

**LONG ISLAND POWER AUTHORITY**

**MINUTES OF THE 305th MEETING**

**HELD ON DECEMBER 15, 2021**

*The Long Island Power Authority (“LIPA”) was convened for the three hundred and fifth time at 11:32 a.m. at LIPA’s Headquarters, Uniondale, NY, pursuant to legal notice given on December 10, 2021, and electronic notice posted on the LIPA’s website.*

*In compliance with New York State Open Meeting Law and in furtherance of COVID-19 public 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 December 15, 2021 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:*

**Mark Fischl, Acting Chair (in person)**  
**Elkan Abramowitz (via video conferencing)**  
**Valerie Anderson Campbell (via video conferencing)**  
**Drew Biondo (in person)**  
**Rev. Alfred Cockfield (via video conferencing)**  
**Sheldon Cohen (in person)**  
**Nancy Goroff (in person)**  
**Laureen Harris (in person)**  
**Ali Mohammed (in person)**

**Representing LIPA, in person, were Thomas Falcone, Chief Executive Officer; Bobbi O’Connor, Chief Administrative Officer & Board Secretary; Tamela Monroe, Chief Financial Officer; Mujib Lodhi, Chief Information Officer and Senior Vice President of Customer Experience; Billy Raley, Senior Vice President of T&D Oversight; Justin Bell, Vice President of Public Policy and Regulatory Affairs; and Andrew Berger, Communications Assistant.**

Participating via video conferencing were Rick Shansky, Senior Vice President of Power Supply and Whole Markets; Donna Mongiardo, Vice President-Controller; Locascio, Director of External Affairs; Jason Horowitz, Assistant General Counsel and Assistant Secretary to the Board; and Osman Ahmad, IT-Consultant.

Representing DPS, in person, were Carrie Gallagher, Director of the Department of Public Service's Long Island Office, and Nick Forst, Assistant Counsel at the Department of Public Service.

*Acting Chair Fischl welcomed everyone to the 305th meeting of the Long Island Power Authority Board of Trustees.*

*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 adopted by the Trustees based on the memoranda summarized below<sup>1</sup>:*

**1687. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 17, 2021 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 17, 2021 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.

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**Requested Action**

**The Board of Trustees (the "Board") of the Long Island Power Authority ("LIPA") is requested to adopt a resolution finding that LIPA has complied with the Board Policy on Safety**

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<sup>1</sup> Trustee Cockfield was not available to vote on the content agenda items. Trustee Abramowitz abstained from voting on the Approval for the Selection of Letter Credit Facilities.

(the “Policy”) for the period since the last annual review and approving the annual report for the Policy, which resolution is attached hereto as Exhibit “A.”

### **Background**

By Resolution No. 1379, dated September 27, 2017, the Board adopted the Policy. The Policy sets objectives to ensure a safe environment for the dedicated workforce of its service provider and the public. The Policy also establishes regular performance reporting by LIPA Staff to enable the Board to assess the adequacy of the service provider’s policies, procedures, and practices for safety, compliance with applicable health and safety laws and regulations, safety performance, including comparisons to peer electric utilities and initiatives to improve the safety of the service provider’s operations. The Policy was last reviewed by the Board in December 2020.

### **Compliance with the Policy**

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

The Policy provides the following:

“Reviewing on a periodic basis no less than every three years the policies, procedures, and practices of the Authority’s service provider.”

- In 2020, LIPA hired Schumaker & Company (“Schumaker”) to conduct the second triennial Safety Assessment of PSEG Long Island. The 2020 Schumaker report contains five recommendations aimed at enhancing existing practices in such areas as training, safety metrics, work practices, safety oversight, and consolidation of training services and facilities. All recommendations were implemented and verified.
- For 2021, in light of the limitations on the scope of the Schumaker review as a result of COVID-19, when such restrictions are lifted, LIPA is scheduled to engage an independent third party to perform onsite field observations of PSEG Long Island’s work practices and safety management processes, including a comparison to industry best practices.

“Benchmarking against the top quartile in safety performance of the service provider to the top 25 percent of peer utilities, as measured by OSHA Recordable Incidence Rate and OSHA Days Away Rate.”

- PSEG Long Island benchmarks its safety performance against a nationwide panel of electric utilities. That benchmarking helps establish programs that improve safety performance at PSEG Long Island. Since 2014 through year-to-date (“YTD”) 2021, there has been a 65% improvement in the OSHA Recordable Incident Rate and a 70% improvement in the OSHA Days Away Rate. PSEG Long Island has now reached top quartile performance for both OSHA measures for the first time, and is moving towards top decile performance compared to industry benchmarked peers. The OSHA Recordable Incident Rate through November 2021 is 0.97 vs. the top quartile

benchmark target of 0.97 and the OSHA Days Away Rate through November 2021 is 8.79 vs. the top quartile benchmark target of 11.90. PSEG Long Island is on track to achieving its best safety performance year on record in 2021.

**“Assessing the operational factors that contribute to injuries, motor vehicle accidents and redlight violations and the efforts to improve performance, where necessary.”**

- **PSEG Long Island has an ongoing process for assessing the factors that drive safety performance. They have built a culture of accountability using Partners in Leadership concepts, effectively changing the way people think and act throughout the organization to achieve desired results. Contractor Safety Programs are stronger through improved vetting, communications, and oversight of contractors responding to storm emergencies.**

**Throughout COVID-19, PSEG Long Island has enhanced employee safety and regulatory training experiences by implementing new online driver, safety leadership, and annual safety training programs. In addition, they have delivered newly created Work Area Protection and Flagging training to enhance safety while working on or alongside roadways and they have enhanced forklift training to include additional practical skills. Moreover, they continue to partner with Briotix Health reducing musculoskeletal injuries through improved work techniques and pre-job stretching (40% over 2020 and 60% since 2014).**

- **Motor vehicle safety continues to be an area of focus in 2021, including a new remedial training program offering insurance discounts and point reductions to employees upon completion. Continued enhancements of automated vehicle location system (“AVLS”) controls and red light ticket analytics is driving culture change in employee driving behaviors and is credited with the continued reduction of both motor vehicle accidents (12% November 2021 YTD year-over-year (“YOY”) and 54% since the inception of AVLS) and red-light violations (33% November 2021 YTD YOY and 59% since the inception of AVLS).**
- **PSEG Long Island continues to conduct executive-level meetings with contractors to review their investigations of injuries and motor vehicle accidents. Additionally, PSEG Long Island introduced improvements to the onboarding of foreign crews during restoration efforts that stemmed from a team of Long Island and New Jersey subject-matter experts tasked with reviewing and recommending changes to the current on boarding and oversight practices of foreign crews during restoration efforts. These include, among other actions, reviewing contractor OSHA and ISNetworld safety ratings prior to arrival; communicating safety information electronically upon call out in addition to providing onsite safety briefings upon arrival; hosting daily safety meetings with all internal and external Safety, Health and Environmental resources throughout storm events; and assigning leads for field surveys of external crews.**

### **Enterprise Risk Management Discussion**

**The Board has adopted a policy on Enterprise Risk Management (“ERM”). Enterprise risks are brought to the Board’s attention throughout the year. There is one risk related to the Policy; “Employees and contractors not following safety procedures and equipment failures resulting in injury/death to employees, contractors and/or member(s) of the public.”**

**This risk is rated as a medium level risk and is identified as one of PSEG Long Island’s top-tier risks. To mitigate this risk, PSEG Long Island’s Safety Program fosters a high level of safety awareness by its employees and contractors. PSEG Long Island verifies contractor safety records, reviews, authorizes contractor safety plans prior to commencement of work, and conducts required trainings for employees, contractors, and supervisors (e.g., Substation Awareness Training). Attendance is tracked and monitored at these training sessions. The Safety Program also includes contractor roundtables with PSEG Long Island staff to ensure adherence to the policies and procedures and identifies additional protocols for integration into these sessions. Equipment has also been installed in company vehicles to record driving data to help reduce motor vehicle incidences.**

**In addition to PSEG Long Island’s oversight of its contractors, LIPA continues its oversight by verifying OSHA-related data as part of the current monthly Scorecard meetings. Increased LIPA oversight of contractors will be achieved with the inclusion of all on-island contractor injuries not previously included in PSEG Long Island’s safety statistics and a new safety performance metric – Serious Injury Incidence Rate will capture high hazard related injuries. Given the oversight efforts of both organizations, the programs noted above, and the new metrics we believe the risk is adequately managed.**

**Annual Review of the Policy**

**LIPA Staff recommends no changes to the Policy.**

**Recommendation**

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

**1688. RESOLUTION APPROVING THE REPORT TO THE BOARD OF TRUSTEES ON THE BOARD POLICY ON SAFETY**

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**WHEREAS, the Board Policy on Safety (the “Policy”) was originally approved by the Board of Trustees Resolution No. 1739, dated September 27, 2017; 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 the Policy for the period since the last annual review and approves the annual report to the Board.**

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**Requested Action**

**The Board of Trustees (the “Board”) of the Long Island Power Authority (“LIPA”) is requested to adopt a resolution: (i) approving the annual report on the former Board Policy on Information and Physical Security (the “Policy”) for the period since the last annual review; and (ii) finding that LIPA has substantially complied with the Policy, which resolution is attached hereto as Exhibit “A.”**

### **Discussion**

**By Resolution No. 1500, dated December 18, 2019, the Board adopted the Policy. The Policy delineates the Board’s expectations and direction for information and physical security in accordance with public safety, operational, reputational, and compliance requirements and establishes a reporting requirement to the Board on compliance with the key provisions of the Policy. The Policy was last reviewed and amended by the Board at its meeting in December 2020. The Policy was supplanted by a new Information Technology and Cybersecurity Policy at the Board’s November 17, 2021 meeting; however, Staff is reporting on compliance with the prior Policy for activities through November 2021.**

### **Compliance with the Policy**

**LIPA Staff recommends that, for the reasons set forth below, the Board find that LIPA has - substantially complied with the Policy. Compliance with each element of the Policy is discussed in detail below.**

**The Policy provides that “LIPA and its Service Provider will undertake, at a minimum, the following activities each year”:**

**“Annual reviews of the overall maturity of the cyber and physical security programs of LIPA and its Service Provider, consistent with industry best practices”**

- LIPA and its service provider, PSEG Long Island, have adopted the NIST Cybersecurity Framework (CSF) to drive improvements to their cybersecurity programs. The Framework focuses on using business drivers to guide cybersecurity activities and considers cybersecurity risks as part of the risk management processes, including guidance on People, Process, and Technology to implement defense in depth for the enterprise.**
- LIPA and its service provider, PSEG Long Island, have adopted NERC’s Physical Security Standard (CIP-2 and CIP-14) to protect LIPA’s T&D assets. The physical security of each of the T&D assets is derived from a risk assessment of each asset and its impact on the power grid.**

**“The Service Provider will conduct quarterly internal and annual third-party vulnerability assessment and penetration testing of all Information Technology (IT) and Operational Technology (OT) assets and vulnerability assessment of facilities and functions every three years.**

**The Service Provider will confidentially submit the vulnerability assessment and penetration testing reports, management action plans, and monthly progress report on remediation to LIPA's Chief Information Officer"**

