

LONG ISLAND POWER AUTHORITY

MINUTES OF THE 129th MEETING

HELD ON DECEMBER 12, 2000

Pursuant to notice dated December 4, 2000, the Long Island Power Authority (the "Authority") was convened for the one hundred and twenty-ninth time at 10:25 AM at the Omni Teleconference Center in Uniondale, NY.

The following Trustees of the Authority were present:

Richard M. Kessel, Chairman
Howard Steinberg, Deputy Chairman
Michael Affrunti
NancyAnn Akeson
Harvey Auerbach
Thomas Doherty
Michael Faltischek
Harriet Gilliam
Joseph Janoski
Robert Maimoni
Nancy Nugent
Vincent Polimeni
Jonathan Sinnreich

Also representing the Authority were Seth Hulkower, Chief Operating Officer, Stanley Klimberg, General Counsel, Campbell Ayling, Associate General

Counsel, David Warren, Chief Financial Officer, Edward Grilli, Chief of Staff, Edward Murphy, Vice President and Controller, David Feldman, Budget Director, Bert Cunningham, Vice President - Communications, Christopher Furlong, Director of Customer Relations, Richard Bolbrock, Vice President – Power Markets, Bruce Germano, Vice President – Retail Sales, William Davidson, Director of Government Relations, Laurie Leat, Secretary to the Board, Michael Hervey, Director of Transmission & Distribution Operations, Debra Raso, Special Assistant to the Chairman, and Meena Malhotra, Senior Accountant.

Upon determining that a quorum was present, the Chairman called the meeting to order.

Chairman Kessel stated that the first item on the agenda is approval of the minutes of the November 16 Board Meeting.

Upon motion duly made and seconded, the following resolution was approved unanimously:

511. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 16, 2000 MEETING OF THE BOARD OF TRUSTEES OF THE

LONG ISLAND POWER AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held on November 16, 2000, are hereby approved and all actions taken by the Trustees present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

* * *

Chairman Kessel entertained a motion to go into executive session to discuss the Shoreham litigation.

Upon motion duly made and seconded, the following resolution was approved unanimously:

512. EXECUTIVE SESSION - PURSUANT TO SECTION 105 OF THE PUBLIC OFFICERS LAW

RESOLVED, that pursuant to Section 105 of the Public Officers Law, the Trustees of the Long Island Power Authority shall convene in Executive Session for the purpose of discussing Shoreham litigation.

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At 10:37 a.m. the open session of the Board of Trustees was temporarily adjourned and an executive session of the Board of Trustees was convened. At

11:30 a.m. the executive session was adjourned and the open session was reconvened.

Chairman Kessel proposed that if, as expected, the major Suffolk County taxing jurisdictions including Suffolk County appeal the decision issued last week by State Supreme Court Justice Gowan regarding the Shoreham Settlement Agreement, then LIPA should join in such appeal.

Trustee Janoski asked whether, if one of the taxing jurisdictions does not join the appeal, that would preclude LIPA from joining the appeal. Chairman Kessel replied that if one or more major litigants choose not to appeal, then the LIPA Board members would discuss alternatives at that time.

Trustee Sinnreich stated that whether or not the other litigants choose to appeal, LIPA should appeal. He stated that the fundamental issue at stake in the appeal is broad and concerns LIPA's powers to achieve the goals set forth in the LIPA Act to further the interests of the ratepayers and taxpayers.

Trustee Auerbach stated that if the major litigants do not appeal, that matter can be discussed at a future date and need not be part of the resolution at this time.

Trustee Maimoni stated that the resolution should not address what LIPA will do if it loses the appeal. He indicated that the resolution should be structured to provide that LIPA intends to appeal and will undertake due deliberation at a later date if it loses the appeal.

Trustee Polimeni stated that the LIPA Board and the Chairman did an incredible job at crafting the Shoreham settlement and it has been beneficial to the ratepayers, Suffolk County, Nassau County and others.

Trustee Doherty stated that the resolution should provide that LIPA will enforce all of its rights under the Shoreham Settlement Agreement. He indicated that he agrees with Trustee Polimeni that the settlement was fair and equitable. Trustee Doherty also stated that Suffolk County should step up and take the lead role in an appeal, and LIPA should support the County in that effort and be a party to the appeal.

Trustee Janoski stated that the executive branch of Suffolk County might want the County to pursue an appeal but that the legislative branch, because of concerns relating to the Towns of Smithtown, Babylon, Islip, and Southampton, may not want the County to pursue the appeal. He also indicated his belief that LIPA has an obligation in any event to move forward in an appeal.

