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September 26, 2006

Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

Re: ***Iroquois Gas Transmission System, L.P.***
Docket No. PF05-16-000
Broadway Energy LLC
Docket Nos. CP06-54-000
Broadway Pipeline LLC
Docket Nos. CP06-55-000; CP06-56-000

Dear Secretary Salas:

I am writing on behalf of our client, East End Property Company #1 LLC in connection with the above. In my previous communications, I have stated that the need and purpose for the Brookhaven Lateral Project is at best unclear and at worst a purposeful deception as presented. While Iroquois submittals and the Commission's Notices for the Project state that the purpose of the Brookhaven Lateral is to fuel the proposed Caithness Power Plant, neither Iroquois, Caithness nor the Long Island Power Authority ("LIPA") admit that is so. I have filed copies of documentation, including sworn statements submitted to the Court, that indeed they have not decided to fuel the Caithness plant by the Brookhaven Lateral Project. Therefore, the entirety of this process appears based upon speculation. Unless of course the real purpose of the Brookhaven Lateral Project is to provide a distribution line for natural gas from the Broadwater Energy projects.

Annexed hereto as Exhibit "A" is a copy of yet another sworn statement, an Affdiavit of Edward J. Grilli, the Chief of Staff of LIPA dated September 19, 2006, which states "To provide natural gas to the Caithness Project, LIPA is considering several transportation options" and ". . .LIPA has not determined how to transport natural gas to the Caithness Project site at this time." (See Paragraph 28 of Grilli Affidavit). Furthermore, Mr. Grilli states "LIPA is continuing to study all transportation service options." (See Paragraph 31 of Grilli Affidavit), and "Ultimately, LIPA's Board of Trustees will decide which option for natural gas transportation service to the Caithness Project site is in the best interests of LIPA's customers. No decision has been made,
. . ." (See Paragraph 32 of Grilli Affidavit).

Therefore, as acknowledged by Iroquois, without a decision having been made to use the Iroquois Brookhaven Lateral to fuel Caithness, we have not even reached the starting point for regulatory review. (See Iroquois September 8, 2006 Response to Scoping Comments, page 14). As such, we request the Commission suspend any, even prefiling, review of the Brookhaven Lateral Project.

Moreover, Iroquois' assessment of fueling alternatives for Caithness is contradicted by LIPA's Mr. Grilli. As an example, Iroquois concludes that the feasiability of the Islander East pipeline as a possible alternative is doubtful. (See Iroquois September 8, 2006 Response to Scoping Comments, page 15). However, with regard to fueling Caithness, LIPA's Mr. Grilli states the Islander East pipeline has received the Commission's approval and "is awaiting certificates and approvals from the State of Connecticut. (See Paragraph 29 of Grilli Affidavit). Also, Iroquois seems to simply dismiss the option of fueling the Caithness Plant by the existing Keyspan Energy Delivery Long Isalnd ("KEDLI") natural gas pipeline as ". . .not a feasible alternative. (See Iroquois September 8, 2006 Response to Scoping Comments, page 15). However, while LIPA's Mr. Grilli states the KEDLI option would be less reliable and economical to LIPA's customers then Islander East or perhaps the Brookhaven Lateral Project, he by no means declares it is not feasible. (See Paragraph 30 of Grilli Affidavit).

As stated in my September 19, 2006 correspondence to the Commission, the Brookhaven Lateral Project cannot be advanced without LIPA being on the record as to its selected fueling option for the Caithness plant and the use of its rights of way for the Brookhaven Lateral Project to fuel Caithness and/or as a distribution line for natural gas from the proposed Broadwater Energy FSRU and pipeline.

