

LONG ISLAND POWER AUTHORITY

MINUTES OF THE 293rd MEETING

HELD ON NOVEMBER 18, 2020

The Long Island Power Authority (“LIPA”) was convened for the two-hundred-and-ninety-third time at 11:12 a.m. at LIPA’s Headquarters, Uniondale, NY, pursuant to legal notice given on November 13, 2020, and electronic notice posted on the LIPA’s website.

In compliance with Governor Andrew M. Cuomo’s Executive Order No. 202.1 on COVID-19 safety, the following guidelines were publicly posted and followed:

The Long Island Power Authority is taking steps to minimize the risk of exposure for the public and our employees. As such, LIPA will not be permitting in-person access to its November 18, 2020 Board meeting. Members of the public are encouraged to observe the live stream of the Board meeting posted at the LIPA website. The meeting will also be recorded and posted to LIPA’s website for later viewing

The following LIPA Trustees were present:

Ralph Suozzi, Chairman (via video conferencing)
Matthew Cordaro (in person)
Elkan Abramowitz (via video conferencing)
Drew Biondo (via video conferencing)
Sheldon Cohen (via video conferencing)
Mark Fischl, Acting Chair (in person)
Peter Gollon (via video conferencing)
Laureen Harris (via video conferencing)
Ali Mohammed (via video conferencing)

Representing LIPA, in person, were Thomas Falcone, Chief Executive Officer; Bobbi O’Connor, Chief Administrative Officer & Board Secretary; Rick Shansky, Senior Vice President of Operations Oversight; and Jen Hayen, Director of Communications. Participating via video conferencing were Anna Chacko, General Counsel; Mujib Lodhi,

Chief Information Officer; Tamela Monroe, Chief Financial Officer; Kenneth Kane, Senior Advisor to Operations Oversight; Justin Bell, Vice President of Public Policy and Regulatory Affairs; Michael Deering, Vice President of External Affairs; Thomas Locascio, Director of External Affairs; Gerard Ring, Director of Budget and Financial Oversight; Jason Horowitz, Assistant General Counsel and Assistant Secretary to the Board; and Osman Ahmad, IT-Consultant.

Acting Chair Fischl welcomed everyone to the 293rd meeting of the Long Island Power Authority Board of Trustees and gave his opening remarks.

Acting Chair Fischl stated that the first item on the agenda was the Consideration of the Consent Agenda Items.

After questions and a discussion by the Trustees, and the opportunity for the public to be heard, upon a motion duly made and seconded, the following resolutions were unanimously adopted by the Trustees based on the memoranda summarized below:

1567. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE SEPTEMBER 23, 2020 MEETING OF THE BOARD OF TRUSTEES OF THE LONG ISLAND POWER AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held on September 23, 2020 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.

Acting Chair Fischl stated that the next item on the agenda was the Discussion of Isaias Storm Scorecard to be presented by Rick Shansky.

Mr. Shansky presented the Discussion of Isaias Storm Scorecard and took questions from the Trustees.

Acting Chair Fischl stated that the next item on the agenda was the Discussion of the 90-Day Report from Isaias Task Force by Thomas Falcone and Mujib Lodhi.

Mr. Falcone and Mr. Lodhi presented the Discussion of the 90-Day Report from Isaias Task Force and took questions from the Trustees.

Acting Chair Fischl stated that the next item on the agenda was the Consideration of the Adoption of Recommendations from the Isaias Task Force Reports and the Storm Scorecard Evaluation to be presented by Thomas Falcone.

After requesting a motion on the matter, which was seconded, Mr. Thomas Falcone presented the following action item and took questions from the Trustees.

Requested Action

The Board of Trustees (the “Board”) of the Long Island Power Authority (“LIPA”) is requested to approve a resolution adopting (i) the recommendations from the 30-Day Report and the 90-Day Report (collectively, the “Reports”) of LIPA’s Isaias Task Force (the “Task Force”); and (ii) the Storm Scorecard Evaluation, which resolution is attached hereto as Exhibit “A”.

Background

On Tuesday, August 4, 2020, Tropical Storm Isaias landed on Long Island with rain and wind gusts of up to 70 miles per hour. The resulting damage to the electrical system caused approximately 646,000 customer outages.