Chairman Kessel reaffirmed that LIPA should appeal if the other major litigants including Suffolk County choose to appeal, and indicated that LIPA would join forcefully in such appeal. He also indicated that the resolution should not bind LIPA to appeal if other major litigants choose not to. He stated that the resolution should specifically address LIPA's rights under the Shoreham Settlement Agreement, since others may seek to mislead the public in that regard.

Upon motion duly made and seconded, the following resolution was approved with Trustee Maimoni opposing:

513. RESOLUTION REGARDING APPEAL OF DECISION CONCERNING THE SHOREHAM SETTLEMENT AGREEMENT

WHEREAS, by Decision dated December 5, 2000 ("Decision"), in an Article 78 proceeding commenced by the Town of Islip and the Supervisors of the Towns of Islip, Babylon, Smithtown and Southampton, and joined in by the Town of Smithtown

on the side of those petitioners, New York State Supreme Court Justice James A. Gowan declared that to the extent the Shoreham Settlement Agreement (“Agreement”) imposes a surcharge on electric rates on Suffolk County ratepayers, the Agreement violates the Suffolk County Tax Act and is unlawful;

NOW, THEREFORE, BE IT RESOLVED, that if as expected the major Suffolk County taxing jurisdictions including Suffolk County appeal the Decision, then the Long Island Power Authority (“Authority”) and its subsidiary, LIPA, (collectively “LIPA”) shall join and fully support those parties in the appeal of the Decision; and be it further

RESOLVED, that in the event the Decision is upheld on appeal, LIPA shall, as provided by the Agreement, proceed expeditiously to enforce the Reduced Property Tax Judgment and collect from Suffolk County the greater of (1) \$620 million, plus the statutory interest in effect at that time, less an amount equal to the principal amount of Shoreham Tax Settlement Bonds which have been paid with the Surcharge imposed on electric rates on Suffolk County ratepayers, or (2) the sum of the amount payable by the Authority to fully satisfy its remaining debt service and Related Obligations incurred from time-to-time in connection with the Shoreham Settlement Bonds and the amount required to substantially equalize in the aggregate the rebates and credits received by all ratepayers pursuant to paragraphs 6.1 and 16 of the Agreement; and be it further

RESOLVED, that in the event the Suffolk County Legislature or any member acting in its behalf commences any action or proceeding, or asserts a claim or argument in any action or proceeding commenced by another party, challenging LIPA’s right under the Agreement, as referenced in the preceding paragraph, to collect from Suffolk County the Reduced Property Tax Judgment with interest if the Decision is upheld on appeal, then the Authority, as provided by the Agreement, intends to declare the Agreement and the Reduced Property Tax Judgment null and void; and be it further

RESOLVED, that should the Authority declare the Agreement and the Reduced Property Tax Judgment null and void as a result of the occurrence of the event(s) as referenced in the preceding resolved clause, LIPA intends, among other things, to proceed expeditiously to collect from Suffolk County the full Shoreham Property Tax Judgment plus applicable interest, pursue its claims for overpayment of Shoreham payments in lieu of taxes and pursue all other legally available remedies.

Chairman Kessel stated that the next item on the agenda is a proposed resolution approving the Fiscal Year 2001 Operating and Capital Budgets for the Long Island Power Authority and its subsidiary, LIPA. He stated that fuel and purchased power costs are budgeted at \$927.2 million, operation and maintenance expenses at \$670.5 million, general and administrative expenses at \$16.3 million, depreciation and amortization expenses at \$211.7 million, other income and deductions at \$63.9 million, interest expenses at \$365.1 million, and that cash flow from operations is forecast to be \$246 million. He indicated that the capital budget totals \$241.9 million.

Following a motion duly made and seconded to approve the 2001 Operating and Capital Budgets, Chairman Kessel asked the Chairman of the Finance Committee, Trustee Polimeni, to address the activities of that Committee in reviewing the proposed budgets. Trustee Polimeni reported that the Finance Committee has spent considerable time reviewing the budgets with LIPA's budget team, led by Mr. Warren. Trustee Polimeni indicated that the Finance Committee is completely comfortable with and supports adoption of the budgets.

Trustee Sinnreich stated that a LIPA staffing schedule he received this morning should be distributed to all of the Trustees prior to the vote on the budgets.

The schedule was distributed to all of the Trustees.

Trustee Doherty indicated that the Finance Committee, of which he is a member, spent significant time examining the fuel cost issue. He stated that LIPA should address this issue in the early part of 2001.