Very truly yours,

s/Michael E. White
Michael E. White

MEW:kp
Enclosure

D#512625F#046435

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

EAST END PROPERTY COMPANY #1 LLC, MARK KASPIEV, JOHN McCONNELL, JOHAN McCONNELL, DONALD SEUBERT, PATRICIA SEUBERT, FRANCESCA HURLEY, MICHAEL HURLEY, LAURENCE EINUIS, EMILY KARLOVITS, STEPHEN HENRY, THE YAPHANK TAXPAYERS AND CIVIC ASSOCIATION, INC., and the SOUTH YAPHANK CIVIC ASSOCIATION, Petitioners-Plaintiffs, - against - TOWN BOARD OF THE TOWN OF BROOKHAVEN, THE TOWN OF BROOKHAVEN and CAITHNESS LONG ISLAND, LLC, Respondents-Defendants, - and - LONG ISLAND POWER AUTHORITY, Additional Respondent-Defendant (CPLR 1001[a])	INDEX NO. 06-23201 Justice Assigned: Hon. Jeffrey Arlen Spinner AFFIDAVIT OF EDWARD J. GRILLI IN OPPOSITION TO ARTICLE 78 PETITION AND COMPLAINT

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

EDWARD J. GRILLI, deposes and says:

1. I am the Chief of Staff of the Long Island Power Authority ("LIPA"). LIPA is a political subdivision of the State of New York and is responsible for ensuring that there is

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adequate generating capacity to meet public demand for electricity on Long Island. I submit this affidavit in opposition to the Article 78 Petition and Complaint, which essentially raises the same meritless issues that have been rejected by LIPA, by all other agencies with permitting authority over the Caithness Long Island Energy Center (the "Caithness Project"), and most recently by the Honorable R. Bruce Cozzens, Jr. of the Supreme Court, Nassau County. Indeed, Justice Cozzens found that LIPA satisfied its obligations under the State Environmental Quality Review Act ("SEQRA") by taking a hard look at the anticipated environmental impacts of the Caithness Project and that the extensive and comprehensive Final Environmental Impact Statement ("FEIS") issued by LIPA provided a reasoned elaboration of the basis for LIPA's determination.

2. As discussed below, Long Island, particularly Suffolk County, has seen a recent growth spurt, both residential and commercial, that has outpaced LIPA's projections for on-Island generating needs. In order to keep up with such growth, LIPA continually studies and investigates ways to provide additional generating capacity on-Island that will be the most economical to the LIPA ratepayers consistent with its other obligations.

3. To that end, LIPA determined that the most effective way to meet the growing demand for electricity is to pursue a diverse portfolio of resources to provide cost-effective, reliable electric power to its customers on Long Island. In pursuing this goal, in May 2003, LIPA issued its Generation/Transmission Capacity Request for Proposals ("RFP") seeking proposals for 250 to 600 megawatts ("MW") of new electricity supply to help meet Long Island's long-term energy needs. In June 2004, after a detailed review of proposals from fourteen (14) respondents to that RFP, LIPA selected the approximately 350 MW Caithness

Project proposed by Caithness Long Island, LLC ("Caithness") as one of the proposed projects to meet LIPA's on-Island generating capacity needs. In addition, LIPA also selected the Neptune transmission line project, proposed by Neptune Regional Transmission System, to enable LIPA to import about 660 MW of off-Island power into the LIPA service area. LIPA is also pursuing energy-conservation initiatives, wind-powered generating facilities, and other renewable energy generating measures and is currently considering whether to acquire one or more of KeySpan's older power plants for the purpose of repowering. Overall, the Caithness Project, a state-of-the-art generating facility that will be the most efficient and cleanest plant on Long Island, is an essential component of LIPA's long-term plan to ensure sufficient and reliable sources of electric power on Long Island.

4. As discussed below, the Caithness Project was the subject of a comprehensive environmental impact statement ("EIS") that complied with all substantive and procedural requirements of SEQRA. LIPA also engaged in repeated discussions with community residents, elected officials, civic organizations and all involved agencies throughout the entire environmental review process in a manner that went well beyond the requirements of SEQRA. Overall, the Caithness Project will serve a compelling public purpose in a manner that is lawful, environmentally responsible, and fair to the community it serves.

THE PURPOSE AND NEED FOR THE CAITHNESS PROJECT

5. LIPA is a "body corporate and politic and a political subdivision of the state, exercising essential governmental and public powers" that was created in 1986 pursuant to the Long Island Power Authority Act (the "LIPA Act"), Public Authorities Law §§ 1020-1020-hh. The LIPA Act created LIPA to, among other things, replace the Long Island Lighting

Company as the provider of electric power in Nassau and Suffolk Counties on Long Island and in the portion of Queens County known as the Rockaways (the "LIPA Service Area").

