

Final

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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EAST END PROPERTY COMPANY #1, LLC,  
MARK KASPIEV, LAUREN NOACK, JOHN McCONNELL,  
JOHAN McCONNELL, CHARLES F. OTT, DONALD  
SEUBERT, PATRICIA SEUBERT and THE MEDFORD  
TAXPAYERS AND CIVIC ASSOCIATION, INC.  
Petitioners-Plaintiffs,

Index No.:

-against-  
PETITION-

VERIFIED

COMPLAINT

RICHARD M. KESSEL as Chairman of the Board of  
Trustees of the LONG ISLAND POWER AUTHORITY,  
MICHAEL J. AFFRONTI, NANCY ANN AKESON,  
HARVEY AUERBACH, JOHN FABIO, EDNA GERRARD,  
HARRIET A. GILLIAM, JAMES C. HERRMANN, ROBERT  
S. MAIMONI, NANCY NUGENT, JONATHAN SINNREICH,  
DR. JAMES M. SHUART, as Members of the Board of Trustees  
of The Long Island Power Authority, THE LONG ISLAND  
POWER AUTHORITY, CAITHNESS LONG ISLAND, LLC  
and IROQUOIS GAS TRANSMISSION SYSTEM LP,

Justice Assigned:

Respondents-Defendants.

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The petitioners-plaintiffs, by their attorneys, Jaspan Schlesinger Hoffman LLP, as  
and for their Verified Petition and Complaint allege the following:

NATURE OF THE ACTION

1. This is a combined special proceeding pursuant to CPLR Article 78 and  
action for declaratory and equitable relief pursuant to State Finance Law §123-b and  
CPLR §3001.
2. Petitioners seek Article 78 relief based upon the respondents' failure to  
comply with the provisions of the New York State Environmental Quality Review Act  
("SEQRA") as set forth in Article 8 of the New York Environmental Conservation Law

A.

and its implementing regulations at 6 NYCRR Part 617 with respect to a resolution authorizing Richard M. Kessel, as Chairman of the Board of Trustees of the Long Island Power Authority, to enter into a Power Purchase Agreement between the Long Island Power Authority ("LIPA") and Caithness Long Island LLC ("Caithness") authorizing the siting, construction and operation of a combined-cycle 350 mega watt power plant to be fueled primarily by natural gas with oil as a back-up fuel, known as Caithness Long Island Energy Center, on property located in the Town of Brookhaven, New York (the "Project").

3. By this proceeding, petitioners seek to annul LIPA's SEQRA determination for the Project and LIPA's determination to enter into the Power Purchase Agreement with Caithness and authorizing the Project, based on LIPA's failure to undertake the appropriate environmental quality review process and take the "hard look" at the entire action proposed by LIPA and Caithness as mandated by SEQRA.

4. In adopting a Findings Statement determining that the Project is one that avoids or minimizes adverse environmental impacts to the extent practicable, LIPA erroneously failed to consider as part of the entire action the already selected natural gas source to be supplied by a proposed 21.6 mile pipeline to serve the Project, failed to honestly evaluate the purpose, need for and cost of the Project, failed to assess the cumulative impacts of the Project together with other projects proposed as part of the Town of Brookhaven's Empire Development Zone and overlooked important land use, air quality, water quality and quantity, terrestrial ecology, flora, fauna, noise, visual, traffic environmental justice and socioeconomic issues arising from this Project, as well as consideration of alternatives to the Project, given that at least one other natural gas fueled power plant alternative to the Project was already fully permitted and approved.

5. LIPA manipulated the public outreach process so as to exclude the residents of Atlantic Point, the largest residential community closest to the proposed Project, as well as other residents of the community, from the public participation and comment process.

6. Rather than dispassionately and objectively evaluating the Project, LIPA actively advocated for the Project at the public hearings on the Draft Environmental Impact Statement ("DEIS") and at the LIPA Board meeting on the Final Environmental Impact Statement ("FEIS") and Findings Statement and even took action to advance the Project before the completion of the SEQRA process, thereby defeating the important public purpose of injecting environmental considerations into the decision making process on any action at the earliest possible time. LIPA's advocacy for the Project and actions to advance the Project prior to completion of the SEQRA process rendered the environmental review nothing but an afterthought or mere formality to a foregone conclusion.

#### **THE PARTIES**

7. Petitioner East End Property Company #1, LLC ("East End") is a Delaware limited liability company authorized to do business in New York and the owner of a 117 acre parcel of real property improved with 795 rental apartments and townhomes, located at 1220 Orchid Circle, Bellport, New York, known as Atlantic Point.

8. Atlantic Point was constructed between 2001 and 2003 as one of the largest residential rental communities on Long Island. Atlantic Point was formerly known as the Alexan Brookhaven. In 2005, the name of the complex was changed to Atlantic Point.

9. Petitioner Mark Kaspiev ("Kaspiev") is one of over 2,000 residents of Atlantic Point, residing at Apt. 1482 Yarrow Circle, Bellport, New York and is employed as the Property Manager of Atlantic Point.