Chairman Kessel stated that one of LIPA's big concerns is the fuel cost issue and he would like to work quickly on this issue. He indicated that LIPA is preparing a list of several options to be discussed with the Trustees. He emphasized that LIPA is striving to find ways to deal effectively with this important issue in an effort to ensure that customers are protected as much as possible from the effects of higher fuel costs.

Trustee Akeson requested that the Board be presented with the options prior to a vote on the fuel cost issue. She also requested that workshops be set up to discuss the options. Chairman Kessel agreed.

Chairman Kessel stated that LIPA is currently working on a new bill format, which is due in February, in order to segregate the gas portion, for which LIPA is not responsible, from the LIPA electric portion of the bill. He pointed out that this change

will help make clear to customers that it is the gas portion of the bill that is increasing, not the electric portion. He also indicated that LIPA is looking into restructuring the billing process, which could include separate billing for electricity and gas.

Trustee Nugent indicated that given the concerns regarding the joint gas and electric bill, LIPA should actively pursue the segregation being considered and get its message out to the public. Chairman Kessel agreed and asked Trustee Nugent to take the lead and work with Bert Cunningham on a strategy to get LIPA's message out to the public. Trustee Nugent agreed.

Trustee Faltischek asked whether public comment was received on the fuel cost pass-through issue at LIPA's public hearing held on December 4, 2001 on the 2001 Operating and Capital Budgets. Chairman Kessel stated that only one specific reference was made to that issue by the members of the public in attendance. One such member offered the view that LIPA's tariff requires that following review of the previous year's results, an automatic pass-through of the fuel costs is to be undertaken.

The following resolution was approved unanimously:

514. APPROVAL OF THE 2001 OPERATING AND CAPITAL BUDGETS

WHEREAS, the Long Island Power Authority (“Authority”), through its wholly owned subsidiary, LIPA, owns and operates the electric transmission and distribution system (“T&D System”) serving the counties of Nassau and Suffolk and a small portion of the county of Queens known as the Rockaways; and

WHEREAS, the Board of Trustees is required to approve annual budgets for the operation and maintenance of the T & D System and for capital improvements; and

WHEREAS, the Authority released its proposed 2001 Operating and Capital Budgets on November 16, 2000; and

WHEREAS, the Authority conducted a public hearing on the proposed 2001 Operating and Capital Budgets on December 5, 2000; and

WHEREAS, the proposed 2001 Operating and Capital Budgets have been reviewed and approved by the Finance Committee of the Board of Trustees;

NOW, THEREFORE, BE IT RESOLVED, that the 2001 Operating and Capital Budgets, which are attached hereto, are hereby approved; and be it further

RESOLVED, that the Authority intends to finance the requirements of the 2001 Capital Budget through the issuance of tax-exempt debt of the Authority, to the extent permitted by law.

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Chairman Kessel indicated that the last item on the agenda for action by the Trustees is a proposed resolution approving the Third Supplemental Subordinated Resolution and Authorization for the Issuance of Commercial Paper Notes.

Chairman Kessel indicated that the Trustees are being requested to approve and adopt a Third Supplemental Subordinated Resolution under the Electric System General Subordinated Revenue Bond Resolution, which was adopted by this Authority on May 20, 1998; and to approve and adopt an Authorizing Resolution adopting the Third Supplemental Subordinated Resolution and authorizing and approving various related matters (collectively “resolution”). He asked Mr. Warren to explain the resolution and address any questions and comments.

Mr. Warren explained that this resolution is a continuation of the plan reported previously to, and authorized by, the Trustees for the Authority to establish a commercial paper program, which is effectively a revolving credit facility for the Authority to use for capital projects. He indicated that an application regarding this resolution has been made to the Public Authorities Control Board and is expected to be approved at their next meeting which is scheduled for December 13, 2001. Mr. Warren opened the floor to questions.

Deputy Chairman Steinberg stated he has a concern about the concept of issuing short-term paper to fund capital projects. He asked Mr. Warren to indicate the maximum amount of commercial paper that would be authorized to be issued, and he

inquired as to what projects would be funded. Mr. Warren responded that this resolution authorizes \$300 million, and that subsequent issuances are not subject to a set maximum but will be subject to authorization by the Trustees. He explained that the commercial paper would fund the whole range of projects in LIPA's capital budget for 2001, and could also be used to fund projects already in place and authorized under LIPA's 2000 budget.