6. Pursuant to LIPA's statutory obligation to provide an adequate and dependable supply of electric power within the LIPA Service Area, LIPA is continually evaluating its electricity needs and generating capacity to meet those needs. LIPA is obligated to adhere to system reliability criteria that are administered by the New York Independent System Operator ("NYISO"), the organization that controls the generation and flow of electric power in New York State. These criteria contain a reserve requirement and a locational requirement. Under the reserve requirement, LIPA must own or have contracts for generating capacity and other resources in order to meet forecasted-peak summer demand, plus a reserve of 18 percent. The reserve requirement is meant to enable LIPA to meet its customers' electric needs in the event of outages during equipment failures or warmer than expected summer weather conditions. The NYISO's current locational requirement mandates that 99 percent of LIPA's generating capacity be physically located on Long Island, in recognition of the fact that Long Island is geographically removed from the major infrastructure that comprises the balance of New York State's electric grid and that LIPA has limited interconnections with that grid.

7. The need for additional power generating resources on Long Island is addressed in the May 2004 NYISO report, "Power Trends: New York's Success & Unfinished Business." The NYISO report recommended that "additional capacity, predominantly in NYC and on Long Island, should be completed in the 2008 and beyond timeframe in order to ensure that the City and Long Island do not fall below minimum

reliability requirements. The amount of this capacity should be a minimum of 500 to 1,000 MW each year depending on the pace of demand growth.... Long Island is even more critical and may fall below its locational requirements next year. ...*[T]he urgency of siting additional generation on Long Island as soon as possible cannot be overstated.*" (Emphasis added.) The NYISO report stated that, even with the completion of new facilities already under construction, Long Island will face a deficit in its installed capacity requirements of 276 MW by 2009 unless new generation is added, and recommended that "2,000 MW of new generation be added by 2009, predominantly in NYC and Long Island, and that 500 to 1,000 MW be approved and constructed annually thereafter depending on the pace of electricity usage." The NYISO report also noted that a newer, more efficient fleet of generating facilities would "produce orders of magnitude improvement in terms of emissions reductions."

8. NYISO issued an updated "Power Trends Report" in April 2005, which confirmed the need for additional capacity on Long Island.

9. To address the growing energy needs on Long Island, LIPA adopted its "Energy Plan 2004 to 2013" in June 2004. This plan was adopted after eight public hearings were held from January 2003 to April 2004 with opportunities for oral and written public comments.

10. The need for new on-Island generating capacity became even more apparent this past summer, which was not an unusually hot summer. On August 3, 2006, LIPA customers set a new peak-hour usage record of 5,792 MW, which was an increase of 525 MW, or 10 percent over last year's peak-hour demand. LIPA also set a new 24-hour energy

requirement of 113,951 megawatt-hours of electricity to Long Island, which is a 15 percent increase over last year's 24-hour record. Demand has grown far more quickly than anticipated. When LIPA took over from LILCO in 1998, this demand level was not expected to be reached until after 2010. As new large residential complexes, such as Petitioner East End Property's Atlantic Point, and commercial/industrial parks continue to develop in Suffolk County, it is critical that the Caithness Project move forward in order to meet the unprecedented demand for electricity on Long Island.

THE CAITHNESS PROJECT

11. The Caithness Project is a dual-fuel, "combined-cycle" generating plant with a maximum generating capacity of approximately 350 MW of electricity. The plant will operate using natural gas, but low sulfur distillate oil is available as a back-up fuel for up to 30 days per year.

12. The Caithness Project will be located on a 15-acre parcel within a 96-acre parcel in the Town of Brookhaven, New York. An additional 28 acres within the 96 acres will be temporarily disturbed during construction.

13. The state-of-the-art emissions controls at the Caithness Project will include selective catalytic reduction technology to reduce emissions of oxides of nitrogen, a precursor to the formation of ozone (also known as smog). An oxidation catalyst will control carbon monoxide emissions. Exhaust steam from the steam turbine will be cooled (i.e., condensed) using an air-cooled condenser to minimize water use and eliminate any potential cooling tower plume. Because the Caithness Project will burn either natural gas or low-sulfur fuel oil, it will result in very low emissions of particulate matter and sulfur dioxide. Both the U.S.

