

PROPOSED RESOLUTION NO. 53 - 2022

A RESOLUTION authorizing the County Attorney to compromise and settle the claims of Petitioner Long Island Lighting Company d/b/a LIPA, a wholly owned subsidiary of the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, organized and existing pursuant to the Public Authorities Law of New York pursuant to the County Law, the County Government Law of Nassau County and the Nassau County Administrative Code.

WHEREAS, § 1020-a of the Public Authorities Law of the State of New York ("PAL") of Title 1-A of Article 5 of the PAL (the "LIPA Act") provides that assuring the provision of an adequate supply of electricity in a reliable, efficient and economic manner, and retaining existing commerce and industry in and attracting new commerce and industry to Nassau County, Suffolk County and the Rockaway Peninsula are matters of state concern; and

WHEREAS, PAL § 1020-p(1) provides that the operation of LIPA is primarily for the benefit of the people of the State of New York, for the improvement of their health, welfare and prosperity, and is a public purpose, and LIPA shall be regarded as performing an essential government function in carrying out the provisions of the LIPA Act; and

WHEREAS, PAL § 1020-kk provides that the LIPA Act, being necessary for the prosperity of the state and its inhabitants, shall be liberally construed to effect the purposes thereof; and

WHEREAS, PAL § 1020-p(2) provides that LIPA shall be required to pay no taxes nor assessments upon any of the property acquired or controlled by it or upon its activities in the operation and maintenance thereof or upon income

derived therefrom, providing that nothing therein shall prevent LIPA from entering into agreements to make payments in lieu of taxes ("PILOTs") with the governing bodies of municipalities as provided for in PAL § 1020-q; and

WHEREAS, Real Property Tax Law ("RPTL") § 412 provides that real property owned by public authorities enumerated in the public authorities law shall be entitled to such exemption as may be provided therein; and

WHEREAS, PAL § 1020-f(h) confers upon LIPA broad powers to make and execute agreements and contracts with any municipality; and

WHEREAS, PAL § 1020-g(k) empowers LIPA to enter into contractual arrangements with municipalities with respect to the construction, improvement, rehabilitation, ownership and/or operation of generating facilities; and

WHEREAS, PAL § 1020-f(r) confers broad powers upon LIPA to enter into agreements to purchase power from any private entity or any other available source, and PAL § 1020-f(h) gives LIPA the authority to make and execute agreements necessary or convenient in the exercise of its statutory powers and functions, and PAL § 1020-g(j) gives LIPA the power to cooperate with and to enter into contractual arrangements with private utility companies or public entities; and

WHEREAS, the County determines the annual assessments of real property located within the County for the purpose of imposing real property taxes for the County, the towns, the special districts and all but one of the school districts within the County; and

WHEREAS, LIPA filed applications for correction of assessment with ARC and/or commenced proceedings pursuant to RPTL Article 7 seeking judicial review of the County's assessments for its real property at the Glenwood Landing power plant identified as 1/20/Q/41 (Acct. No. 2030301485); 1/20/Q/41 (Acct. No. 2030301486A); 1/20/Q/41 (Acct. No. 2035301485); 1/20/K/4A (Acct. No. 3030001015); 1/20/K/4A (Acct. No. 3030001015A); 1/20/K/5A (Acct. No. 2030301480); 1/20/K/5A (Acct. No. 2030301480A); 1/21/M/585 (Acct. No. 3030001040); 1/21/F/4 (Acct. No. 3030001019); 1/21/M/35 (Acct. No. 3030001020); 1/21/M/35 (Acct. No. 3035001021A); 1/21/M/35 (Acct. No. 3030001020A); 1/21/M/35 (Acct. No. 3035001020A) (hereinafter "Glenwood Landing") for the tax years 2009/10, 2010/11, 2011/12, 2012/13, 2013/14, 2014/15, 2015/16, 2016/17, 2017/18, 2018/19, 2019/20, 2020/21 and 2021/22 (the "Glenwood Proceedings"). Glenwood Landing is owned by National Grid Generation LLC ("National Grid") and its output is wholly committed under contract to LIPA under an Amended and Restated Power Supply Agreement dated as of October 10, 2012 (the "PSA"), under which LIPA is responsible for all its costs, including property taxes.

WHEREAS, the steam units at Glenwood Landing were decommissioned and demolished in approximately 2012 and the only remaining generation assets at the site currently consist of two gas turbines of approximately 55 MW each and one gas turbine of approximately 16 MW, and associated parcels; and