- **PSEG Long Island Cybersecurity: PSEG engaged a third-party consultant to perform a vulnerability assessment and penetration test late in 2020. Due to COVID-19 limitations, the assessment was concluded in the first quarter of 2021. PSEG Long Island reported the remediation of all critical, high, and medium risks identified as a result of the assessment.**

**Management Action Plans were not submitted to LIPA. However, PSEG Long Island reports monthly on progress to close the findings. PSEG Long Island also has a program of monthly vulnerability scanning of all assets, which are tracked in a comprehensive database and are addressed throughout the year. The Request for Proposal for the 2022 assessment has been released, and responses are pending.**

- **LIPA Cybersecurity: LIPA engaged a third-party firm to conduct a vulnerability assessment and penetration test and performed focused timeboxed attack and penetration testing of hosts on LIPA's corporate network, including servers, workstations, and other network devices available through the internal environment. Remediation plans were developed and are being implemented. Significant improvements in the LIPA's cybersecurity management practices were made in 2021.**
- **PSEG Long Island Physical Security: FERC reliability standards require transmission owners or operators to perform a risk assessment of their systems to identify "critical facilities," evaluate the potential threats and vulnerabilities to those identified facilities and develop and implement a security plan designed to protect against physical attacks on those identified critical facilities. PSEG Long Island conducts Security Vulnerability Inspections (SVI) at 53 critical and NERC facilities and Physical Security Inspections (PSI) at all LIPA sites. A computer database is used for tracking inspections and the management of NERC CIP Physical Security requirements. In addition, a "Red Team" penetration test is conducted to assess the Security Command Center response.**
- **In 2021, PSEG Long Island performed annual SVIs for 51 of the 53 identified critical facilities, with the final two facilities scheduled for completion in December 2021. There were no critical physical security deficiencies discovered during these inspections.**

**"The Service Provider will conduct an independent annual NIST Cybersecurity Framework and COBIT 2019 Maturity Level assessment by an assessor approved by LIPA and confidentially submit assessment reports and management action plans, including planned initiatives to achieve targeted COBIT Maturity Level 4 (Quantitatively Managed) along with NIST CSF Tier 3 (Repeatable) by September 2021 and COBIT Maturity Level 5 (Optimizing) along with NIST CSF Tier 4 (Adaptable) by September 2022"**

- **PSEG Long Island will not meet its NIST - CSF/COBIT Maturity target for 2021 established in the Board policy. PSEG Long Island conducted the NIST Cybersecurity Maturity Level assessment and developed the work plan to improve the maturity level.**

**PSEG Long Island report on progress at monthly oversight meetings. However, the evaluation and the work plan have not been submitted to LIPA. PSEG Long Island did not complete the COBIT maturity assessment. The NIST-CSF maturity target has been incorporated into the reformed contract default metrics.**

**“The Service Provider will develop initial 3-Year Cyber and Physical Security Strategic Plans and submit them to LIPA by June 2021; the Service Provider will review and/or update the respective Strategic Plans at least annually to consider the changing threat landscape and/or mitigation opportunities”**

- To date, PSEG Long Island has not submitted an initial 3-Year Cybersecurity Strategic plan.**
- In June 2021, PSEG Long Island delivered to LIPA a report outlining their physical security plans and priorities. LIPA reviewed the plan and believes there is room for improvement. In 2022, LIPA will be engaging an outside consultant to review PSEG Long Island’s physical security plans and practices and make recommendations for enhancements to be included in the 2023 budget.**

**“The Service Provider will develop and submit to LIPA an annual work-plan in Q4 of each year for the subsequent year, guided by the Cyber and Physical Security Strategic Plans”**

- PSEG Long Island has not developed nor submitted the annual Cybersecurity Work Plan for 2022.**
- Though formal Strategic and Work Plans have not been developed for Physical Security, PSEG Long Island has provided a Project Justification Document (PJD) describing 2022 planned work, which entails security upgrades at two substations. Going forward, LIPA will endeavor to align the Board Policy with the Budget and PJD processes.**

**“The Service Provider shall comply with all applicable standards, directives, and guidance issued by regulatory or industry advisory bodies, including the North American Electric Reliability Corporation, Federal Energy Regulatory Commission, Department of Energy, Department of Homeland Security, and New York State Department of Public Service; This would include Annual self-assessment for compliance with NERC. Quarterly reporting of any incidents of noncompliance with the applicable standards”.**

- In 2021 Northeast Power Coordinating Council (NPPC) Inc. conducted a scheduled audit of PSEG Long Island’s NERC compliance. The audit period was from September 28, 2018, to October 30, 2020, for CIP; February 28, 2015, to October 30, 2020 (DP: Distribution Provider, TO: Transmission Owner) and November 30, 2017, to October 30, 2020 (TOP: Transmission Operations, TP: Transmission Planner) for O&P (Operations and Planning); and covered the DP, TOP, TO and TP function(s). The audit process included a review of evidence submitted to demonstrate compliance and SME interviews conducted virtually.**



**The audit scope included 15 standards and 46 requirements. The audit findings resulted in three potential non-compliance findings, for which remediation has been addressed. None of these findings were related to physical security.**

**“The Service Provider will confidentially report no less than quarterly to LIPA’s Chief Information Officer: Service Provider’s compliance with industry and regulatory standards and exceptions. The effectiveness of the Security Programs and Policies, as indicated by various security-related Key Performance Indicators (KPIs). Implementation of additional defensive technology initiatives. Security incidents, responses, and their impact.”**

- **In compliance with this policy requirement, PSEG Long Island staff provided monthly briefings on the state of Cybersecurity, Key Performance Indicators, and ongoing Cyber defensive technology projects.**

**“The Service Provider will inform the LIPA CIO of any significant breach or other unmitigated vulnerabilities immediately upon discovery.”**

- **PSEG Long Island informed the LIPA CIO of all cyber incidents during 2021.**

**“LIPA will provide oversight, including review, Independent Verification, and Validation (IV&V) of the Services Provider’s Cyber and Physical Security Program(s) as necessary.”**

- **In 2022, LIPA will have a comprehensive vulnerability assessment, penetration testing, and overall cyber program evaluation conducted by an independent consultant. This assessment will include an independent review of PSEG Long Island’s NIST CSF compliance status and will provide recommendations to achieve the target outlined in the reformed PSEG Long Island contract default metrics.**
- **In 2021, LIPA Staff conducted regularly scheduled meetings with PSEG Long Island’s compliance group to review whether there were any issues requiring the need to self-report on any NERC standards. In 2022, LIPA will have a vulnerability assessment, and overall physical security program evaluation conducted by a third-party consultant/firm of critical infrastructure.**

### **Annual Review of the Policy**

**At its meeting on November 17, 2021, the Board adopted a new policy on Information Technology and Cyber Security to replace this Policy. Moving forward, the annual reports to the Board will review compliance with the Board Policy on Information Technology and Cyber Security.**

### **Recommendation**

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

**1689. RESOLUTION APPROVING THE ANNUAL REPORT TO THE BOARD OF TRUSTEES ON THE FORMER BOARD POLICY ON INFORMATION AND PHYSICAL SECURITY**

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**WHEREAS, the Board Policy on Information and Physical Security (the “Policy”) was originally approved by the Board of Trustees by Resolution No. 1500, December 18, 2019; and**

**WHEREAS, the Policy was last reviewed and amended by the Board at its meeting in December 2020; and**

**WHEREAS, the Oversight and Clean Energy Committee (the “Committee”) of the Board of Trustees has conducted the annual review of the Policy and has recommended that the Policy has been substantially complied with.**

**NOW, THEREFORE, BE IT RESOLVED, that consistent with the accompanying memorandum, the Board hereby finds that LIPA has substantially complied with the Policy and approves the annual report to the Board**

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**Requested Action**

**The Board of Trustees is requested to adopt a resolution authorizing the replacement of the Letter of Credit (“LOC”) facility issued by Citibank, N.A. (“Citibank”) supporting LIPA’s General Revenue Notes, Series 2015 GR-5 (the “GR-5 Notes”) and the execution of a new reimbursement agreement in connection therewith.**

**Background**

**LIPA desires to maintain its overall liquidity levels which are currently comprised of cash on hand, its revolving facility, and the GR Notes program. The Authority believes that maintaining its liquidity will help manage its varying cash flows from its seasonal business, provide for working capital, and provide extra financial support for unexpected events such as major storms.**

**LIPA has an LOC facility issued by Citibank supporting its outstanding GR-5 Notes, which expires on March 11, 2022.**

**The Authority issued a Request for Proposal for Letter of Credit Facilities (the “Bank Facility RFP”). A selection committee consisting of LIPA staff, with the assistance of the Authority’s financial advisor, reviewed the responses and selected the proposal submitted by Bank of America, N.A. (“Bank of America”) as the winning response.**

**LIPA will enter a new reimbursement agreement with Bank of America, which agreement will be substantially similar to the agreements previously entered into by the Authority in relation to other LOCs supporting its General Revenue Notes.**

The new agreement will require the execution of new offering memorandums or other disclosure documents and other instruments.

**Recommendation**

Based upon the foregoing and the recommendation of the Finance and Audit Committee, I recommend that the Trustees adopt the attached resolution.

**1690. RESOLUTION APPROVING THE SELECTION OF A CERTAIN BANK AND APPROVING CERTAIN RELATED AGREEMENTS**

WHEREAS, on May 13, 1998 Long Island Power Authority (the “Authority”) adopted its Electric System General Revenue Bond Resolution (the “General Resolution”), which authorizes bonds, notes or other evidences of indebtedness of the Authority as special obligations of the Authority for any lawful purpose of the Authority; and

WHEREAS, the Authority has issued a Request for Proposal for Letter of Credit Facilities (the “Bank Facilities RFP”) requesting proposals from a number of banks to enter into one or more credit facilities or to issue letters of credit in support of the outstanding General Revenue Notes, Series 2015 GR-5 (the “Revenue Notes”), and the staff selection committee has reviewed the responses and selected the proposal submitted by Bank of America, N.A. as the winning response (such proposal being referred to hereinafter as the “Selected Proposal” and

Bank of America, N.A. referred to hereinafter as a “Selected Bank”);

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. The Trustees hereby approve the Selected Proposal and the Chief Executive Officer, Chief Financial Officer, Vice President-Controller and Secretary (the “Authorized Officers”) are each hereby authorized to enter into a reimbursement or other agreement with the Selected Bank in connection with the Revenue Notes, which agreements shall be substantially similar to such agreements previously entered into by the Authority in relation to other letters of credit supporting Revenue Notes, with such changes and additions to and omissions from such prior agreements as such authorized executing officer deems in his discretion to be necessary or appropriate, such execution to be conclusive evidence of such approval.
2. Each Authorized Officer is hereby authorized and directed to execute and deliver any and all documents, including but not limited to the execution and delivery of one or more offering memorandums or other disclosure documents, Issuing and Paying Agency Agreements, Dealer Agreements, and other instruments, and to do any and all acts necessary or proper for carrying out and implementing this resolution and each of the documents authorized hereby and each Authorized Officer shall be an Authorized Representative (as defined in the General Resolution) in connection with such matters.
3. This resolution shall take effect immediately.