On August 5, LIPA’s Chief Executive Officer initiated an independent review of the circumstances and root causes that led to well-documented lapses in PSEG Long Island’s storm response. The Task Force was charged with providing actionable recommendations and overseeing PSEG Long Island’s remediation activities. LIPA committed to reporting the Task Force’s findings and recommendations to the LIPA Board of Trustees and the public in a 30-Day Preliminary Report, 90-Day Interim Report, and 180-Day Final Report.

The Task Force presented the 30-Day Report to LIPA’s Board of Trustees at the September 23, 2020 Board Meeting and released it to the public. Because of the urgency of the immediate threat of another major storm, the 30-Day Report focused on the failures of PSEG Long

Island’s information technology and communication systems and their proximate causes. The 90-Day Report expands on those findings and addresses broader questions on the effectiveness of PSEG Long Island’s management of utility operations.

Additionally, Section 8.4(C) of the Amended and Restated Operations Services Agreement (“OSA”) between LIPA and PSEG Long Island establishes the criteria for metrics failure, including failure of the Major Storm Performance Metric. The OSA provides LIPA with the right to terminate its contract with PSEG Long Island without penalty “if ...the Service Provider, in the then-current Contract Year and any one of the preceding two (2) Contract Years, fails to achieve at least 410 points out of a maximum of 1,000 points as calculated pursuant to the modified version [of the Storm Scorecard], as agreed upon by LIPA and the Service Provider in the letter agreement dated as of the date of the Agreement. . .” LIPA also retains other contract termination rights.

The Storm Scorecard is based on a 1,000-point maximum score, spread across the dimensions of Preparation (100 possible points), Operational Response (600 possible points), and Communications (300 possible points). Consistent with the Public Service Commission Order in Case 13-E-0140, within each dimension, the component measures are each scored on a satisfactory/unsatisfactory basis, as measured against the established criteria within the context of the approved Emergency Restoration Plan (“ERP”).

Recommendations from the 30-Day and 90-Day Reports

As set forth in Appendix 2 and Appendix 3 of the 90-Day Report, the Task Force has provided nearly 100 recommendations for the Board’s consideration (the “Task Force Recommendations”).

The Task Force Recommendations are designed to, among other things, (i) Change Management Incentives and Accountabilities; (ii) Reform Information Technology and Emergency Management; and (iii) Strengthen LIPA’s Oversight. The Task Force Recommendations are tiered based upon priority. The tiered system allows LIPA and PSEG Long Island to either implement or present implementation plans for the most critical recommendations on an accelerated basis.

Storm Scorecard Failure

LIPA’s evaluation of the Storm Scorecard for Tropical Storm Isaias, included as Appendix 4 of the 90-Day Report, demonstrated the failure of PSEG Long Island to achieve a minimum score of 410 out of 1,000 points on the Storm Scorecard. PSEG Long Island’s response to Tropical Storm Isaias earned 260 out of a possible 1,000 points.

DPS Investigation and Recommendation

On August 5, Governor Andrew M. Cuomo directed the Department of Public Service (“DPS”) to conduct an investigation into utility performance, including the performance of PSEG Long Island.

On August 18, DPS issued a Notice of Apparent Violations and Direction of Prompt Remedial Action letter to PSEG Long Island for its apparent failures to properly anticipate and/or respond to the weather emergency in accordance with its approved ERP.

On November 13, DPS provided a recommendation (the “DPS Recommendation”) to the LIPA Board as a result of its ongoing investigation of PSEG Long Island’s storm response (see Exhibit C). DPS Staff has identified more than 70 potential violations of PSEG Long Island’s ERP. The DPS recommends, among other things, that LIPA:

- **evaluate options to terminate PSEG Long Island as LIPA’s Service Provider;**
- **declare PSEG Long Island’s poor performance during Isaias as a first failure of the Major Storm Performance Metric as defined in the OSA; and**
- **seek to either terminate or renegotiate the OSA to enable greater oversight by LIPA and DPS.**

Implementation Plans, Contingency Plans, and Status Reports

The 90-Day Report and the DPS Recommendation both recommend either termination or renegotiation of the OSA. If LIPA and PSEG Long Island cannot reach an agreement on acceptable contractual and management reforms, or if there is a lack of progress to implement the Task Force Recommendations, the Task Force recommends that the Board of Trustees consider the exercise of its rights to terminate the OSA contract with PSEG Long Island before 2025.