Environmental Protection Agency and New York State Department of Environmental Conservation ("NYSDEC") have concluded that the Caithness Project, with its state-of-the-art emissions controls, will not result in any significant adverse impacts to air quality, and both agencies have issued air permits that would permit construction of the plant.

14. The Project will interconnect to the LIPA system within the 96-acre parcel via a new 138-kilovolt switchyard to be constructed on site and adjacent to the existing LIPA Holbrook-to-Brookhaven transmission line right-of-way.

15. Natural gas will be provided via a new natural gas pipeline or new lateral from an existing pipeline, which would be the subject of its own, separate environmental review under applicable federal or state law. A spur from the new natural gas pipeline will run across the 96-acre parcel to the Project site.

16. To accommodate the short-term use of fuel oil as a back-up fuel, the Caithness Project will include a 750,000-gallon fuel oil storage tank and associated off-loading facilities consistent with both New York State and Suffolk County requirements. Both NYSDEC and the Suffolk County Department of Health Services have found oil storage on site would not result in any adverse impacts to groundwater or surface water resources, and each agency has approved the construction and operation of this storage tank.

ENVIRONMENTAL REVIEW

17. As part of its overall review of the Caithness Project, LIPA undertook a detailed review of the Project's potential environmental impacts, choosing to prepare an EIS, as the lead agency under SEQRA, in order to ensure maximum public participation on the project.

18. LIPA recognized that, as lead agency, it was responsible for (1) identifying all relevant areas of environmental concern; (2) taking a "hard look" at those areas; and (3) providing a "reasoned elaboration" of the basis for its determination with respect to the potentially significant environmental impacts of the Caithness Project.

19. In September 2004, LIPA began a coordinated review process under SEQRA by sending all involved agencies, principally the Town of Brookhaven, NYSDEC, the New York State Public Service Commission and the Suffolk County Department of Health Services, letters requesting their consent to LIPA's serving as the lead agency for the Caithness Project.

20. While all involved agencies consented to LIPA's serving as lead agency, the Town of Brookhaven had expressed orally that it might be interested in taking on that role. At a December 17, 2004 meeting between me and the former Town Supervisor, we discussed the Town's interest in serving as the "lead agency" for the purposes of SEQRA review. LIPA believed that it was in the best position to serve in that capacity. In order to avoid a dispute with the Town on this issue, LIPA agreed that it would serve as lead agency but would share preliminary drafts of SEQRA documents with the Town for its review prior to their release to the general public and would seek Town input on the environmental review on an on-going basis throughout the SEQRA process.

21. Under SEQRA, "scoping" for an EIS is optional. LIPA nevertheless conducted public scoping to ensure that interested members of the public had an opportunity to comment on the types and methodologies of environmental studies and the alternatives to be examined in the EIS. LIPA also met with the various involved agencies, including the

Town of Brookhaven, to discuss the scope of the EIS. In December 2004, LIPA prepared and released a Draft Scope of Work and announced the holding of a public meeting on the Draft Scope in the New York State *Environmental Notice Bulletin*, the Long Island edition of *Newsday,* and *Suffolk Life*. The public meeting on the Draft Scope of Work was held on January 5, 2005. As revised, based on public comments, the Final Scope of Work was issued January 26, 2005.

22. Based on the Final Scope of Work, Caithness, through its highly experienced consultant, TRC Environmental, prepared a Draft EIS ("DEIS") for review by LIPA and its independent technical and legal consultants. On March 24, 2005, following that review, LIPA accepted the DEIS by determining that the DEIS was adequate with respect to its scope and content for purposes of commencing public review under SEQRA, as required by 6 NYCRR § 617.9(a)(2). A notice advising the public of the completion and availability of the DEIS and scheduling a public hearing was published in the New York State *Environmental Notice Bulletin*, the Long Island edition of *Newsday,* and various editions of *Suffolk Life* on March 30, 2005. On April 20, 2005, LIPA held the public hearing on the DEIS.