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### **Requested Action**

The Trustees are requested to authorize the issuance of up to \$1,040,000,000 aggregate principal amount of Electric System Revenue Bonds (the “Authorized Bonds”) for the purposes described below.

### **Plan of Finance**

LIPA’s 2022 Plan of Finance includes the following elements, some of which have previously been presented to and approved by the Trustees:

- i. Issuance of the Authorized Bonds in a principal amount no greater than \$540,000,000 for the purposes of funding the costs of system improvements and/or reimbursing such costs already incurred, including refinancing of notes or revolving credit agreement borrowings incurred to finance such costs.**
  
- ii. Issuance of the Authorized Bonds in an amount no greater than \$500,000,000 for the purpose of generating annual debt service and present value savings by refunding LIPA Bonds or refinancing any outstanding debt of the Utility Debt Securitization Authority (“UDSA”). There is currently \$755,325,000 of existing refunding authorization remaining. With the issuance of the Authorized Bonds, the total authorization would be a principal amount no greater than \$1,255,325,000 for the purposes of refunding fixed or variable rate bonds or notes of the Authority.**

<b>Remaining Refunding Bonds Previously Authorized</b>	<b>Additional Authorization December 15, 2021</b>	<b>Total Refunding Authorization</b>
<b>\$755,325,000</b>	<b>\$500,000,000</b>	<b>\$1,255,325,000</b>

- iii. Funding amounts due for the termination of Financial Contracts entered into in connection with any Authorized Bonds or refunded bonds.**

### **Authorized Actions**

The Authorized Bonds will be issued as either fixed-rate or variable-rate bonds or a combination thereof and sold either on a negotiated basis: (i) to one or more underwriters for resale to investors or (ii) directly to one or more investors or financial institutions. The Chief Executive Officer and the Chief Financial Officer are each authorized to sell all Bonds to one or more underwriters for resale to investors. In each case, the sale shall be at such price or prices as determined to be the most cost effective and advantageous for the Authority. The new Authorized Bonds could be issued in conjunction with such previously authorized, but not yet issued, bonds or be sold separately.

Any underwriter, dealer, or swap counterparty will be one of the firms approved pursuant to the Authority’s most recent procurement for underwriting, investment banking and swap counterparty services, which firms include BofA Securities, Barclays, Citigroup, Goldman

Sachs & Co., J.P. Morgan, Loop Capital Markets, Morgan Stanley, RBC Capital Markets, Ramirez & Co. Inc., Siebert Williams Shank & Co. LLC, TD Securities, UBS and Wells Fargo Securities. The Trustees are requested to permit the Chief Executive Officer, Chief Financial Officer or Vice President -- Controller of the Authority to designate, as necessary, the underwriters, remarketing agents, or swap counterparties, as applicable, assigned to each bond series from the approved list of firms.

In addition to the issuance of the Authorized Bonds to finance Cost of System Improvements, the Authority has determined that it may be appropriate to enter into one or more interest rate or basis swaps (“Financial Contracts”) relating to the Authorized Bonds, should they provide debt service savings or mitigate interest rate risk for the Authorized Bonds as compared to merely issuing conventional fixed-rate or floating-rate bonds. Authorization to enter into such Financial Contracts with an aggregate notional amount of up to \$1,040,000,000 requested. The material terms of the agreements relating to any such Financial Contracts are expected to be substantially similar to agreements previously entered into by the Authority and may include interest rate risk, basis risk, settlement risk, termination risk, counterparty risk, and certain continuing covenants. Any such Financial Contracts would be approved by the Authority’s Executive Risk Management Committee, per the Board’s Policy on Interest Rate Exchange Agreements.

### **Recommendation**

Based upon the foregoing and the recommendation of the Finance and Audit Committee, I recommend that the Trustees adopt the resolutions attached hereto authorizing the issuance of up to \$1,040,000,000 aggregate principal of Electric System General Revenue Bonds for the purpose of funding Costs of System Improvements and/or reimbursing such costs already incurred, including refinancing of notes or revolving credit agreement borrowings incurred to finance such costs, for the purpose of refunding outstanding fixed or variable rate bonds or notes of the Authority or refinancing any UDSA Bonds, and the execution and delivery of one or more new Financial Contracts.

### **1691. AUTHORIZATION RELATING TO THE ISSUANCE OF ELECTRIC SYSTEM GENERAL REVENUE BONDS FOR THE PURPOSES OF FUNDING COSTS OF SYSTEM IMPROVEMENTS AND CERTAIN OTHER COSTS AND REFUNDING CERTAIN OUTSTANDING BONDS**

WHEREAS, on May 13, 1998, Long Island Power Authority (the “Authority”) adopted its Electric System General Revenue Bond Resolution (the “General Resolution”), which authorizes bonds, notes or other evidences of indebtedness of the Authority, such bonds to be designated as “Electric System General Revenue Bonds” (the “Bonds”), for, among other purposes, funding Costs of System Improvements (as defined in the General Resolution) and other lawful purposes of the Authority and refunding other bonds or notes of the Authority; and

WHEREAS, Article II of the General Resolution requires that the issuance of each series of 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 Bonds; and**

**WHEREAS, the Authority has various series of outstanding Bonds that may, depending on market conditions, advantageously be refunded; and**

**WHEREAS, the Authority wishes to authorize the issuance of one or more series of Bonds (the “Authorized Bonds”) for the purpose of funding Costs of System Improvements (as defined in the General Resolution) and/or reimbursing such costs already incurred, including refinancing of notes or revolving credit agreement borrowings incurred to finance such costs and for the purpose of refunding outstanding fixed or variable rate bonds or notes of the Authority (collectively, the “obligations to be refunded”), which Authorized Bonds shall be in an aggregate principal amount not to exceed \$1,040,000,000, of which no more than \$540,000,000 in principal amount shall be issued for the purpose of funding Costs of System Improvements; and**

**WHEREAS, the Authority has entered into interest rate swap agreements relating to certain of the Authority’s bonds and notes and, to the extent that such bonds and notes are refunded, it is anticipated that such interest rate swap agreements will either be reallocated to other bonds or notes of the Authority, assigned to or assumed by other counterparties, or terminated, as determined by the Chief Executive Officer or Chief Financial Officer; and**

**WHEREAS, the Authority wishes to issue the Authorized Bonds as either a fixed rate or variable rate or a combination thereof; and**

**WHEREAS, in order to achieve such purposes there has been prepared and submitted to the Trustees a form of Thirty-Second Supplemental Resolution (the “Thirty-Second Supplemental General Resolution”); and**

**WHEREAS, the General Resolution permits the Authority to enter into Financial Contracts (as defined therein), which include interest rate caps or collars and forward rate, future rate and certain swap agreements with Qualified Counterparties (as defined therein); and**

**WHEREAS, the Authority has determined that the use of such swap agreements is appropriate in certain circumstances but recognizes that certain risks can arise in connection with their use and the Authority has adopted guidelines (the “Guidelines”) for the use of such agreements in order to assure that such agreements are used for appropriate purposes and to assure that the risks potentially associated with such agreements are effectively managed and minimized; and**

**WHEREAS, under current market conditions the Authority has determined that it may achieve debt service savings by entering into one or more such interest rate swap agreements in an aggregate notional amount of up to \$1,040,000,000 relating to all or a portion of the Authorized Bonds pursuant to which the Authority and the counterparties thereto would agree to make payments to one another based principally upon certain indices, formulae or methods to be specified therein; and**

**WHEREAS, the decision as to which specific strategy or strategies to be employed in connection with such new or existing interest rate swap agreements and the indices, formulae or methods to be used in calculating payments to be made to the Authority or the counterparties**

will be made by the Chief Executive Officer or Chief Financial Officer, taking into account market conditions and the advice of the Authority's financial advisor, with the intention of lowering the effective rate of interest payable in connection with the Authority's indebtedness or mitigating risks associated with such indebtedness consistent with interest rate and other risk considerations;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. The Thirty-Second Supplemental General 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 Chief Executive Officer, Chief Financial Officer, Vice President-Controller and Secretary (collectively, the "Authorized Officers") are each hereby authorized to deliver the Thirty-Second Supplemental General Resolution to The Bank of New York Mellon, as the Trustee for the Bonds, with such amendments, supplements, changes, insertions and omissions thereto as may be approved by such Authorized Officer, which amendments, supplements, insertions and omissions shall be deemed to be part of such resolution as approved and adopted hereby.

2. The Chief Executive Officer and the Chief Financial Officer are each authorized to sell all Bonds issued on a negotiated basis either (i) to one or more underwriters for resale to investors or (ii) by private placement to one or more investors or financial institutions. The Chief Executive Officer and the Chief Financial Officer are each authorized to sell all Bonds issued on a competitive basis to one or more underwriters for resale to investors. In each case, the sale shall be at such price or prices as determined to be the most cost effective and advantageous for the Authority.

3. Each of the Chief Executive Officer and the Chief Financial Officer is hereby authorized with respect to each series of the Authorized Bonds, to execute and deliver (i) a Bond Purchase Agreement (a "Bond Purchase Agreement") in substantially the form of the bond purchase agreement executed by the Authority in connection with the issuance of the Authority's Electric System General Revenue Bonds, Series 2021, with such modifications thereto as the Chief Executive Officer or Chief Financial Officer, upon the advice of counsel to the Authority, approves, (ii) in connection with any private placement of the Authorized Bonds, a placement continuing covenant or other financing, loan or credit agreement (each a "Placement Agreement") with the purchaser(s) thereof in such form, upon advice of counsel to the Authority, as may be approved by the Chief Executive Officer or Chief Financial Officer, or (iii) in connection with a competitive sale, a Notice of Sale and other necessary documents in such form, upon advice of counsel to the Authority, as may be approved by the Chief Executive Officer or Chief Financial Officer, which approval in each case shall be conclusively evidenced by the execution thereof by the Chief Executive Officer or Chief Financial Officer.

