

EXHIBIT A

SHORT FORM ORDER

INDEX
NO.: 603885-21

**SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 44 SUFFOLK COUNTY**

PRESENT: Honorable Elizabeth H. Emerson

EUGENE COOK,

Petitioner,

FOR A JUDGMENT UNDER ARTICLE 78 OF
THE CPLR

-against-

PUBLIC AUTHORITIES CONTROL BOARD
AND LONG ISLAND POWER AUTHORITY,

Respondents.

_____ X

MOTION DATE: 8-19-21; 9-20-21
SUBMITTED: 9-23-21
MOTION NO.: 001-MD
002-MG
003-MG; CASE DISP

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Upon the following papers read on these motions to dismiss; Notice of Motion and supporting papers 19-21; 22-33; Notice of Cross Motion and supporting papers____; Answering Affidavits and supporting papers 34-35; Replying Affidavits and supporting papers 36; 37; it is,

ORDERED that these motions by the respondents for orders dismissing the petition insofar as it is asserted against them are granted.

The petitioner commenced this CPLR article 78 proceeding in the nature of mandamus after this court dismissed his action for a judgment declaring, inter alia, that certain agreements between the Long Island Power Authority ("LIPA") and National Grid Generation, LLC ("National Grid") required the approval of the Public Authorities Control Board ("PACB").

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By an order of this court dated February 17, 2020, the prior action was dismissed insofar as it was asserted against LIPA and National Grid on the grounds that the petitioner's remedy was a proceeding in the nature of mandamus, that the petitioner did not have standing to maintain the action, and that the action was time-barred (*see, Cook v Long Island Power Authority*, Index No. 604663-20). The petitioner subsequently commenced this proceeding. The petitioner seeks a judgment directing LIPA to submit to the PACB, inter alia, all tax certiorari filings and agreements involving LIPA's legacy power plants from 1999 to the present. LIPA and the PACB separately move to dismiss the petition.

Preliminarily, the court notes that, while the agreements that are the subject of this proceeding are varied, the petitioner's focus is on LIPA's tax-certiorari claims and the settlement of such claims against, inter alia, the Town of Huntington in November 2020 (the "LIPA Settlement Agreement"). This is the second time that the petitioner has sought to challenge LIPA's tax-certiorari claims and the LIPA Settlement Agreement. The petitioner made similar arguments and sought a similar outcome in the prior litigation.

The motions are granted for a variety of reasons. First, the petitioner has failed to demonstrate an injury-in-fact that falls within his zone of interest (*Skelos v Paterson*, 65 AD3d 339, 344 *revd on other grounds* 13 NY3d 141) and that is different in kind from the public at large (*Matter of AEP Resources Serv. Co. v Long Is. Power Auth.*, 179 Misc 2d 639, 648, *citing Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761). He, therefore, lacks standing to challenge LIPA's authority to enter into a contract without approval from the PACB.

Second, before commencing a proceeding in the nature of mandamus, it is necessary to make a demand and await a refusal (*see, Matter of Blue v Commissioner of Social Servs.*, 306 AD2d 527, 528). The statute of limitations begins to run on the date of the refusal and expires four months later (*Id.*). The period in which action is to be taken cannot be indefinitely extended by delaying the demand (*Id.*). An allegedly aggrieved party who does not proceed promptly and make a formal demand may be charged with laches (*Id.*). The reasonable-time requirement for a prompt demand should be measured by the four-month statute of limitations of CPLR article 78 (*Id.*). Thus, a demand should be made no more than four months after the right to make the demand arises (*Id.*).

The petitioner made no demands for LIPA to submit any agreements to the PACB until February 18, 2021, and then he made only two demands. One involved an agreement between LIPA and South Fork Wind LLC dated January 2017. That demand, made four years after the agreement was entered into, was untimely. The other demand involved the LIPA Settlement Agreement dated November 2020. The record reflects that the petitioner was a Huntington Town Council Member who voted on the LIPA Settlement Agreement in September 2020. Six months earlier, in March 2020, he commenced the above-referenced declaratory judgment action alleging that, without the requested declaratory relief, he could not fulfill his duties as a Council Member and vote on the LIPA Settlement Agreement. He, therefore, was

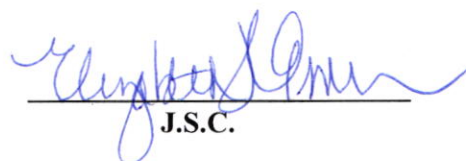
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aware of and could have made a demand for the LIPA Settlement Agreement to be submitted to the PACB as early as March 2020. The court finds that his demand a year later, in February 2021, was also untimely.

Finally, contrary to the petitioner's contentions, neither LIPA's tax-certiorari claims nor the LIPA Settlement Agreement involve a "project" within the meaning of Public Authorities Law § 1020-b (12-a). Accordingly, the petition is dismissed.

Dated: November 3, 2021



J.S.C.

HON. ELIZABETH HAZLITT EMERSON