Noting that the resolution authorizes the designation of dealers, Trustee Maimoni requested Mr. Warren to explain who the dealers are, what they do for the Authority and how they were chosen. Mr. Warren responded that the dealers are investment banking firms, or broker-dealers, that assist in selling the commercial paper to institutional investors. He also explained that the dealers would be selected from the five senior managing underwriters which were approved by the Trustees at the September meeting following a very competitive procurement process. Each firm's qualifications will be reviewed and the Authority will choose one or more from the group of five. He also indicated that the dealer fees are very small and all the firms charge essentially the same rate for their services.

Upon motion duly made and seconded, the following resolution was approved with Deputy Chairman Steinberg opposing.

**515. ADOPTING THE THIRD SUPPLEMENTAL SUBORDINATED RESOLUTION
AUTHORIZING COMMERCIAL PAPER NOTES AND APPROVING CERTAIN
RELATED AGREEMENTS AND INSTRUMENTS**

WHEREAS, the Long Island Power Authority (the "Authority") was created by the Long Island Power Authority Act (the "Act"), constituting Title 1-A of Article 5 of the Public Authorities Law of the State of New York; and

WHEREAS, the Act empowers the Authority, among other things, to issue its bonds and notes for any purposes authorized thereby and to adopt resolutions establishing the contract with its bond and note holders; and

WHEREAS, on May 20, 1998 the Authority adopted its Electric System General Subordinated Revenue Bond Resolution (the "General Subordinated Bond Resolution"), which, consistent with the Act, authorizes special obligations of the Authority (hereinafter "Subordinated Bonds") in accordance with the terms thereof for any lawful purpose; and

WHEREAS, Section 2.05 of the General Subordinated Bond Resolution requires that the issuance of each series of Subordinated Bonds by the Authority shall be authorized by a supplemental resolution or resolutions of the Authority adopted at or prior to the time of issuance, subject to further delegation to certain officers to establish the details of the terms of such Subordinated Bonds; and

WHEREAS, the duly authorized officers of the Authority have caused to be prepared and submitted to the Trustees a form of Supplemental Resolution entitled "Third Supplemental Subordinated Resolution Authorizing Commercial Paper Notes," pursuant to which the Authority will authorize the issuance, sale and delivery of Subordinated Bonds to be designated as Commercial Paper Notes (the "Commercial Paper Notes") in order to pay or reimburse Costs of System Improvements, to pay any amounts due under any Financial Contracts (as defined in the General Subordinated Bond Resolution) entered into in connection with the Commercial Paper Notes, to refund Commercial Paper Notes, to pay fees and expenses incurred in conjunction with each of the foregoing and the issuance of the Commercial Paper Notes, and any other purposes as may be specified by subsequent Authority resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE TRUSTEES OF THE LONG ISLAND POWER AUTHORITY, AS FOLLOWS:

1. The Third Supplemental Subordinated Resolution, in the form presented to this meeting and made a part of this resolution as though set forth in full herein, is hereby approved and adopted. The Chairman of the Authority is hereby authorized to deliver the Third Supplemental Subordinated Resolution to the Trustee (as defined in the General Subordinated Bond Resolution), with such amendments, supplements, changes, insertions and omissions thereto as may be approved by the Chairman, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted hereby.

2. The Authorized Representative (as defined in the General Subordinated Bond Resolution) is hereby authorized and directed to execute and deliver any and all documents and instruments and to do any and all acts necessary or proper for carrying out the issuance, sale and delivery of the Commercial Paper Notes and for implementing the terms of, and the transactions contemplated by, the Third Supplemental Subordinated Resolution and this resolution and each of the documents authorized thereby and hereby, including, without limitation, the delivery of Certificates of Determination (as defined in the Third Supplemental Subordinated Resolution).

3. This resolution shall take effect immediately.

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As the next agenda item, Chairman Kessel asked Mr. Warren and Mr. Murphy to deliver the financial report.

Trustees Sinnreich, Faltischek, Steinberg and Maimoni exited the teleconference room.

Mr. Warren referred the Trustees to materials previously furnished to them in the Board packets which address LIPA's current projection of cash at year-end 2000. He stated that the Board has been updated at each meeting on that projection. He indicated that LIPA's past projections of cash at year-end 2000 has centered around \$300 million, and LIPA's current projection is in the range of \$325 - \$330 million.

Chairman Kessel entertained a motion to adjourn. Upon motion duly made and seconded, the Board voted unanimously to adjourn the meeting at 12:20 p.m.

Respectfully submitted,

Stanley B. Klimberg