4. Each of the Chief Executive Officer and the Chief Financial Officer is hereby authorized and directed to execute and deliver any and all documents, including but not limited to the execution and delivery of one or more official statements or other disclosure documents and instruments and to do and cause to be done any and all acts necessary or proper for carrying out each Bond Purchase Agreement, Placement Agreement or Notice of Sale, the issuance, sale and delivery of the Authorized Bonds and for implementing the terms of each Bond Purchase

**Agreement or Placement Agreement, and the transactions contemplated thereby, the Thirty-Second Supplemental General Resolution and this resolution.**

**5. As and to the extent that Authorized Bonds are issued for the purpose of refunding bonds or notes of the Authority each of the Chief Executive Officer and the Chief Financial Officer is hereby authorized to engage in a tender offer or exchange of outstanding bonds or notes of the Authority, as the case may be, and to execute and deliver any and all documents necessary to accomplish the same, if determined to be cost effective and advantageous for the Authority.**

**6. As and to the extent that Authorized Bonds are issued for the purpose of refunding bonds or notes of the Authority with respect to which there are existing interest rate swap agreements, the Chief Executive Officer and the Chief Financial Officer are each authorized to allocate such interest rate swap agreements to such other outstanding Authority bonds or notes, or to terminate such agreements, as such officer may determine appropriate so as to permit the Authority to obtain the benefit of such interest rate swap agreements or to minimize the cost associated with the refunding and, to the extent that such agreements are terminated, some or all of the costs of such termination may be funded with the proceeds of the refunding Bonds, as determined by such officer. Any such officer is also hereby authorized to arrange for the assignment and assumption of any existing interest rate agreement to another counterparty or the amendment or termination of any such agreement, to the extent officer determines any such assignment and assumption, amendment or termination to be advisable.**

**7. As and to the extent that the Chief Executive Officer or the Chief Financial Officer determines that it would be advantageous in current market conditions to issue bond anticipation notes, such officer is hereby authorized to determine whether such bond anticipation notes shall be issued as “Bonds” or “Subordinated Indebtedness” (as defined in the General Resolution). In the event that bond anticipation notes are issued as Subordinated Indebtedness, the details thereof shall be incorporated in a Note Certificate executed by such officer and delivered to the trustees under the General Resolution and the Authority’s Electric System General Subordinated Revenue Bond Resolution, along with a copy of this resolution. Such Note Certificate may include such amendments and modifications to the provisions of this resolution as such officer shall determine Certificate also shall be filed with this resolution into the records of the Authority and, upon such filing, shall be deemed to be a part of this resolution as if set forth in full herein.**

**8. The Chief Executive Officer and the Chief Financial Officer are, and each of them hereby is, authorized to enter into interest rate swap agreements in an aggregate notional amount of up to \$1,040,000,000 relating to the Authorized Bonds with such Qualified Counterparties (as defined in the General Resolution) as such officers may select in accordance with the Guidelines, which agreements shall (i) commence on such date or dates as the Chief Executive Officer or Chief Financial Officer specifies, (ii) have a term ending on or prior to the anticipated final maturity of the bonds to which they relate, as the Chief Executive Officer or Chief Financial Officer specifies, (iii) provide for payments to the Authority determined based upon such index, formula or method as may be approved by the Chief Executive Officer or Chief Financial Officer, and (iv) otherwise be in accordance with the Guidelines and substantially in the form of interest rate swap agreements entered into by the Authority in relation to other interest rate swap transactions, with such changes and additions to and**



omissions from such form as such authorized executing officer deems in his discretion to be necessary or appropriate, such execution to be conclusive evidence of such approval. In connection with the authorizations herein set forth, the Authority has determined, after consideration of the risks inherent in the use of interest rate swap agreements, including those outlined in the memo submitted to the Trustees in connection with the financing authorized hereby and the advice of the Authority's financial advisor relating to the use of the proposed interest rate swap agreements, that (a) the use of such interest rate swap agreements will, in the judgment of the Authority, result in lowering the effective rate of interest payable in connection with the Authority's indebtedness, (b) the risks of the proposed interest rate swap agreements are both manageable and reasonable in relation to the potential benefits; and (c) the proposed interest rate swap agreements are necessary or convenient in the exercise of the power and functions of the Authority under the Act.

9. The Chief Executive Officer and the Chief Financial Officer are, and each of them hereby is, authorized to enter into reimbursement or other agreements with banks or other financial institutions providing Credit Facilities (as defined in the General Resolution) in connection with the Authorized Bonds, which agreements shall be substantially similar to such agreements previously entered into by the Authority in relation to other Credit Facilities, with such changes and additions to and omissions from such prior agreements as such authorized executing officer deems in his discretion to be necessary or appropriate, such execution to be conclusive evidence of such approval. Such agreements may be entered into with Barclays Bank PLC, Bank of Montreal, Citibank NA, Royal Bank of Canada, State Street Bank and Trust Company, TD Bank NA, US Bank, and/or Wells Fargo Bank, NA or any other bank or financial institution selected pursuant to an Authority procurement process.

10. Each of the Chief Executive Officer and the Chief Financial Officer are hereby further 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 and implementing the terms of, and the transactions contemplated by this resolution and each of the documents authorized thereby and hereby.

11. This resolution shall take effect immediately.

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## **1692. THIRTY-SECOND SUPPLEMENTAL ELECTRIC SYSTEM GENERAL REVENUE BOND RESOLUTION**

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**BE IT RESOLVED** by the Trustees of the Long Island Power Authority as follows:

### **ARTICLE I**

#### **DEFINITIONS AND STATUTORY AUTHORITY**

101. **Supplemental Resolution; Authority.** This resolution ("Supplemental Resolution") is supplemental to, and is adopted in accordance with Articles II and VIII of, a resolution adopted by the Authority on May 13, 1998, entitled "Electric System General

Revenue Bond Resolution,” as heretofore supplemented (“General Resolution”), and is adopted pursuant to the provisions of the Act.

102. **Definitions.** 1. All terms which are defined in Section 101 of the General Resolution (including by cross-reference to Section 101 of the Resolution) shall have the same meanings for purposes of this Supplemental Resolution, unless otherwise defined herein.

2. In this Supplemental Resolution:

“Authorized Denominations” with respect to Bonds of a Series, shall have the meaning set forth in the applicable Certificate of Determination.

“Bonds” or “Bonds of a Series” and words of like import shall mean each or all a Series of Bonds issued pursuant hereto collectively, as the context may require.

“Bond Purchase Agreements” means the Bond Purchase Agreement(s) among or between the Authority and Purchaser or Purchasers for the sale of the Bonds and shall include any placement, continuing covenant, financing, loan or credit agreement entered into in connection with the placement of Bonds with an investor or financial institution.

“Certificate of Determination” shall mean a certificate or certificates of an Authorized Representative of the Authority delivered pursuant to Section 204 of this Supplemental Resolution, setting forth certain terms and provisions of the Bonds of a Series, as such certificate(s) may be amended and supplemented.

“Code” means the Internal Revenue Code of 1986 (Title 26 of the United States Code), as amended.

“Commercial Paper Rate” with respect to Bonds of a Series, has the meaning set forth in the applicable Certificate of Determination.

“Commercial Paper Mode” means the mode during which Bonds of a Series bear interest at a Commercial Paper Rate.

“Credit Facility Issuer” means the issuer of any Credit Facility.

“Daily Rate” with respect to Bonds of a Series, has the meaning set forth in the applicable Certificate of Determination.

“Daily Rate Mode” means the mode during which Bonds of a Series bear interest at a Daily Rate.

“DTC” shall mean The Depository Trust Company, New York, New York, or its successors.

“Electronic Means” means telecopy, facsimile transmission, e-mail

**transmission or other similar electronic means of communication.**

**“Fiduciary” or “Fiduciaries” means any Fiduciary (as defined in the General Resolution) and any Tender Agent, or any or all of them, as may be appropriate.**

**“Fixed Rate” means an interest rate fixed to the maturity date of the Bonds of a Series.**

**“Fixed Rate Mode” means the period during which Bonds of a Series bear interest at a Fixed Rate.**

**“Index Mode” means the mode during which Bonds of a Series bear interest at an Index Rate.**

**“Index Rate” with respect to Bonds of a Series, has the meaning set forth in the applicable Certificate of Determination.**

**“Interest Period” for a Series of Bonds, shall have the meaning set forth in the applicable Certificate of Determination.**

**“Liquidity Facility” means any standby bond purchase agreement, letter of credit or similar obligation, arrangement or instrument issued or provided by a bank, insurance company or other financial institution which provides for payment of all or a portion of the Purchase Price (including accrued interest) of the Bonds of any Series that may be obtained by the Authority pursuant to Section 601 hereof.**

**“Liquidity Facility Issuer” means the issuer of a Liquidity Facility.**

**“Mandatory Purchase Date” for any Series of Bonds, means any date specified as such in the applicable Certificate of Determination.**

**“Maturity Date” means, with respect to any Bond, the final date specified therefor in the Certificate of Determination, which shall not be later than thirty-five years after the date of issuance.**

**“Maximum Rate” means for Bonds of a Series, such rate as may be specified in the applicable Certificate of Determination; provided, however, that in no event shall the Maximum Rate exceed the maximum rate permitted by applicable law.**

**“Mode” means the Commercial Paper Mode, Daily Rate Mode, Index Mode, Term Rate Mode, the Weekly Rate Mode, the Fixed Rate Mode or any other method of determining the interest rate applicable to Bond of a Series permitted under the applicable Certificate of Determination.**

**“Mode Change Date” means, with respect to Bonds of a Series, the date one Mode terminates and another Mode begins.**

**“Purchase Date” for Bonds of a Series shall have the meaning set forth in the applicable Certificate of Determination.**

**“Purchase Fund” means a fund by that name that may be established by a Certificate of Determination pursuant to Section 403 hereof.**

**“Purchase Price” means the price at which Bonds subject to optional or mandatory tender for purchase are to be purchased as provided in the Certificate of Determination.**

**“Purchaser” or “Purchasers” means the underwriter(s) or purchaser(s) for the Bonds of a Series named in the Bond Purchase Agreement for the Bonds of such Series.**

**“Refunded Obligations” means such portion, if any, of the Authority’s outstanding fixed or variable rate Bonds and Subordinated Bonds as shall be specified in a Certificate of Determination.**

**“Remarketing Agent” means the remarketing agent at the time serving as such for the Bonds of a Series (or portion thereof) pursuant to Section 503 hereof.**

**“Remarketing Agreement” means the remarketing agreement entered into by and between the Authority and the Remarketing Agent with respect to the Bonds of a Series (or portion thereof).**

**“Replacement Bonds” means the Bond certificates provided to the beneficial owners of the Bonds, or their nominees, pursuant to Section 203(a) hereof.**

**“Resolution” means the General Resolution, as amended and supplemented by the Supplemental Resolution.**

**“Securities Depository” shall mean DTC as the Securities Depository appointed pursuant to Section 203(a) hereof, or any substitute Securities Depository, or any successor to any of them.**

**“Tender Agent” means the Trustee as tender agent appointed for the Bonds pursuant to Section 504 hereof.**

**“Term Rate” with respect to Bonds of a Series (or portion thereof), has the meaning set forth in the applicable Certificate of Determination.**

**“Term Rate Mode” means the mode during which Bonds of a Series (or portion thereof) bear interest at a Term Rate.**

**“Weekly Rate” with respect to Bonds of a Series, has the meaning set forth in the applicable Certificate of Determination.**

**“Weekly Rate Mode” means the mode during which Bonds of a Series bear interest at a Weekly Rate.**

## ARTICLE II

### AUTHORIZATION OF BONDS

201. **Principal Amount, Designation, Series and Trustee.** (a) Pursuant to the provisions of the General Resolution, one or more separate Series of Bonds entitled to the benefit, protection and security of such provisions are hereby authorized in a not-to-exceed aggregate original principal amount described below and with the following designation: “Electric System General Revenue Bonds, Series 202\_” and with such additional or different designations as may be set forth in the applicable Certificates of Determination. The aggregate principal amount of each Series of Bonds shall be determined by an Authorized Representative of the Authority, subject to the terms of Section 204 hereof. Each Series shall initially bear interest in accordance with the Interest Rate Mode specified in and as may be provided by the applicable Certificate of Determination.