The Board of Trustees has requested regular reporting on the status of each Task Force Recommendation, as well as actions taken by staff in response to the DPS Recommendation.

LIPA’s Isaias Task Force, in coordination with PSEG Long Island, will submit an Implementation Plan for each Task Force Recommendation to the Board of Trustees. The Implementation Plan for those recommendations designated as Tier 1 shall be completed by the Board’s December meeting, currently scheduled for December 16, 2020. The Implementation Plan for those recommendations designated as Tier 2 shall be completed for the Board’s January 2021 meeting. The Implementation Plan for those recommendations designated as Tier 3 shall be completed simultaneous with the Task Force’s completion of the 180-Day Report. Thereafter, the Task Force shall submit a Status Report to the Board no less than quarterly that summarizes the status of the Implementation Plans for each Task Force Recommendation, including:

- **a summary of activities completed to date,**
- **any revisions to completion targets contained within an Implementation Plan for a Recommendation, and**
- **the Task Force’s opinion of the effectiveness of the Implementation Plan in addressing each Task Force Recommendation.**

Furthermore, the Board has requested that the Chief Executive Officer conduct contingency planning for the termination of the OSA and report to the Board on the results.

Recommendation

The issues identified by the Task Force’s investigation, as well as the DPS’ separate investigation, need to be fixed with urgency. Furthermore, the Board retains its contractual, legal, and equitable claims against PSEG Long Island for its unsatisfactory performance before, during, and after Tropical Storm Isaias. Based upon the foregoing, I recommend approval of the above requested action by adoption of a resolution in the form attached hereto.

After questions and a discussion by the Trustees, and the opportunity for the public to be heard, upon a motion duly made and seconded, the following resolutions were approved by the Trustees.

1568. RESOLUTION ADOPTING THE RECOMMENDATIONS FROM LIPA’S ISAIAS TASK FORCE AND STORM SCORECARD EVALUATION

WHEREAS, on Tuesday, August 4, 2020, Tropical Storm Isaias landed on Long Island with rain and wind gusts of up to 70 miles per hour, resulting in damage to the electrical system and causing approximately 646,000 customer outages; and

WHEREAS, pursuant to Section 1020-f(y) of the Public Authorities Law, General Powers of the Authority, LIPA, in part, may “make any inquiry, investigation, survey or study which the authority may deem necessary to enable it effectively to carry out the provisions of this title. . .”; and

WHEREAS, pursuant to Section 4.4(16), Rights and Responsibilities of LIPA, of the Amended and Restated Operations Services Agreement (“OSA”), LIPA, in part, has the right to “make recommendations to the Service Provider, in each case as may be reasonably necessary or appropriate to perform LIPA’s oversight responsibilities and obligations with respect to the provision of Operations Services under this Agreement and as may otherwise be necessary or appropriate to comply with LIPA’s legal, contractual and fiduciary obligations. . .”; and

WHEREAS, pursuant to the OSA, the “Service Provider will be deemed to have failed the Major Storm Performance Metric under Section 8.4(C) of the Agreement if, commencing in the third Contract Year of the Term, the Service Provider, in the then-current Contract Year and any one of the preceding two (2) Contract Years, fails to achieve at least 410 points out of a maximum of 1000 points as calculated pursuant to the modified version, as agreed upon by LIPA and the Service Provider in the letter agreement dated as of the date of the Agreement. . .”; and

WHEREAS, on August 5, LIPA’s Chief Executive Officer initiated an independent review of the circumstances and root causes that led to the lapses in PSEG Long Island’s Tropical Storm Isaias storm restoration; and

WHEREAS, LIPA’s Chief Executive Officer appointed an Isaias Task Force that was charged with both providing actionable recommendations and overseeing PSEG Long Island’s remediation activities; and

WHEREAS, LIPA committed to reporting the Isaias Task Force’s findings, observations, and recommendations to the LIPA Board of Trustees and public in a 30-Day Report, 90-Day Report, and 180-Day Final Report; and