23. At the request of the Town of Brookhaven and several individuals, LIPA decided to extend the public comment period on the DEIS beyond that required by SEQRA. A notice announcing the extension of the public comment period by three weeks, from May 4, 2005 to May 25, 2005, was published in the New York State *Environmental Notice Bulletin* and *Suffolk Life*.

24. Based on comments on the DEIS, LIPA caused the FEIS to be prepared. The FEIS included a chapter that addressed each and every public comment made with respect to the DEIS.

25. In particular, the Town of Brookhaven, in its capacity as an involved agency, hired several independent consultants to review the DEIS, who then filed, on behalf of the Town, the following comments: (a) Schneider Engineering reviewed the traffic study contained in the DEIS and suggested that an additional intersection at Horseblock Road and Bellport Avenue be examined for potential traffic impacts; (b) Cambridge Environmental examined the air quality and environmental justice analyses included in the DEIS and had comments regarding cumulative hazardous air pollutant emissions in the area; and (c) Environmental Design & Research examined the visual impact analysis included in the DEIS and requested that LIPA provide an additional photosimulation from the Suffolk County Vietnam Veterans Memorial. Finally, the Town also hired the law firm of Jaspan Schlesinger Hoffman LLP ("Jaspan Firm") who requested that the EIS include a detailed analysis of the natural gas pipeline. In response to the Town's comments, the FEIS analyzed an additional traffic intersection at Horseblock Road and Bellport Avenue, included a discussion of hazardous air pollutants in the chapter on environmental justice, and included a photosimulation from the Vietnam Veterans Memorial. With regard to the natural gas pipeline analysis, the response to comments in the FEIS explained that no decision concerning the natural gas transportation arrangements for the Caithness Project had been made, and that, in any event, the licensing and environmental review of natural gas pipelines are exempt from SEQRA under federal and state law. Nonetheless, Chapter 19 of the FEIS was revised to

provide more details regarding the potential environmental impacts of two potential pipeline routes. The FEIS showed that the installation of a natural gas pipeline is not expected to result in any significant adverse impacts, either individually or cumulatively with the Caithness Project, to the environment. However, under federal law, only FERC can ultimately select the route for an interstate pipeline and subject an interstate pipeline company, such as Iroquois, to environmental review; LIPA has no such jurisdiction. I note that the Jaspan Firm then filed the lawsuit on behalf of East End Properties in the Nassau County proceeding, alleging that LIPA had improperly segmented the environmental review of the natural gas pipeline from the review of the Caithness Project. Justice Cozzens rejected this allegation.

26. On June 23, 2005, LIPA accepted the FEIS, which was also made available for public review in accordance with SEQRA. A notice announcing the release and availability of the FEIS was published in the New York State *Environmental Notice Bulletin*, the Long Island edition of *Newsday,* and *Suffolk Life* on June 29, 2005. Copies of the FEIS were also mailed to all persons who participated in the public review of the DEIS. The FEIS was also made available at four repositories in the area and posted on the LIPA website. LIPA also informed the Town of Brookhaven and the other involved agencies that it would accept comments on the FEIS through the end of summer, well beyond the 10 days provided under SEQRA. No agency or individual submitted comments on the FEIS.

27. In December 2005, after a thorough review of all potential environmental impacts and weighing the social, economic and other essential considerations from among the reasonable alternatives available, LIPA adopted a SEQRA findings statement in which it

selected the Caithness Project as the one that avoids adverse environmental impacts to the maximum extent practicable.

OPTIONS TO PROVIDE NATURAL GAS TRANSPORTATION SERVICE FOR THE CAITHNESS PROJECT

28. To provide natural gas to the Caithness Project, LIPA is considering several transportation options. The highest pressure and most flexible pipeline serving the New York region is the Iroquois Gas Transmission System ("Iroquois"). Delivery to the Caithness Project could be possible via a new pipeline lateral from the current South Commack terminus of the Iroquois pipeline to the Caithness site.