(b) Bonds issued pursuant to this Supplemental Resolution shall be issued in a not-to- exceed aggregate original principal amount of \$1,040,000,000, provided that, to the extent that any bond anticipation notes are issued pursuant to Section 204(b) of this Supplemental Resolution and are refunded with Bonds issued pursuant to this resolution, the principal amount of such bond anticipation notes shall be excluded for purposes of the limit on the aggregate original principal amount of Bonds that may be issued hereunder.

(c) The authorization in this Section 201 to issue additional Bonds is in addition to any previous authorization of Bonds pursuant to any prior Supplemental Resolution, which shall remain in full force and effect. Any Bonds issued pursuant to this Supplemental Resolution bonds may be issued in conjunction with any previously authorized, but not yet issued, Bonds or be issued separately as may be provided in the applicable Certificate of Determination.

202. **Purposes.** (a) The purposes for which the Bonds of any Series are to be issued shall include such of the following as shall be specified in the applicable Certificate of Determination:

- (i) to fund Costs of System Improvements, including, without limitation, reimbursement of moneys theretofore expended by the Authority or the Subsidiary for such costs or refinancing of notes or revolving credit agreement borrowings incurred to finance such costs;
- (ii) to refund all or a portion of the Refunded Obligations, including refinancing of notes or revolving credit agreement borrowings incurred to refund all or a portion of the Refunded Obligations or to refinance any outstanding bonds of the Utility Debt Securitization Authority and to repurchase any related restructuring property;
- (iii) to pay or reimburse the Authority for amounts due under any

**Financial Contract entered into in connection with any bonds or notes of the Authority, including, without limitation, termination payments that may be payable under an interest rate swap or other Financial Contract entered into in connection with any Refunded Obligations; and**

- (iv) to pay fees and expenses in conjunction with each of the foregoing and the issuance of the Bonds of a Series, including reimbursement of fees and expenses expended by the Authority in connection therewith.**

**(b) The proceeds of each Series of Bonds shall be deposited and applied in accordance with the applicable Certificate of Determination.**

**203. Securities Depository.**

**(a) Securities Depository. The Bonds of each Series when initially issued shall be registered in the name of Cede & Co., as nominee of DTC, in the form of a single fully registered Bond for each maturity of the Bonds of each Series. DTC is hereby appointed initial Securities Depository for the Bonds, subject to the provisions of subsection (b) of this Section. So long as DTC or its nominee, as Securities Depository, is the registered owner of Bonds, individual purchases of beneficial ownership interests in such Bonds may be made only in book-entry form by or through DTC participants, and purchasers of such beneficial ownership interest in Bonds will not receive physical delivery of bond certificates representing the beneficial ownership interests purchased.**

**So long as DTC or its nominee, as Securities Depository, is the registered Owner of Bonds, payments of principal, the Purchase Price and the Redemption Price of and interest on such Bonds will be made by wire transfer to DTC or its nominee, or otherwise pursuant to DTC's rules and procedures as may be agreed upon by the Authority, the Trustee and DTC. Transfers of principal, the Redemption Price, and interest payments to DTC participants will be the responsibility of DTC. Transfers of such payments to beneficial owners of Bonds by DTC participants will be the responsibility of such participants, indirect participants and other nominees of such beneficial owners.**

**So long as DTC or its nominee, as Securities Depository, is the Owner of Bonds, the Authority shall send, or cause the Trustee to send, or take timely action to permit the Trustee to send, to DTC notice of redemption of such Bonds and any other notice required to be given to Owners of Bonds pursuant to the General Resolution, in the manner and at the times prescribed by the General Resolution, or otherwise pursuant to DTC's rules and procedures or as may be agreed upon by the Authority, the Trustee (if applicable) and DTC.**

**Neither the Authority nor any Fiduciary shall have any responsibility or obligation to the DTC participants, beneficial owners or other nominees of such beneficial owners for (1) sending transaction statements; (2) maintaining, supervising or reviewing, or the accuracy of, any records maintained by DTC or any DTC participant, indirect participant or other nominees of such beneficial owners; (3) payment or the timeliness of payment by DTC to any DTC participant, indirect participant or by any DTC participant,**

indirect participant or other nominees of beneficial owners to any beneficial owner, of any amount due in respect of the principal or the Redemption Price of or interest on Bonds; (4) delivery or timely delivery by DTC to any DTC participant or indirect participant, or by any DTC participant, indirect participant or other nominees of beneficial owners to any beneficial owners, of any notice (including notice of redemption) or other communication which is required or permitted under the terms of the General Resolution to be given to holders or Owners of Bonds; (5) the selection of the beneficial owners to receive payment in the event of any partial redemption of Bonds; or (6) any action taken by DTC or its nominee as the registered Owner of the Bonds.

Notwithstanding any other provisions of this Supplemental Resolution to the contrary, the Authority, the Trustee and each other Fiduciary shall be entitled to treat and consider the Person in whose name each Bond is registered in the books of registry as the absolute owner of such Bond for the purpose of payment of principal, the Purchase Price, the Redemption Price, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal and the Redemption Price of and interest on the Bonds only to or upon the order of the respective Owners, as shown on the books of registry as provided in this Supplemental Resolution, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Authority's obligations with respect to payment of principal and the Redemption Price of and interest on the Bonds to the extent of the sum or sums so paid.

Notwithstanding any other provisions of this Supplemental Resolution to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal, the Purchase Price and the Redemption Price of, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, pursuant to DTC's rules and procedures.

Payments by the DTC participants to beneficial owners will be governed by standing instructions and customary practices, as is now the case with municipal securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such DTC participant and not of DTC, the Trustee or the Authority, subject to any statutory and regulatory requirements as may be in effect from time to time.

Provisions similar to those contained in this subsection (a) may be made by the Authority in connection with the appointment by the Authority of a substitute Securities Depository, or in the event of a successor to any Securities Depository.

Authorized Officers are hereby authorized to enter into such representations and agreements as they deem necessary and appropriate in furtherance of the provisions of this subsection (a).

(b) **Replacement Bonds.** The Authority shall issue Bond certificates (the "Replacement Bonds") directly to the beneficial owners of the Bonds, or their nominees, in the event that DTC determines to discontinue providing its services as Securities Depository with respect to such Bonds, at any time by giving notice to the Authority, and the Authority

fails to appoint another qualified Securities Depository to replace DTC. In addition, the Authority shall issue Replacement Bonds directly to the beneficial owners of the Bonds, or their nominees, in the event the Authority discontinues use of DTC as Securities Depository at any time upon determination by the Authority, in its sole discretion and without the consent of any other Person, that beneficial owners of the Bonds shall be able to obtain certificated Bonds.

(c) **Notices.** In connection with any notice of redemption provided in accordance with Article VI of the General Resolution, notice of such redemption shall also be sent by the Trustee by first class mail, overnight delivery service or other secure overnight means, postage prepaid, to any Rating Agency; to the Securities Depository which are known to the Trustee to be holding Bonds, to any Liquidity Facility Issuer with respect to such Bonds, and to at least two (2) of the national Information Services that disseminate securities redemption notices, in each case not later than the mailing of notice required by the General Resolution.

204. **Delegation of Authority.** There is hereby delegated to each Authorized Representative of the Authority, subject to the limitations contained herein, the power with respect to the Bonds of each Series to determine and effectuate the following:

(a) the principal amount of the Bonds of each Series to be issued, provided that the aggregate original principal amount of Bonds of all Series shall not exceed the limit set forth in Section 201(b) and provided further that the aggregate original principal amount of the portion of the Bonds authorized by this Supplemental Resolution issued to fund Costs of System Improvements shall not exceed \$540,000,000;

(b) whether to issue Bonds as “bond anticipation notes” and the maturities, interest rates, tender and redemption provisions, if any, and other terms of such bond anticipation notes;

(c) the dated date or dates, maturity date or dates and principal amount of each maturity of the Bonds of such Series, the first and subsequent interest payment date or dates of the Bonds of such Series, and the date or dates from which the Bonds of such Series shall bear interest;

(d) the methods of determining the interest rate applicable to the Bonds of such Series which may include Commercial Paper Rates, Daily Rates, Index Rates, Term Rates, Fixed Rates, Weekly Rates or other methods of determining the interest rate applicable to such Bonds and the initial interest rate or rates of the Bonds of such Series, provided that the initial interest rate or rates applicable to the Bonds of a Series at the date of their issuance shall not exceed six percent (6%) per annum;

(e) the amounts of the proceeds of the Bonds of each Series to be deposited and applied in accordance with Section 202 hereof;

(f) the redemption provisions, if any, of the Bonds;



- (g) the tender provisions, if any, of the Bonds;
- (h) the definitive form or forms of the Bonds and the definitive form or forms of the Trustee's certificate of authentication thereon;
- (i) the specification, from time to time, of a new Maximum Rate, in accordance with the definition thereof;
- (j) provisions that are deemed advisable by such Authorized Representative in connection with a change in the Mode applicable to the Bonds of a Series;
- (k) obtaining any Credit Facility or Liquidity Facility related to the Bonds of a Series or any portion thereof, and complying with any commitment therefor including executing and delivering any related agreement with any Credit Facility Issuer or Liquidity Facility Issuer, to the extent that such Authorized Representative determines that to do so would be in the best interest of the Authority;
- (l) whether the interest on the Bonds will be included in gross income for Federal income tax purposes; and
- (m) any other provisions deemed advisable by such Authorized Representative, not in conflict with the provisions hereof or of the General Resolution.

Such Authorized Representative shall execute one or more certificates evidencing determinations or other actions taken pursuant to the authority granted herein, an executed copy of which shall be delivered to the Trustee. Each such certificate shall be deemed a Certificate of Determination and shall be conclusive evidence of the action or determination of such officer as to the matters stated therein. The provisions of each Certificate of Determination shall be deemed to be incorporated in Article II hereof. No such Certificate of Determination, nor any amendment to this Supplemental Resolution, shall change or modify any of the rights or obligations of any Credit Facility Issuer or any Liquidity Facility Issuer without its written assent thereto.

205. **Form of Bonds and Trustee's Authentication Certificate.** Subject to the provisions of the General Resolution and this Supplemental Resolution, the form of the Bonds of each Series, form of assignment, and the Trustee's Certificate of Authentication shall be in substantially the form set forth in the applicable Certificate of Determination. Any portion of the text of any Bond of a Series may be set forth on the reverse thereof, with an appropriate reference thereto on the face of such Bond. Bonds of any Series may be typewritten, printed, engraved, lithographed or otherwise reproduced and may incorporate such legends and other additional text as may be customary, including but not limited to any legend to reflect delivery of the Bonds of any Series to a Securities Depository.

206. **Denominations; Medium, Method and Place of Payment of Principal and Interest; Dating.** The Bonds of each Series shall be issued in the form of fully registered bonds in Authorized Denominations and shall be numbered, lettered and dated as prescribed in the applicable Certificate of Determination. The principal of and premium, if any, and interest on the Bonds of each Series shall be payable in lawful money of the United States of

America as provided in the applicable Certificate of Determination.

