

## **Proposal Concerning Modifications to LIPA's Tariff for Electric Service**

### **Requested Action:**

On April 23, 2009, the Board authorized the President and CEO, or his designee, to execute a settlement agreement, and other related agreements, between the Long Island Power Authority, and its wholly-owned subsidiary, the Long Island Lighting Company, d/b/a LIPA, (together "LIPA"), and the Long Island Railroad ("LIRR"), in connection with the provision of power supply by LIPA to LIRR and the grant of easement rights to LIPA by LIRR. The agreement is authorized by the current tariff but has not been executed. In an exercise of caution, and to avoid any possible controversy regarding the rates that have been negotiated, LIPA Staff hereby proposes revisions to the Tariff for Electric Service ("Tariff") that will explicitly authorize LIPA to contract with the Metropolitan Transit Authority ("MTA") for traction power service to the Long Island Rail Road at the rates in the approved contract. Staff also proposes that the Tariff be amended to authorize the resale of power purchased from the New York Power Authority ("NYPA") to the Brookhaven National Laboratories ("BNL") at the NYPA/LIPA contract price plus LIPA's wholesale transmission rate. Finally, Staff proposes that the name of Service Classification No. 13 ("SC 13") be changed to "Negotiated Rate Service for Large Commercial Customers".

### **Background:**

The SC 13 Tariff currently authorizes LIPA to offer negotiated rates to attract, expand or retain load that would otherwise locate outside the LIPA service territory or to avoid the substitution of LIPA load with on-site generation. . This broad language, in our view, authorizes service at negotiated rates to the Long Island Rail Road through its owner, the Metropolitan Transportation Authority and service at negotiated rates to the Brookhaven National Laboratories, which is eligible for lower cost NYPA power if LIPA is willing to deliver the power without increasing its price. The current should be clarified, however, to avoid any controversy with regard to negotiated rates for either type of service. The contracts that LIPA negotiates pursuant to this Tariff authority will not take effect unless they are approved by the Trustees in accordance with LIPA's governing statutes. They would also be conditioned on approval by the Office of the Attorney General and the Office of the State Comptroller.

The term "Traction Power" refers to electricity used to power the Long Island Railroad trains, switches, signal systems and associated incidental loads. Traction Power does not include the electricity used at stations, buildings and parking lots. The Long Island Rail Road had a long term, negotiated contract for Traction Power service with LILCO, which LIPA assumed in 1998. That contract has expired, and LIPA has negotiated with the MTA the terms of a new agreement. The Long Island Rail Road is LIPA's largest customer, has unique operating characteristics, and serves a vital public purpose that benefits Long Island. Staff, therefore, proposes that the authority to

negotiate a contract for a term beyond seven years with the MTA for Traction Power be explicitly incorporated into the Tariff. Staff believes that the tariff should allow for the option of a contract with the MTA to extend beyond the normal seven year term authorized for other negotiated contracts because: (a) the Long Island Railroad provides essential and continuous transportation service, which requires a degree of electric supply and relative price stability for long term planning; and (b) a long term contract for traction power would facilitate the MTA's long term statutory commitment to the Long Island region.

NYPA, with the approval of its Board of Trustees, offers lower cost power to certain entities within the LIPA service territory. Much of that power is sold directly by NYPA to end users, with LIPA providing wholesale transmission and distribution service to NYPA under a Tariff on file with the Federal Energy Regulatory Commission ("FERC"). NYPA has access to several sources of low cost power, including market transactions in the upstate and out-of-state regions. In addition, NYPA owns transmission cables under the Long Island Sound that enables it to deliver these low cost power supplies to Long Island at a substantial discount over what it costs to generate power on Long Island.

BNL currently receives all of its power from NYPA with LIPA providing wholesale transmission service to NYPA across the LIPA service territory. NYPA has provided such power to BNL at a substantial discount from market rates, which has aided BNL to compete for science projects and U.S. Department of Energy ("DOE") technology investments and prevent the layoffs of hundreds of people working at BNL's facility on Long Island, which would have devastating effects on Long Island's economy. BNL is one of a handful of customers on Long Island that receive power under NYPA's economic development power (EDP) or municipal distribution agency (MDA) programs.

NYPA would also like to provide lower cost hydroelectric power to BNL under a "Sale for Resale" arrangement with LIPA purchasing the power from NYPA and reselling it to BNL as LIPA's retail customer. Because the provision of such power would benefit the LIPA service territory, and to avoid any potential for controversy, Staff recommends that the Tariff be modified to authorize LIPA to provide that power pursuant to negotiated rates consisting of the contract price found in the "Sale for Resale" agreement with NYPA plus a charge equivalent to the wholesale transmission rate for delivery of power.

At the time that LIPA acquired LILCO and created the Tariff for Electric Service, SC 13 referred to "Non-Bypass Service". Previously, LILCO was authorized by the New York Public Service Commission to negotiate special contracts in situations where large commercial customers might bypass the LILCO system by constructing on-site generation that would disadvantage the remaining customers on the LILCO system. Since the LIPA acquisition in 1998, SC 13 has been expanded to authorize negotiated contracts to attract, or retain load from large commercial customers. Since the scope of SC 13 continues to expand, Staff recommends that the name be changed to "Negotiated

Rate Service for Large Commercial Customers” to more fully reflect the nature of the service.

**Proposed Tariff Changes:**

**Change the name of Service Classification No. 13 to “Negotiated Rate Service for Large Commercial Customers” and add two new criteria for eligibility.**

**Affected Tariff Leaves:** 6, 270, 271, 272, 273, 274,275,276, 277, 278 and 279

**Reason for Tariff Change**

Staff requests tariff authorization to negotiate contracts to deliver electricity to the MTA and BNL in order to benefit the LIPA service territory. The contracts would be subject to Trustee and other approvals required by New York State regulations.

**Financial Impacts:**

The financial impact of the proposed tariff change is specific to each negotiated contract. With regard to Traction Power Service, the negotiated contract with the MTA is in furtherance of a settlement agreement authorized by the Authority’s Board of Trustees at its April 23, 2009 meeting. This settlement was negotiated in connection with the provision of power supply by LIPA to LIRR and the grant of easement rights to LIPA by LIRR. LIPA staff believes that the settlement agreement is beneficial to both parties for the following principal reasons: 1) the proposed retroactive billed rate and prospective billed rate for traction service is reflective of LIPA’s cost to provide such service; 2) the proposed increase in the LIRR rights of way rental value to be paid by LIPA is consistent with an independent appraisal obtained by LIPA; and 3) the mutual agreement to freeze rates for 10 years is consistent with providing better cost predictability to both sister authorities serving a similar customer base and poses limited risk to LIPA. The tariff modifications requested here will not change the financial impacts as presented to the Trustees relating to the approval of the settlement agreement with the MTA. In addition, the proposed agreement with Brookhaven National Labs and NYPA is structured so that LIPA receives exactly the same level of revenue (net of power supply costs) that it receives today under the existing arrangement. Therefore, no financial impact is anticipated from that proposed negotiated contract.

**Summary of Proposed Changes:**

In summary, the proposed changes to LIPA’s Tariffs for Electric Service will modify Service Classification No. 13. The proposed revised Tariff Leaf Nos. 6, 270, 271, 272, 273, 274, 275, 276, 277, 278 and 279 are attached.