29. Another potential natural gas transportation alternative is via connection to the proposed Islander East pipeline. This proposed pipeline has received Federal Energy Regulatory Commission ("FERC") approval and is awaiting certificates and approvals from the State of Connecticut.

30. Natural gas in the area is currently delivered by the network of the Local Distribution Company, Keyspan Energy Delivery-Long Island ("KEDLI"). This network was developed many years ago to deliver natural gas to residences and small- and medium-sized businesses. Delivery to the Caithness site from the KEDLI network, as repeatedly suggested by Petitioners, would be less reliable because it would be subject to curtailment during peak gas usage periods (such as the cold winter months). It would also require the installation of on-site compression technology to increase the lower pressure of such gas to pressure levels suitable for use in the Caithness Project, and thus would be less economical to LIPA's customers.

31. As stated in the FEIS and contrary to the repeated assertions by Petitioners, LIPA has not determined how to transport natural gas to the Caithness Project site at this time. LIPA is continuing to study all transportation service options. To date, LIPA has entered into a contract with Iroquois in which it agreed to reimburse Iroquois up to 3.1 million dollars for Iroquois's reasonable and documented costs incurred in conducting the environmental and engineering review of alternative pipeline routes as part of Iroquois's pre-application filing with FERC. No contract for LIPA to purchase natural gas transportation services from Iroquois exists as alleged by Petitioners.

32. Ultimately, LIPA's Board of Trustees will decide which option for natural gas transportation service to the Caithness Project site is in the best interests of LIPA's customers. No decision has been made, and when a decision is made, a final agreement will be entered into and delivered to the New York State Comptroller and New York State Attorney General for approval, as is statutorily required.

PUBLIC SUPPORT FOR THE CAITHNESS PROJECT

33. Well before LIPA approved the Caithness Project, LIPA made extensive efforts to reach out to the residents, public officials and business leaders in the Town of Brookhaven. The purpose of this outreach was to provide interested persons with as much information about the proposed Caithness Project as possible, including, but not limited to, the purpose and need for the new Project, its timing, and any potential environmental impacts that it could have on the surrounding community.

34. Representatives of LIPA and Caithness met with representatives of 50 federal, state, and local governments, agencies, businesses, and interest groups, including Petitioners

Yaphank Taxpayers and Civic Association and the South Yaphank Civic Association and other community groups, such as the Brookhaven Village Association and the Medford Taxpayers and Civic Association. In addition, Caithness held approximately 100 meetings with twenty civic, business and environmental groups; six local government agencies with responsibility to oversee the project; twenty-one elected officials; and five major news media editorial boards.

35. LIPA opened its scoping meeting with an open house segment, which also was not required by law, to provide the public with an opportunity to learn about the project before the formal SEQRA public hearings began and to gain access to LIPA and Caithness staff to ask questions related to the project. Advertisements for this open house were provided in *Newsday* and *Suffolk Life* and LIPA mailed postcards to all its billed customers located within an approximate two mile radius around the Caithness site.

36. LIPA Chairman Richard M. Kessel held a community forum to discuss the Caithness Project in November 2005 at which LIPA responded to questions by the local community. At this public forum, several community leaders also asked that LIPA consider providing a "host community benefits package," which is routinely provided to communities that will host an industrial project that will serve an overall public purpose, such as a power plant or solid waste facility.

37. Through the ongoing public outreach efforts made by LIPA and Caithness, there is significant public support for the very efficient and environmentally-protective Caithness Project. Attached as Exhibit A are several letters of support and news releases and editorials that demonstrate the public support for this important public project.

COMMUNITY BENEFITS PACKAGE

38. Petitioners' allegations that LIPA offered the Town of Brookhaven a $151 million community benefits package only after the June 6, 2006 Town Board meeting is absolutely false. In the summer of 2005, LIPA and the Town began to negotiate a community benefits package that would principally consist of Payments in Lieu of Taxes ("PILOTs") to the local taxing authority, the Town of Brookhaven. Moreover, a community benefits package had always been considered by LIPA as part of its overall planning since the Caithness Project was initiated.