WHEREAS, the Task Force presented the 30-Day Report to LIPA’s Board of Trustees at the September 23, 2020 Board Meeting and released it to the public; and

WHEREAS, the 30-Day Report identified PSEG Long Island’s most consequential failures during Isaias, provided preliminary results of the Task Force’s investigation of the root causes, and recommended corrective actions; and

WHEREAS, the LIPA Board of Trustees has received the 90-Day Report from the Task Force, which provides recommendations to, among other things, (i) Change Management Incentives and Accountabilities; (ii) Reform Information Technology and Emergency Management; and (iii) Strengthen LIPA’s Oversight (together with the 30-Day Report recommendations, the “Task Force Recommendations”); and

WHEREAS, LIPA’s evaluation of the Storm Scorecard showed that PSEG Long Island failed to meet the minimum threshold of 410 points as set forth in the OSA;

WHEREAS, on August 5, the Department of Public Service initiated an investigation into utility performance, including the performance of PSEG Long Island;

WHEREAS, on November 13, the Department of Public Service provided a recommendation to the LIPA Board of Trustees (the “DPS Recommendation”) regarding the poor performance of PSEG Long Island during Tropical Storm Isaias; and

WHEREAS, the Board has reviewed and concurs with the Task Force Recommendations and the DPS Recommendation; and

WHEREAS, the Task Force Recommendations include that if LIPA and PSEG Long Island renegotiate and cannot reach an agreement on acceptable reforms, or should there be a lack of progress to implement the Isaias Task Force Recommendations, the Board of Trustees consider the exercise of its rights to terminate the OSA with PSEG Long Island before 2025 due to the urgent issues identified by the Task Force’s investigation;

WHEREAS, the Board has asked the Isaias Task Force, in coordination with PSEG Long Island, to submit an Implementation Plan to the Board of Trustees for each Task Force Recommendation;

WHEREAS, the Board has asked the Isaias Task Force, to submit a Status Report to the Board no less than quarterly summarizing the status of the Implementation Plans for each Task Force Recommendation; and

NOW, THEREFORE, BE IT RESOLVED, the Board hereby adopts the Task Force Recommendations; and

BE IT FURTHER RESOLVED, that the Board hereby directs the Isaias Task Force, together with PSEG Long Island, to implement the Task Force Recommendations, including the creation of Implementation Plans to be completed within the tiered structure as set forth in Appendix 2 and Appendix 3 of the 90-Day Report; and to report to the Board at least quarterly until such Task Force Recommendations are fully implemented; and

BE IT FURTHER RESOLVED, that the Board hereby directs the Isaias Task Force to opine on the effectiveness of each Implementation Plan in addressing each Task Force Recommendation; and

BE IT FURTHER RESOLVED, that the Board hereby adopts the Storm Scorecard demonstrating PSEG Long Island's failure to meet the minimum threshold of 410 points as set forth in the OSA; and

BE IT FURTHER RESOLVED, that the Board hereby directs the Chief Executive Officer to conduct contingency planning for the termination of the OSA and report to the Board on the results; and

BE IT FURTHER RESOLVED, that the Board directs LIPA's Chief Executive Officer to report on action taken in response to the DPS Recommendation; and

BE IT FURTHER RESOLVED, that PSEG Long Island's performance is wholly unsatisfactory and the Board directs that all of LIPA's potential contractual, legal, and equitable claims be investigated and pursued.

Acting Chair Fischl stated that the last item on the agenda was the Annual Budget Presentation to be presented by Thomas Falcone and members of the LIPA Executive Management Team.

Mr. Falcone and his Executive Management Team presented the Annual Budget Presentation and took questions from the Trustees.

Acting Chair Fischl then announced that the next Board meeting is scheduled for Wednesday, December 16, 2020 at 11:00 a.m. in Uniondale.

Acting Chair Fischl then asked for a motion to adjourn to Executive Session to discuss litigation matters and announced that no votes would be taken and that the Board would not be returning to Open Session. The motion was duly made and seconded, and the following resolution was adopted:

1569. 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 litigation matters.

At approximately 12:49 p.m. the Open Session of the Board of Trustees was adjourned on a motion to enter into Executive Session.