10. Petitioner Lauren Noack is one of over 2,000 residents of Atlantic Point, residing at 1544 Yarrow Circle, Bellport, New York and is employed as a rental agent at Atlantic Point.

11. Petitioners John McConnell and Johan McConnell ( the "McConnells") reside at 76 Gerard Road, Yaphank, New York 11980.

12. Petitioners Donald and Patricia Seubert ( the "Seuberts") reside at 56 Robinson Ave, Medford, New York, 11763.

13. Petitioner Charles F. Ott resides at 6 Fairview Ave, Medford, New York, 11763.

14. Petitioner The Medford Taxpayers and Civic Association, Inc. is a New York corporation consisting of residents of the Medford community.

15. Respondent LIPA is, upon information and belief, a corporate municipal instrumentality created pursuant to the Public Authorities Law of the State of New York and maintains its office at 330 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553.

16. Respondent Richard M. Kessel is sued herein in his capacity as the Chairman of the Board of Trustees of LIPA.

17. Respondents Michael J. Affrunti, Nancy Ann Akeson, Harvey Auerbach, John Fabio, Edna Gerrard, Harriet A. Gilliam, James C. Herrmann, Robert S. Maimoni, Nancy Nugent, Jonathan Sinnreich and Dr. James M. Shuart are sued herein in their capacity as members of the Board of Trustees of LIPA.

18. Respondent Caithness Long Island, LLC ("Caithness") is, upon information and belief, a Delaware Limited Liability Company authorized to do business in New York with a principal place of business at 565 Fifth Avenue, New York, New York 10017.

19. Respondent Iroquois Gas Transmission System, LP ("Iroquois"), is, upon information and belief, a Delaware Limited Liability Company authorized to do business in New York with a principal place of business at One Corporate Drive, Suite 600, Shelton, Connecticut 06484.

#### **DESCRIPTION OF THE PROJECT**

20. The Project is a dual-fueled combined-cycle power plant designed to generate approximately 350 mega watts of electricity. The Project site would comprise approximately 15 acres within a larger 96-acre parcel within the Pitch Pine-Oak Forest of the Pine Barrens located south of the Sills Road interchange of the Long Island Expressway (Exit 66). Natural gas is stated to be the primary fuel with oil serving as a back-up fuel. Natural gas is to be delivered to the Project site via a 21.6 mile extension of the Iroquois natural gas pipeline which currently terminates in South Commack, New York (the "Iroquois Pipeline"). Oil will be delivered via tractor trailer tank trucks, with 750,000 gallons stored on the Project site. The Project will have an exhaust stack with a height of at least 170 feet above grade. The Project will be constructed over a 26 month time frame. While located in the specially designated Town of Brookhaven Empire Zone, designed to generate jobs and economic development, the Project is expected to generate only 25 permanent jobs.

#### **STANDING**

21. The Project is a Type I action pursuant to 6 NYCRR Part 617.4(b)(6). As

purchase of power from the Caithness Project without knowing the cost to the LIPA ratepayers of such an agreement or arrangement.

149. Petitioners have not previously sought this relief from this or any other court.

150. Petitioners will be irreparably harmed if this relief is not granted.

**WHEREFORE**, petitioners demand judgment as follows:

- (1) annulling any purported determinations by LIPA with respect to the Project including the adoption of the Findings Statement and compelling LIPA to comply with the requirements of conducting a coordinated review of the entirety of the action to be undertaken with the necessary "hard look" at the environmental impacts of all of the elements of the Project;
- (2) permanently enjoining any act taken in furtherance of the Power Purchase Agreement until such time as a complete and proper SEQRA review is conducted in conformance with law;
- (3) declaring the Power Purchase Agreement between LIPA and Caithness to be void and of no force and effect based upon the failure to perform the SEQRA review in accordance with law;
- (4) declaring any and all agreements between LIPA and Iroquois to be void and of no force and effect; and
- (5) for such other and further relief as the Court deems just and proper all together with the costs, disbursements and attorneys' fees of this action.

Dated: Garden City, New York  
January 25, 2006

**JASPAN SCHLESINGER HOFFMAN LLP**  
Attorneys for Petitioner

By:

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**STEVEN R. SCHLESINGER**  
**MICHAEL E. WHITE**  
300 Garden City Plaza  
Garden City, New York 11530  
(516) 746-8000

**ATTORNEY VERIFICATION**

**MICHAEL E. WHITE**, an attorney duly admitted to practice law before the Courts of this State, affirms the following under penalties of perjury:

I am a member of the firm Jaspán Schlesinger Hoffman LLP and attorney for petitioners herein. I have read the annexed **VERIFIED PETITION AND COMPLAINT**, know the contents thereof, and the same are true to my knowledge based on documents maintained by my office and my clients, except those matters therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true. The reason this verification is made by me and not by the petitioners is that petitioners are not located in the county where I maintain my office.

Dated: Garden City, New York  
January 25, 2006

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**MICHAEL E. WHITE**

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