with any party including but not limited to prior employment by LIPA, National Grid, or the Town.
- c. The Town and LIPA shall attempt to jointly select a qualified person.
- d. If the Town and LIPA are unable to jointly select a qualified person, then each shall identify two qualified persons. Each party shall eliminate one of the two qualified persons proposed by the other party, leaving two qualified persons. The final selection of an arbitrator/appraiser from among the two qualified persons shall be done by random draw.

16) If, after LIPA has provided notice that it intends to purchase power from National Grid beyond the current A&R PSA expiration date pursuant to a power supply agreement or other similar agreement, for less than the power plant units at the premises that are under contract, and the assessment on the premises has been revised pursuant to paragraph 13, and LIPA subsequently purchases power from one or more of the units that were previously under contract and ramped down, then the assessment for the premises shall be increased by the same percentage as was previously reduced.

17) The Agreement is contingent upon the Town and Northport-East Northport School District withdrawing their appeals in the Third-Party Beneficiary cases within 30 days of the execution of the settlement, which condition is consideration for LIPA's decision to pay more than 50% of the 2019/20 taxes in the 2026/27 tax year as stated above in paragraph 1. The Agreement is also contingent upon the Town withdrawing its appeal from the Supreme Court's Order in the tax

certiorari proceeding, dated December 12, 2017, denying the Town's motion to invalidate assignments from National Grid to LIPA (AD Docket #: 2018-01569).

- 18) The Agreement is contingent upon approval by National Grid as evidenced by the attached side agreement.
- 19) Regardless of whether LIPA exercises its rights to purchase power for less than all of the four power plant units at the premises under the existing A&R PSA or any similar agreement between LIPA and National Grid or a successor entity, LIPA will honor its commitments under this Agreement for the tax years from 2019/20 through 2026/27, including but not limited to its obligation to make the target annual tax payments set forth in Schedule A, provided that all other conditions are met.
- 20) Miscellaneous Conditions:
 - a. Town waives RPTL 718 (timely file note of issue) for all years comprising the settlement period and for all outstanding tax certiorari proceedings for all Tax Years to the extent any proceedings have not been discontinued.
 - b. RPTL 727 is waived for purposes of this settlement.
 - c. No third-party beneficiaries unless named in the settlement agreement. National Grid will be a third-party beneficiary of the settlement agreement.
 - d. Town waives all notice of claim requirements in relation to the subject matter of this settlement agreement.
 - e. The settlement agreement will contain a most-favored nation provision inuring to the Town's benefit.
- 21) LIPA and National Grid to enter into a side agreement which shall be attached to the Settlement Agreement. The side agreement shall state:

If during the settlement period or the extension years, National Grid files tax challenges, National Grid agrees to discontinue any tax challenges that have not been assigned to LIPA, upon LIPA's direction to discontinue based on LIPA's determination that the Town has complied with the settlement agreement.

National Grid agrees to waive any claim for refund of property taxes previously paid by it or LIPA on the premises that are the subject of any pending tax certiorari proceedings (for tax years 2009/10 – 2019/20), and which are discontinued pursuant to LIPA's direction.

LIPA will not re-assign and National Grid will not accept re-assignment of any tax certiorari proceeding previously assigned from National Grid to LIPA. This provision does not apply if the Town breaches the Settlement Agreement.

If the Town and LIPA agree to a revised assessment of the entire premises pursuant to paragraph 13(B)(1) of the term sheet or equivalent provision in the Settlement Agreement, or the Town elects to implement the procedure in paragraph 13(B)(2) and 13(B)(4), National Grid agrees that it will not file any tax challenges for the balance of the extension years.

If none of the four power plant units are subject to a power supply agreement or other similar agreement, National Grid agrees to negotiate with the Town an assessment of the premises. However National Grid reserves its right to file administrative and legal challenges to any assessment on the premises in this event.

LIPA and National Grid agree that the Town of Huntington is a third-party beneficiary of this side agreement.

National Grid hereby approves the Settlement Agreement.

- 22) As consideration for the School District's withdrawal of its appeal as outlined in paragraph 17 above, LIPA will provide payments to the School District in the total amount of \$14.5 million to be paid to the Northport-East Northport Union Free School District over 7 years as follows: (1) one payment of \$2.5 million in year 1 of the Agreement to be made by LIPA to the School District within thirty (30) days of execution and Court approval of the Settlement Agreement; and (2) six (6) payments of \$2 million each year in years 2, 3, 4, 5, 6 and 7 of the Settlement Agreement to be made by LIPA to the School District by July 1st in each of the six years. For purposes of clarity, it is understood that these payments from LIPA to the School District shall in no way be deemed or construed as payments in lieu of taxes and/or a reduction to LIPA's tax payment obligations as set forth in Schedule A.