Interest on Bonds of a Series shall be calculated as provided in the applicable Certificate of Determination. The interest rates for Bonds of a Series contained in the records of the Trustee shall be conclusive and binding, absent manifest error, upon the Authority, the Remarketing Agent, the Tender Agent, the Trustee, the Liquidity Facility Issuer, the Credit Facility Issuer and the Owners.

No Bond of a Series may bear interest at an interest rate higher than the Maximum Rate.

207. **Determination of Interest Rate(s); Purchase Price.** The interest rate applicable during any Rate Period (other than a Fixed Rate determined on or prior to the date of issuance of the related Bonds) shall be determined in accordance with the applicable Certificate of Determination. Except as otherwise provided in the applicable Certificate of Determination, any such rate shall be the minimum rate that, in the sole judgment of the Remarketing Agent, would result in a sale of the Bonds of the Series at a price equal to the principal amount thereof on the date on which the interest rate on such Bonds is required to be determined in accordance with the applicable Certificate of Determination, taking into consideration the duration of the Interest Period, which shall be established by the Authority.

### ARTICLE III

#### SALE OF EACH SERIES; CERTAIN FINDINGS; DETERMINATIONS AND AUTHORIZATIONS; AMENDMENTS TO GENERAL RESOLUTION

301. **Sale of the Bonds.** (a) The Bonds of each Series may be sold to the Purchasers therefor named in the respective Bond Purchase Agreement and approved by an Authorized Representative of the Authority, upon the terms and conditions set forth in the Bond Purchase Agreement at an aggregate purchase price (excluding accrued interest) of not less than ninety-five percent (95%) of the aggregate principal amount of such Bonds to be sold. The Purchaser or Purchasers of the Bonds of each Series shall be approved by the Chief Executive Officer and shall be one or more of the financial institutions approved by the Authority to act as underwriters of the Authority's bonds.

(b) The Authority hereby authorizes one or more Bond Purchase Agreements with respect to the Bonds, which in the case of any series of Bonds being sold to a purchaser for resale to the public, shall be in substantially the form of the bond purchase agreements executed by the Authority in connection with the issuance of the Authority's Electric System General Revenue Bonds, Series 2021 (the "Series 2021 Bonds"), with such modifications thereto as any Authorized Representative of the Authority, upon the advice of counsel to the Authority, approves, but subject to subsection (a) above. In the case of a placement of Bonds with one or more investors or financial institutions, the Bond Purchase Agreement shall be in such form as any Authorized Representative of the Authority, upon the advice of counsel to the Authority, approves, but subject to subsection (a) above. Any Authorized Representative of the Authority is hereby authorized to execute and deliver such

**Bond Purchase Agreements, which execution and delivery shall be conclusive evidence of the approval of any such modifications. Any Bond Purchase Agreement or placement agreement may provide for the sale of the Bonds on a forward delivery basis.**

(c) **The Bonds of each Series may be sold to the Purchasers therefor pursuant to a competitive sale, upon the terms and conditions set forth in a Notice of Sale at an aggregate purchase price (excluding accrued interest) of not less than ninety-five percent (95%) of the aggregate principal amount of such Bonds to be sold.**

**302. Preliminary and Final Official Statements. The Authority hereby authorizes one or more preliminary and final official statements substantially in the form of the Official Statements, delivered with respect to the Authority's Series 2021 Bonds, with such modifications thereto as any Authorized Representative of the Authority, upon the advice of counsel to the Authority, approves, including, without limitation, modifications to reflect matters reflected in continuing disclosure filings made with the Municipal Securities Rulemaking Board subsequent to the date of such Official Statement. Any Authorized Representative of the Authority is hereby authorized to deliver such preliminary official statements to the Purchasers for delivery to prospective purchasers of the Bonds and to execute copies of such final official statement and deliver the same to the Purchasers or Remarketing Agents, as the case may be, in connection with the original issuance of the Bonds of any Series or the remarketing thereof, which execution and delivery shall be conclusive evidence of the approvals of such preliminary and final official statements. The Authority hereby authorizes the use of such preliminary and final official statements and the information contained therein in connection with the public offering and sale of the Bonds of each Series by the Purchasers.**

**303. Continuing Disclosure. The Authority hereby approves the Continuing Disclosure Certificate substantially in the form delivered in connection with the Series 2021 Bonds, and authorizes any Authorized Representative to execute and deliver the same, or any similar undertaking, whether in the form of an agreement with the Trustee or any other instrument, to provide secondary market disclosure in order to permit the Purchasers of the Bonds of any Series to comply with Rule 15c2-12 of the Securities and Exchange Commission, with such modifications as any Authorized Representative, upon the advice of counsel to the Authority, approves, which execution and delivery shall be conclusive evidence of the approval of such modifications. The Authority covenants with the Owners from time to time of the Bonds of each Series for which a Continuing Disclosure Certificate is delivered that it will, and hereby authorizes the appropriate officers and employees of the Authority to take all action necessary or appropriate to, comply with and carry out all of the provisions of such undertaking as amended from time to time. Notwithstanding any other provision of the Resolution, failure of the Authority to perform in accordance with such continuing disclosure undertaking shall not constitute a default or an Event of Default under the Resolution and shall not result in any acceleration of payment of the Bonds of any Series, and the rights and remedies provided by the Resolution upon the occurrence of such a default or an Event of Default shall not apply to any such failure, but such undertaking may be enforced only as provided therein.**

**304. Remarketing Agreements and Tender Agency Agreements. The Authority hereby authorizes one or more Remarketing Agreements and Tender Agency**

Agreements with respect to the Bonds of any Series in substantially the form of the remarketing agreements and the tender agency agreements entered into by the Authority in connection with prior series of Bonds, with such modifications and with such Remarketing Agents and such Tender Agents as any Authorized Representative, upon the advice of counsel to the Authority, approves. Any Authorized Representative of the Authority is hereby authorized to execute and deliver such Remarketing Agreements and such Tender Agency Agreements in connection with the original issuance of the Bonds of any Series or remarketing thereof, which execution and delivery shall be conclusive evidence of the approval of any such modifications.

305. **Further Authority.** All Authorized Representatives of the Authority are and each of them is hereby authorized and directed to execute and deliver any and all agreements, documents and instruments and to do and cause to be done any and all acts necessary or proper for carrying out this Supplemental Resolution and each agreement authorized hereby, the issuance, sale and delivery and remarketing of the Bonds of any Series and for implementing the terms of each such agreement and the transactions contemplated thereby and by this Supplemental Resolution.

306. **Certain Findings and Determinations.** The Authority hereby finds and determines:

(a) The General Resolution has not been amended, supplemented, or repealed since the adoption thereof except by the resolution of the Authority entitled “First Supplemental Resolution authorizing Electric System General Revenue Bonds, Series 1998A” adopted May 13, 1998, by the resolution of the Authority entitled “Second Supplemental Resolution authorizing Electric System General Revenue Bonds, Series 1998B” adopted October 20, 1998, by the resolution of the Authority entitled “Third Supplemental Resolution authorizing Electric System General Revenue Bonds, Series 2000A” adopted February 29, 2000, by the resolution of the Authority entitled “Fourth Supplemental Resolution authorizing Electric System General Revenue Bonds, Series 2001A” adopted March 1, 2001, by the resolution of the Authority entitled “Fifth Supplemental Resolution authorizing Electric System General Revenue Bonds, Series 2001B through 2001P” adopted May 1, 2001, by the resolution of the Authority entitled “Sixth Supplemental Resolution authorizing Electric System General Revenue Bonds, Series 2003A” adopted February 27, 2003, as amended March 27, 2003, by the resolution of the Authority entitled “Seventh Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted March 27, 2003, by the resolution of the Authority entitled “Eighth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted May 26, 2004, by the resolution of the Authority entitled “Ninth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted March 24, 2005, by the resolution of the Authority entitled “Tenth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted April 27, 2006, by the resolution of the Authority entitled “Eleventh Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted October 18, 2006, by the resolution of the Authority entitled “Twelfth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted February 26, 2008, and by the resolution of the Authority entitled “Thirteenth Supplemental Resolution authorizing Additional Interest Rate Modes and Modifications to the Operational Provisions and Characteristics of Existing Interest Rate Modes of Outstanding Electric

**System General Revenue Bonds” adopted February 26, 2008 and by the resolution of the Authority entitled “Fourteenth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted October 23, 2008, by the resolution of the Authority entitled “Fifteenth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted April 23, 2009, by the resolution of the Authority entitled “Sixteenth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 17, 2009, and by the resolution of the Authority entitled “Seventeenth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted September 27, 2010, by the resolution of the Authority entitled “Eighteenth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 15, 2011, by the resolutions of the Authority entitled “Nineteenth Supplemental Resolution authorizing Electric System General Revenue Bonds,” “Twentieth Supplemental Resolution authorizing Electric System General Revenue Bonds” and “Twenty-First Supplemental Resolution authorizing Electric System General Revenue Bonds,” each adopted December 13, 2012, by the resolutions of the Authority entitled “Twenty-Second Supplemental Resolution authorizing Electric System General Revenue Bonds” and “Twenty-Third Supplemental Resolution authorizing Electric System General Revenue Bonds,” each adopted August 6, 2014, by the resolution of the Authority entitled “Twenty-Fourth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 16, 2015, by the resolution of the Authority entitled “Twenty-Fifth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted March 21, 2016, by the resolution of the Authority entitled “Twenty-Sixth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 19, 2016, by the resolution of the Authority entitled “Twenty-Seventh Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 19, 2017, by the resolution of the Authority entitled “Twenty-Eighth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 19, 2018, by the resolution of the Authority entitled “Twenty-Ninth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 18, 2019, as amended and restated May 20, 2020, by the Resolution of the Authority entitled “Thirtieth Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted September 23, 2020, and by the Resolution of the Authority entitled “Thirty-First Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 16, 2020 and the certificates of determination delivered pursuant to all such resolutions. This Supplemental Resolution supplements the General Resolution, constitutes and is a “Supplemental Resolution” within the meaning of such quoted term as defined and used in the General Resolution, and is adopted under and pursuant to the General Resolution.**

**(b) The Bonds of each Series constitute and are “Bonds” within the meaning of the quoted word as defined and used in the General Resolution.**

**(c) The Trust Estate is not encumbered by any lien or charge thereon or pledge thereof which is prior to or of equal rank with the lien and charge thereon and pledge thereof created by the General Resolution.**

**(d) There does not exist an “Event of Default” within the meaning of such quoted term as defined in Section 1001 of the General Resolution, nor does there exist any condition which, after the giving of notice or the passage of time, or both, would constitute**

such an “Event of Default.”

307. **Amendment to the General Resolution.** (a) *Amendment.* Pursuant to the resolution of the Board of Trustees of the Authority, dated July 22, 2020, the General Resolution shall be amended and restated as set forth in such resolution, subject to the consent or deemed consent of not less than a majority of the holders of Bonds and certain other conditions.