WHEREAS, Petitioners filed applications for correction of assessment with ARC and/or commenced proceedings pursuant to RPTL Article 7 seeking

judicial review of the County's assessments for its real property at the E.F. Barrett power plant identified as 031/43/E/2 (Acct. No. 1035031430 and 1035031430A); 031/43/E/2 (Acct. No. 1035031431A); 011/43/E/4 (Acct. No. 1030011100); 031/43/E/12 (Acct. No. 1030031435); 031/43/52/6 (Acct. No. 1030031450); 1/43/52/33 (Acct. No. 1030031445); 031/43/167/14 (Acct. No. 1030031455); 031/43/169/127 (Acct. No. 1030031466); 031/43/170/15 (Acct. No. 1030031470); 031/43/171/15 (Acct. No. 1030031475); 031/43/175/1 (Acct. No. 1030031495); 031/43/176/12 (Acct. No. 1030031500); 031/43/404/11 (Acct. No. 1030031490); 031/43/404/12 (Acct. No. 1030031485); 031/43/404/13 (Acct. No. 1030031480); 031/43/404/13 (Acct. No. 1030031480A); 43/399/204 (Acct. No. 1030011116A); 43/399/204 (Acct. No. 1035011115 and 1035011115A); 43/399/287 (Acct. No. 1030011120); 43/399/288 (Acct. No. 1030011125) (hereinafter "Barrett") that were applied for the tax years 2009/10, 2010/11, 2011/12, 2012/13, 2013/14, 2014/15, 2015/16, 2016/17, 2017/18, 2018/19, 2019/20, 2020/21 and 2021/22 ("the Barrett Proceedings"). Barrett is owned by National Grid and its output is wholly committed to LIPA under the PSA, and LIPA is responsible for all its costs, including property taxes; and

WHEREAS, Barrett consists of two steam turbine units of approximately 175 MW each, seven combustion turbine units of approximately 18 MW each, and four combustion turbine units of approximately 42 MW each ("Barrett" and, collectively with Glenwood, the "Subject Properties"); and

WHEREAS, LIPA's Glenwood Proceedings and Barrett Proceedings are

collectively identified by Index Numbers 411617/10; 407870/11; 407871/11; 407872/11; 403513/12; 403514/12; 403515/12; 402823/13; 402824/13; 402825/13; 402785/14; 402786/14; 402787/14; 402500/15; 402533/15; 402537/15; 403739/16; 403754/16; 403757/16; 403760/16; 403222/17; 403225/17; 403226/17; 403227/17; 402338/18; 402347/18; 402348/18; 402354/18; 403044/19; 403045/19; 403046/19; 403047/19; 401264/20; 401265/20; 401266/20; 401267/20; 401534/2021; 401535/2021; 401537/2021 and 401538/2021. National Grid has similarly commenced proceedings pursuant to RPTL Article 7 seeking judicial review of the County's assessments for Glenwood Landing and Barrett. These proceedings are identified by Index Numbers 402110/2005; 402123/2005; 402124/2005; 401517/2006; 401596/2006; 408737/2007; 408774/2007; 408790/2007; 408791/2007; 403145/2008; 403158/2008; 403185/2008; 408703/2009; 411616/2010; 411617/2010; 402982/2013; 402983/2013; 402984/2013; 402271/2014; 402341/2014; 402354/2014; 402526/2015; 402527/2015; 402528/2015; 403969/2016; 403970/2016; 403978/2016; 403979/2016; 403111/2017; 403169/2017; 403171/2017; 403172/2017; 403173/2017; 404025/2018; 404026/2018; 404027/2018; 404028/2018; 404029/2018; 403602/2019; 403604/2019; 403608/2019; 403768/2019; 402344/2020; 402345/2020; 402347/2020; 402348/2020; 401938/2021; 401939/2021; 401940/2021; 401944/2021 and 401941/2021 and which have been or will be assigned to LIPA; and

WHEREAS, the Subject Properties are under contract to LIPA which pays all costs associated with the plants, controls how and when they are bid into the New York Independent System Operator ("NYISO") Market"); and LIPA is financially responsible for the electricity generated by the Subject Properties, as denoted in the NYISO Load & Capacity Data Report (Gold Book) as the financially responsible party; and as a result of such control, the Subject Properties are exempt from payment of property taxes under PAL 1020-p(2); and

WHEREAS, the Parties seek to avoid the expense and risk associated with litigating the Barrett Proceedings, the Glenwood Proceedings, and the corresponding proceedings brought by National Grid to challenge the assessments on the Subject Properties for tax years 2009/10 through 2021/22 (the "Proceedings"); and, therefore, the Parties have agreed to dismiss, with prejudice these proceedings, pursuant to the terms and conditions contained herein; and;

WHEREAS, it is the Parties' intention in fully and finally resolving the Proceedings, and permanently eliminating the County's potential refund liability, to gradually reduce the annual payments through the 2026/27 school and 2027 general tax years as provided for in Schedule A, A-1, A-2 and A-3 of stipulated agreement; and

WHEREAS, the Parties acknowledge that any property owned or controlled by LIPA is statutorily entitled to an exempt designation on the assessment rolls by the Assessor, pursuant to Real Property Tax Law §412 and Nassau County Administrative Code § 6-7.0; and

WHEREAS, the County Attorney has caused an investigation and analysis

to be made of the said action and as a result thereof recommends that it be settled based on assessed values as set forth above and referenced in Schedule A, A-1, A-2, and A-3; and now therefore, be it

RESOLVED, that the County Attorney be and is hereby authorized and directed to settle the said actions based on the assessed values with direct assessments that will produce payments to County, towns, school districts and special districts as set forth in and referenced in Schedule A, A-1, A-2, and A-3; and be it further

RESOLVED, that it is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. Section 0101 *et seq.* and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that this settlement is a "Type II" Action within the meaning of Section 617.5(c)(29) of 6 N.Y.C.R.R. and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