39. Here, as negotiated, $139 million in PILOTs would be provided by Caithness to the Town of Brookhaven Industrial Development Agency ("IDA")[1] for the benefit of the Town of Brookhaven (a significant portion of these payments would benefit the school district hosting the Caithness power plant). The proposed community benefits package also includes an additional $12 million that would be directed to communities and other school districts near the Caithness site. As requested by the community, the proposed community benefits package also includes scholarship and apprenticeship programs to be provided by Caithness.

40. Petitioners' assertions that the proposed PILOT payment was intended to influence the Town's decision regarding its issuance of approvals to Caithness under the Town of Brookhaven's Zoning Code is absolutely untrue. The purpose of a PILOT (in this case, through the Town of Brookhaven IDA) is to provide long-term certainty for the local taxing jurisdictions and the responsible taxpayer regarding the amount of such payments.

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[1] Subject to the approval of the Town of Brookhaven IDA.

41. The Power Purchase Agreement ("PPA") between LIPA and Caithness requires LIPA to reimburse Caithness for all property taxes relating to the Project, including PILOTS made by Caithness, and to the extent that Caithness is reimbursed for any such taxes, Caithness is required to pass on such reimbursement to LIPA.

42. The reimbursement by LIPA of PILOTs paid by Caithness is entirely consistent with LIPA's obligations under other power purchase agreements it has with other independent power producers. In eight other power purchase agreements, all of which were approved by the New York State Comptroller, LIPA agreed to be responsible for the payment of PILOTs/property taxes, either directly to the taxing authority or indirectly by reimbursing the seller of electricity for such costs incurred.

43. Petitioners' unsupported allegation that the Caithness Project is not eligible for Empire Zone Program ("EZP") benefits is also false. A letter by the Empire State Development Corporation to LIPA's Chairman Richard Kessel, attached hereto as Exhibit B, confirms LIPA's understanding that the Caithness Project is eligible for such benefits.

44. Nonetheless, LIPA has not asked for a guarantee from the Town of Brookhaven as to Caithness's eligibility for such EZP benefits. Even if EZP benefits are not provided to Caithness, the Caithness PPA is still in the best interest of LIPA's ratepayers.

45. I also note that while the community benefits package was negotiated over the past year and did not appear in June 2006 as suggested by Petitioners (which Petitioners are fully aware of since they unsuccessfully challenged the community benefits package in their lawsuit before Justice Cozzens), the package is still not yet final. LIPA's Board of Trustees

still needs to approve the package, and no such package would take effect until after it is approved by the New York State Attorney General and New York State Comptroller.

REQUEST TO SUPPLEMENT FEIS

46. Lastly, well after LIPA's SEQRA review had been completed, Petitioners raised a new issue in their reply memorandum of law before Justice Cozzens regarding an alleged new plant community located on or around the Caithness Project site. In their papers, Petitioners requested that a supplemental EIS be issued.

47. LIPA fully reviewed that request for a supplement to the EIS, including the report from Dr. Eric Lamont, a botanist hired by Petitioners. After requesting and fully reviewing a report by its own environmental consultant, AKRF, Inc., and a second report by the environmental consultant for Caithness, TRC Environmental, LIPA determined that the Lamont report raised no issues that required LIPA to issue a supplemental EIS. This determination was also shared with all involved agencies and thus became a part of the Town's record. In essence, pursuant to the requirements of 6 NYCRR § 617(a)(7), the Lamont report provided no significant, newly discovered information that would trigger the need for LIPA to prepare a supplemental EIS. Justice Cozzens also reviewed the supplemental information regarding this alleged plant community and concurred with LIPA that such information did not raise any new issues that would result in any significant adverse environmental impacts that could trigger the need for a supplemental EIS and dismissed this issue as well.

48. In sum, there is no merit to any of the allegations made by Petitioners and their Article 78 Petition and Complaint should be dismissed in its entirety. This important public

project meets all federal, state and local requirements and should be permitted to move forward to meet the growing electricity needs on Long Island.

Edward J. Grilli

Edward J. Grilli

Sworn to before me this
19th day of September, 2006

NOTARY PUBLIC

BARBARA ANN DILLON
Notary Public, State of New York
No. 01DI5029370
Qualified in Nassau County
Commission Expires June 20 08

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Submission Contents

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