(b) *Deemed Consents.* Pursuant to Section 903 of the General Resolution, the original purchasers and Holders of the Bonds of each Series issued pursuant to this Supplemental Resolution, by their purchase and acceptance thereof, thereby (i) consent, and shall be deemed to have consented to, the amendments made by or pursuant to this Supplemental Resolution, and (ii) waive, and shall be deemed to have waived, any and all other formal notices, implementation or timing requirements that may otherwise be required under the Resolution, which consents shall be effective and binding unless and until revoked pursuant to and to the extent permitted by said Section 903 of the General Resolution.

## ARTICLE IV

### REDEMPTION AND PURCHASE OF BONDS

401. **Optional and Sinking Fund Redemption.** Bonds of a Series shall be subject to optional and mandatory redemption as and to the extent and at the times and subject to such conditions, if any, as shall be specified in the applicable Certificate of Determination.

402. **Optional and Mandatory Purchase of Bonds.** The Bonds of a Series shall be subject to optional and mandatory tender for purchase to the extent, at the times and subject to such conditions as shall be set forth in the applicable Certificate of Determination.

403. **Purchase Fund.** A Purchase Fund may be established in a Certificate of Determination in connection with the delivery to the Trustee of a Liquidity Facility, which fund, if established, shall be held by the Tender Agent and may have such separate accounts as shall be established in such Certificate of Determination. Such Purchase Fund and accounts therein may be established for the purpose of depositing moneys obtained from (i) the remarketing of Bonds of a Series which is subject to tender for purchase in accordance with the applicable Certificate of Determination, (ii) draws under a Liquidity Facility and (iii) the Authority. Such deposited moneys shall be used solely to pay the Purchase Price of Bonds of such Series or to reimburse a Liquidity Facility Issuer.

404. **Remarketing of Bonds of a Series; Notices.** The Remarketing Agent for Bonds of a Series shall offer for sale and use its best efforts to find purchasers for all Bonds of such Series required to be tendered for purchase. The applicable Certificate of Determination shall prescribe provisions relating to the notices which shall be furnished by the Remarketing Agent in connection with such remarketing and as to the application of the proceeds of such remarketing.

**405. Source of Funds for Purchase of Bonds of a Series.** (a) Except as may otherwise be provided in the applicable Certificate of Determination, the Purchase Price of the Bonds of a Series on any Purchase Date shall be payable solely from proceeds of remarketing of such Series or proceeds of a related Liquidity Facility (including moneys that are borrowed by the Authority pursuant to a Liquidity Facility), if any, and shall not be payable by the Authority from any other source.

(b) As may be more particularly set forth in the applicable Certificate of Determination, on or before the close of business on the Purchase Date or the Mandatory Purchase Date with respect to Bonds of a Series, the Tender Agent shall purchase such Bonds from the Owners at the Purchase Price. Except as otherwise provided in a Certificate of Determination, funds for the payment of such Purchase Price shall be derived in the order of priority indicated:

(i) immediately available funds transferred by the Remarketing Agent to the Tender Agent derived from the remarketing of the Bonds; and

(ii) immediately available funds transferred by the Liquidity Facility Issuer (or the Authority to the Tender Agent, if the Liquidity Facility permits the Authority to make draws thereon), including, without limitation, amounts available under the Liquidity Facility.

**406. Delivery of Bonds.** Except as otherwise required or permitted by the book-entry only system of the Securities Depository and in the applicable Certificate of Determination, the Bonds of a Series sold by the Remarketing Agent shall be delivered by the Remarketing Agent to the purchasers of those Bonds at the times and dates prescribed by the applicable Certificate of Determination. The Bonds of a Series purchased with moneys provided by the Authority shall be delivered at the direction of the Authority. The Bonds of a Series purchased with moneys drawn under a Liquidity Facility shall be delivered as provided in such Liquidity Facility.

**407. Delivery and Payment for Purchased Bonds of a Series; Undelivered Bonds.** Each Certificate of Determination shall provide for the payment of the Purchase Price of Purchased Bonds of the related Series and for the sources of such payment and shall also make provision for undelivered Bonds.

**408. Credit Facility and Liquidity Facility.** (a) At any time and subject to such limitations and other provisions as may be set forth in the applicable Certificate of Determination, the Authority may obtain or provide for the delivery to the Trustee of a Liquidity Facility and/or a Credit Facility with respect to the Bonds of any Series.

(b) The Liquidity Facility or Liquidity Facilities relating to the Bonds of any Series shall provide for draws thereon or borrowings thereunder, in the aggregate, in an amount at least equal to the amount required to pay the Purchase Price for the related Bonds of a Series. Except as may otherwise be provided in the applicable Certificate of Determination, the obligation of the Issuer to reimburse the Liquidity Facility Issuer or to pay the fees, charges and expenses of the Liquidity Facility Issuer under the Liquidity

Facility shall constitute a Parity Reimbursement Obligation within the meaning of the Resolution and shall be secured by the pledge of and lien on the Trust Estate created by Section 501 of the Resolution.

## ARTICLE V

### COVENANTS

**501. Tax Covenant.** (a) Subject to subsection (e) of this Section, the Authority shall not take or omit to take any action which would cause interest on any Bonds authorized by this Supplemental Resolution to be included in the gross income of any Owner thereof for Federal income tax purposes by reason of subsection (b) of Section 103 of the Code. Without limiting the generality of the foregoing, no part of the proceeds of any Bonds or any other funds of the Authority shall be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an “arbitrage bond” as defined in section 148 of the Code and to be subject to treatment under subsection (b)(2) of Section 103 of the Code as an obligation not described in subsection (a) of said section. The Authority shall make such payments to the United States as may be necessary to comply with the provisions of Section 148 of the Code.

(b) There is hereby delegated to each Authorized Representative of the Authority the power to execute and deliver for and on behalf of the Authority one or more Arbitrage and Use of Proceeds Certificates with respect to the Bonds of each Series in furtherance of the covenant in subsection (a).

(c) Notwithstanding any other provision of the Resolution to the contrary, upon the Authority’s failure to observe, or refusal to comply with, the covenants in subsection (a) above, the Owners of the Bonds, or the Trustee acting on their behalf, shall be entitled only to the right of specific performance of such covenant, and shall not be entitled to any of the other rights and remedies provided under Article X of the General Resolution.

(d) Notwithstanding Section 1201 of the General Resolution, the Owners of the Bonds of any Series shall be entitled to the benefit of the covenants in subsection (a) above until the retirement of the Bonds of such Series, whether at maturity or earlier redemption or otherwise.

(e) The preceding clauses of this Section 501 shall not apply to any Bonds authorized by this Supplemental Resolution the interest on which is included in gross income for Federal income tax purposes.

**502. Trustee and Paying Agent.** The Trustee, heretofore appointed pursuant to the General Resolution, is also appointed as Paying Agent for the Bonds.

**503. Remarketing Agent.** The Authority shall appoint and employ the services of a Remarketing Agent prior to any Purchase Date or Mode Change Date while the Bonds of any Series are in the Commercial Paper Mode, Daily Rate Mode, Weekly Rate Mode, Index Mode or Term Rate Mode. As and to the extent so provided in the related



reimbursement agreement, no appointment of the Remarketing Agent for the Bonds of a Series shall be effective without the consent of the Credit Facility Issuer or the Liquidity Facility Issuer, as the case may be, for the Bonds of such Series. Such consent shall be deemed to have been given if such Credit Facility Issuer or Liquidity Facility Issuer, as the case may be, unreasonably withholds its consent. The Authority shall have the right to remove the Remarketing Agent as provided in the Remarketing Agreement. To the extent so provided in the related reimbursement agreement, the Authority shall, upon a written direction of the Credit Facility Issuer or the Liquidity Facility Issuer for the Bonds of a Series, remove the Remarketing Agent for the Bonds of such Series if the Remarketing Agent fails to comply with its obligations under the Remarketing Agreement.

**504. Tender Agent.** The Authority shall appoint and employ the services of a Tender Agent prior to any Purchase Date or Mode Change Date while the Bonds of any Series are in the Daily Rate, Weekly Rate, the Term Rate Mode, the Index Rate Mode or the Commercial Paper Mode. The Authority shall have the right to remove the Tender Agent as provided in the Tender Agency Agreement.

## ARTICLE VI

### MISCELLANEOUS

**601. Additional Right to Amend.** This Supplemental Resolution may be amended without consent of the Owners of Bonds or of the Trustee and only with the consent of the Credit Facility Issuer and the Liquidity Facility Issuer for the Bonds of a Series affected by such amendment, at any time or from time to time, (i) for the purpose of making changes in the provisions hereof relating to the characteristics and operational provisions of the Modes of any Series of Bonds or (ii) in order to provide for and accommodate Credit Facilities or Liquidity Facilities for Bonds of any Series. Each such amendment shall become effective on any Mandatory Purchase Date applicable to the Bonds of a Series affected by such amendment next following the filing of a copy thereof, certified by an Authorized Officer, with the Trustee, the Tender Agent, the Remarketing Agent, the Credit Facility Issuer and the Liquidity Facility Issuer with respect to the Bonds of such Series.

**602. Notices.** (a) **Notices to Owners.** All notices required to be given to Owners of Bonds of a Series under this Supplemental Resolution, unless otherwise expressly provided in this Supplemental Resolution, shall be given by first class mail, postage prepaid.

(b) **Notices to Rating Agencies.** The Authority shall give prior written notice to the Rating Agencies of any of the following events:

- (1) Any change of Trustee, Tender Agent or Remarketing Agent;
- (2) Any material changes to the Resolution, the General Resolution or this Supplemental Resolution that affect the Bonds;

(3) Any changes to the Liquidity Facility, the Credit Facility, or any agreement with the Liquidity Facility Issuer, Credit Facility Issuer, Remarketing Agent or Tender Agent pertaining to the Bonds;

(4) Any expiration, termination or extension of any Liquidity Facility or Credit Facility or the obtaining of an alternate Liquidity Facility or alternate Credit Facility pertaining to the Bonds;

(5) Any change in the Mode applicable to the Bonds of any Series from any Mode which is supported by any Liquidity Facility or Credit Facility then in effect to a different Mode which is not supported by such Liquidity Facility or Credit Facility; and

(6) Any redemption, defeasance, mandatory tender or acceleration of all the Outstanding Bonds.

**603. Effective Date.** This Supplemental Resolution shall be fully effective in accordance with its terms upon the filing with the Trustee of a copy hereof certified by an Authorized Representative.

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*Acting Chair Fischl stated that the next item on the agenda was the CEO's Report to be presented by Thomas Falcone.*

*Mr. Falcone presented the CEO Report and took questions from the Trustees.*

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*Acting Chair Fischl stated that the next item on the agenda was the Briefing on DPS Recommendations Regarding PSEG Long Island LLC Contract, Tariff Proposals, and Utility 2.0 Plan presented by Thomas Falcone and Carrie Gallagher from DPS.*

*Mr. Falcone and Ms. Gallagher presented the Briefing on DPS Recommendations Regarding PSEG Long Island LLC Contract, Tariff Proposals, and Utility 2.0 Plan and took questions from the Trustees.*

\*\*\*

*Acting Chair Fischl stated that the next item on the agenda was the Consideration of Approval of the Second Amended and Restated Operations Services Agreement with PSEG Long Island LLC to be presented by Thomas Falcone.*

*Mr. 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 is requested to adopt a resolution approving the Second Amended and Restated Operations Services Agreement (the “Second A&R OSA”) by and between the Long Island Lighting Company d/b/a LIPA, a wholly owned subsidiary of the Long Island Power Authority (collectively “LIPA”) and PSEG Long Island LLC (“PSEG Long Island”), and authorizing the Chief Executive Officer (“CEO”) or his designee to execute the Second A&R OSA and take such other actions necessary and appropriate to effectuate the Second A&R OSA, 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 the following day, August 5, LIPA’s CEO initiated an independent review of the circumstances and root causes that led to the lapses in PSEG Long Island’s storm response. LIPA’s CEO established a Task Force that was charged with providing actionable recommendations and overseeing PSEG Long Island’s remediation activities. LIPA reported the Task Force’s findings and recommendations to the LIPA Board of Trustees and the public in a 30-Day Report and a 90-Day Report.

