

FOR CONSIDERATION

May 19, 2021

TO: The Board of Trustees

FROM: Thomas Falcone

SUBJECT: Approval of the Annual Report on the Board Policy on Taxes and PILOTs

Requested Action

The Board of Trustees (the “Board”) of the Long Island Power Authority is requested to adopt a resolution: (i) finding that the Long Island Power Authority and its subsidiary, the Long Island Lighting Company d/b/a LIPA (collectively “LIPA”) have complied with the Board Policy on Taxes and PILOTs¹ (the “Policy”); and (ii) approving the annual report for the Policy.

Background

By Resolution No. 1320, dated September 21, 2016, the Board adopted the Policy. The Board adopted the last annual review of the Policy by Resolution No. 1525, dated May 20, 2020. Additionally, from 2016 to 2020, LIPA published an annual tax report to update the Board and the public on LIPA’s efforts to reduce the tax burden and lower energy costs for all 1.1 million customers.

Compliance with the Policy

LIPA Staff recommends that, for the reasons set forth below, the Board find that LIPA has complied with the Policy for the period since the last review.

The Policy provides that LIPA should “Pay only such taxes, PILOTs, assessments, and fees as are required by law or by agreement.”

- Long Island power plants are nationally recognized as among the highest taxed commercial properties in the United States. The excessive tax burden on power plants results in higher operational costs that disadvantage Long Island plants compared to the competitive prices of power in the regional electric markets. As such, LIPA has availed itself of the lawful right to challenge excessive payment obligations on four legacy power plants for each year beginning in 2010.
- In November 2020, LIPA entered into a settlement with the Town of Huntington and the Northport-East Northport School District for the Northport Power Station. The settlement will reduce LIPA’s annual property tax payments to 47% of 2020 levels by 2027. If the taxing jurisdictions fulfill the terms of the settlement, LIPA will waive a refund for back tax years estimated at over \$650 million, plus interest. In addition, LIPA will also make

¹ The term “PILOT” is the abbreviation for Payment In Lieu of Taxes.

a total of \$3 million and \$14.5 million in payments over the next seven years to the Town and school district, respectively, in exchange for their discontinuing appeals of the court's ruling that LIPA is entitled to challenge its tax assessments.

- As previously reported to the Board, in 2018 LIPA entered into settlement agreements with the Town of Brookhaven and the Village of Port Jefferson to gradually reduce the taxes on the Port Jefferson power plant, by 50 percent through 2027. If the taxing jurisdictions fulfill the terms of the settlement, LIPA will waive a refund for back tax years estimated at over \$225 million, plus interest. LIPA has now revised its agreement with the Village of Port Jefferson to reduce its taxes by 47% by 2027 consistent with the agreement reached for the Northport Power Station, as discussed above.
- In November 2019, LIPA entered into a tentative settlement with Nassau County for the E.F. Barrett and Glenwood Landing generating stations. The settlement was contingent on the approval of a PILOT agreement by the Nassau County Legislature. By March 31, 2021, the PILOT agreement was not approved by the Nassau County Legislature and LIPA's offer was accordingly withdrawn. LIPA anticipates a trial relating to the Barrett and Glenwood Landing power stations in late 2021 to early 2022.
- LIPA and PSEG Long Island have implemented procedures to ensure that PILOTs on each annual bill related to transmission and distribution equipment owned by LIPA do not exceed 102% of the prior calendar year's payment, consistent with the provisions of the LIPA Reform Act.
- LIPA continues to defend itself in litigation challenging the 2% PILOT cap on transmission and distribution property in certain jurisdictions on Long Island. A court in Suffolk County recently ruled that (1) LIPA's properties acquired from LILCO are not exempt from real-property taxation for tax years 2014/15 through 2019/20 by reason of the LIPA's failure to timely challenge their unlawful assessment as non-exempt, taxable properties by the Town Assessors during those tax years; and (2) compelling LIPA to pay over to Suffolk County the unpaid real property taxes levied against the transmission and distribution properties for tax years 2014/15 through 2019/20, with interest and penalties in the amount of approximately \$66.7 million. LIPA intends to appeal the April 1, 2021 Decision and Order. LIPA does not believe that this litigation will have a material adverse impact on its business.
- As previously reported to the Board, LIPA undertook a review of selected substations across the service territory. The review found several substations that were assessed in excess of their value. Accordingly, LIPA filed challenges on several over-assessed substations, and will continue to monitor assessed valuations of substations.

The Policy provides that LIPA should "Avail itself of the lawful right to challenge excessive tax assessments and payment obligations to minimize the cross-subsidization of taxpayers in some taxing jurisdictions by the Authority's customer-owners in other jurisdictions.

- LIPA has sought to achieve this objective by the actions stated above.

The Policy provides that LIPA should "Inform customers of the burden of taxes, PILOTs,

assessments, and fees in their electric bills”.

- LIPA issued a Property Tax Report during 2020, which is available on its website, and was provided to community leaders, stakeholders, elected officials, media, and investors in response to inquiries related to the burden of taxes on LIPA’s customers.
- LIPA Staff regularly meets with media, stakeholders, and local leaders to discuss the impact of taxes on energy bills.

Annual Review of the Policy

LIPA Staff proposes no amendments to the Policy at this time.

Recommendation

Based upon the foregoing, I recommend approval of the above requested action by adoption of a resolution in the form attached hereto.

Attachments

Exhibit “A” Resolution

RESOLUTION APPROVING THE REPORT TO THE BOARD OF TRUSTEES ON THE BOARD POLICY ON TAXES AND PILOTS

WHEREAS, the Board Policy on Taxes and PILOTs (the “Policy”) was originally approved by the Board of Trustees by Resolution No. 1320, dated September 21, 2016; and

WHEREAS, the Board adopted the last annual review of the Policy by Resolution No. 1525, dated May 20, 2020; and

WHEREAS, the Board has conducted an annual review of the Policy and affirms that the Policy has been complied with.

NOW, THEREFORE, BE IT RESOLVED, that consistent with the accompanying memorandum, the Board hereby finds that LIPA has complied with Policy for the period since the last annual review and approves the annual report to the Board.

Dated: May 19, 2021