The Task Force presented the 30-Day Report to the Board 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 and made recommendations for implementation by PSEG Long Island.

On November 13, 2020, the Department of Public Service (“DPS”) provided a recommendation to the LIPA Board as a result of its independent investigation of PSEG Long Island’s storm response. DPS Staff identified more than 70 potential violations of PSEG Long Island’s Emergency Restoration Plan. DPS recommended, among other things, that LIPA evaluate options to terminate PSEG Long Island as LIPA’s Service Provider.

The Task Force presented the 90-Day Report to the Board at the November 18, 2020 Board Meeting. The 90-Day Report expanded on the findings of the 30-Day Report and addressed

broader questions on the effectiveness of PSEG Long Island's management of utility operations.

As set forth in the 90-Day Report, the Task Force provided approximately 85 recommendations for the Board's consideration (the "Task Force Recommendations"). The Task Force's main recommendation, however, was to change the way LIPA's assets are managed to ensure management accountability to Long Island operations. At the November meeting, the Board also authorized filing a lawsuit against PSEG Long Island seeking \$70 million in damages related to PSEG Long Island's failed management response before, during, and after the storm.

On December 16, 2020, LIPA released Phase I of its Options Analysis. The purpose of the Phase I report was to present the Board and stakeholders with an initial framing of the range of possible restructuring options for the management of LIPA's assets. In response to the Phase I report, the Board asked LIPA Staff to forgo further development of the privatization alternative due to its high cost to customers and to further develop the other alternatives and report back to the Board and the public in a Phase II report no later than March 31, 2021.

On March 29, 2021, LIPA's CEO reported that LIPA Staff had been working diligently on the Phase II Options Analysis, including negotiations with PSEG Long Island on contract reforms that would increase PSEG Long Island management's alignment, accountability, and transparency, as well as facilitate greater oversight by LIPA and the DPS. LIPA's CEO reported that he believed providing negotiations with additional time could facilitate offering the Board and public greater choice and requested that the deadline for the Phase II report be extended to the Board's April 2021 meeting. By Resolution dated March 29, 2021, the Board extended the deadline for the Phase II Options Analysis to the April Board meeting based on LIPA Staff's recommendation.

On April 28, 2021, the Board adopted the Phase II Options Analysis, which described four potential alternatives – (i) privatization (i.e. sell LIPA's assets to private investors), (ii) reset the PSEG Long Island relationship and reform the terms of the current Amended and Restated Operations Services Agreement ("OSA") with PSEG Long Island, (iii) contract with a new service provider to achieve improved operations of customer assets, and (iv) bring operations under a "fully municipal" LIPA management model. The Phase II Options Analysis detailed that LIPA, at that time, was unable to achieve its negotiation objectives with PSEG Long Island. The report described, among other alternatives, the considerations of outsourcing to a new service provider and the LIPA management model.

At the April 28, 2021 meeting, the Board directed, among other things, that LIPA's CEO should continue to pursue renegotiation of the OSA with PSEG Long Island on terms that fundamentally addressed the Board's concerns about PSEG Long Island's management. The Phase II Options Analysis detailed eight reforms that would be required for any reformed contract with PSEG Long Island. Based on the status of negotiations, the Board also directed the issuance of a Request for Information to new potential service providers.

Thereafter, the Board accepted public comment on the Options Analysis at its May 19 meeting, and on May 25, 2021 and May 27, 2021, LIPA Staff arranged public comment hearings to solicit feedback on the future management of LIPA assets from our customers and stakeholders. The Board also accepted written comments relating to the Options Analysis. A summary of those public comments was presented to the Board at its June 2021 meeting and the comments are available on LIPA's website.

### **Settlement with PSEG Long Island and the Second A&R OSA**

At the end of June 2021, pursuant to the Board's direction, LIPA Staff reached a term sheet agreement with PSEG Long Island. The tentative agreement delivered concrete improvements in each of the eight areas outlined as necessary in the Phase II Options Analysis, including greater management alignment and accountability and stronger oversight. The agreement also provided for PSEG Long Island's forfeiture of \$30 million, comprised of \$19.5 million in payments and credits to LIPA towards the cost of upgrading the information technology and communication systems that failed during the storm; \$6.6 million to reimburse customers without power for more than 72 hours for food and medicine spoilage; and \$3.9 million in contributions to Long Island based charities.

On November 9, 2021, LIPA announced a revised four-year management services contract with PSEG Long Island reflecting the June term sheet settlement and including the reforms designed to drive performance and accountability, while providing an unprecedented level of oversight of PSEG Long Island's operations.

The Second A&R OSA delivers concrete contract improvements on all the Board's stated objectives for a reformed contract with PSEG Long Island. These include: (i) a greater share of PSEG Long Island compensation at risk based on performance; (ii) expanded performance metrics with greater rigor in all categories of service; (iii) gating and default metrics to discourage singularly poor performance (i.e. storm response); (iv) strengthened Long Island-based management and accountability for Long Island operations; (v) a duty of candor; (vi) requiring compliance with Board recommendations to address known deficiencies; (vii) long term planning, budget development and cost management; (viii) separation of Long Island information technology systems, and facilitation of independent validation and verification. The Board objectives, terms of the agreement, and the differences between the existing contract and new contract are summarized in the LIPA Fact Sheet: Reforming Long Island's Electric Service. The metrics that would be in place under the reformed contract to evaluate PSEG Long Island's are summarized in LIPA Fact Sheet: Accountability for Performance.

The Second A&R OSA provides, unless sooner terminated, that the term of the agreement shall extend to December 31, 2025. PSEG Long Island would no longer have a right to an eight-year extension on substantially similar terms based on its performance under the current contract.

Instead, the Second A&R OSA provides that "[u]pon mutual agreement in their respective sole discretion, the Parties may extend the end of the Term up to five additional years to

December 31, 2030, with adjustments that are mutually acceptable to the Parties being made to the provisions herein to reflect such extension.”

As such, the Board has requested that LIPA Staff complete a study by year-end 2023 to evaluate the best course of action in advance of the end of the Second A&R OSA in 2025 and release such study for public comment. The study shall consider, among other matters, PSEG Long Island’s performance in 2022 and 2023, as well as a review of the benefits and considerations of contract renewal, alternative service providers, and LIPA management.

### **DPS Recommendation**

On November 23, 2021, DPS sent the Board a letter recommending that the Board adopt the Second A&R OSA (the “DPS Recommendation”). The DPS Recommendation provides that “[t]he Reformed OSA greatly enhances the requirements which dictate the level and quality of service, and it is undeniable that the consequences PSEG Long Island faces should it fail are also greatly increased. [DPS] will ensure PSEG Long Island meets all of the new rigorous requirements, and we will diligently ensure PSEG Long Island is held accountable to meet this new regulatory standard.” The DPS Recommendation is available here.

### **Summary of Public Comments**

LIPA accepted public comment on the reformed contract, and other matters, at its November 17, 2021 Board meeting. On Thursday, December 2, 2021, LIPA held an evening public comment hearing on the reformed contract. LIPA’s Chief Executive Officer, Thomas Falcone, presented a summary of the contract and invited members of the public to speak for up to five minutes. The public hearing was live-streamed, and the materials, transcripts, and archived video are available on LIPA’s website (click here). There were 19 speakers at the public comment hearing, with 18 speakers opposing the reformed PSEG Long Island contract and urging municipalization.

Additionally, LIPA has received two written comments, both of which were supportive of a reformed contract.

Commenters opposing a new contract generally noted that municipalization would mean lower costs, and that public power utilities have high reliability and a commitment to sustainability. Several commenters called on Governor Hochul to reimagine LIPA as a customer-focused utility. Several commenters also called on LIPA to create a roadmap to a fully public utility. Some commenters noted that PSEG Long Island had not been forthright before and after Tropical Storm Isaias, and several noted that PSEG Long Island had not been a good partner. Multiple commenters urged the Board to delay consideration until after the Attorney General completes her investigation of PSEG Long Island’s response to Tropical Storm Isaias. Some commenters requested a longer review period.

*Staff Response: As noted above, LIPA has issued six public reports related to its Tropical Storm Isaias investigation and remediations. In its Options Analysis and other reports, LIPA outlined its reform objectives for the contract, and publicly reported on the June*

*term sheet agreement, as well as the process detailed above to consider the reformed contract.*

*The proposed contract significantly enhances accountability, incentives, and oversight. The accompanying performance measures for 2022 will deliver tangible results for customers beginning next year. Further, the settlement concludes litigation on reasonable terms.*

*Staff notes that under the LIPA Reform Act, LIPA is required to have a management services provider. Recently, a bill was introduced in the Legislature to study LIPA's business model. If passed, the bill would lead to a report no later than September 2023, with a bill authorizing municipalization thereafter. If LIPA were to municipalize after passage of such bill, the transition period would be approximately a year. Therefore, through at least 2024, LIPA will have a service provider. The choice for the near term is between the current PSEG Long Island contract or a reformed contract.*

*Further, staff notes that the Board has required in this authorization a study by year-end 2023 to evaluate the best course of action prior to the expiration of the PSEG Long Island contract in 2025. Such evaluation will be released for public consideration at that time.*

**Commenters in favor of a reformed management contract included IBEW Local 1049, which noted PSEG Long Island's improvements in employee safety and the continuity of employment the contract extension would provide.**

**Peter Gollon, a former LIPA Trustee and supporter of municipalization, also urged approval of the contract as "simply the best that can be done under the present constraints, and it's time to move on, with staff focus shifting from negotiating an improved contract to enforcing the many new terms in it. These terms, if adhered to by PSEG, will improve almost all aspects of the electrical service provided to LIPA's customers." Finally, Bob Fonti and Richard Bivone, who co-chair an Island-wide business stakeholder group, urged approval after reviewing the contract and performance measures.**

### **Recommendation**

**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 resolution was approved by the Trustees; Trustee Goroff voted no, Trustee Cockfield was unavailable for the vote, and the remaining Trustees voted yes.*

**1693. RESOLUTION APPROVING THE SECOND AMENDED AND RESTATED OPERATIONS SERVICES AGREEMENT WITH PSEG LONG ISLAND LLC AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE SUCH AGREEMENT**

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**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 1020-f(h) of the Public Authorities Law, General Powers of the Authority, LIPA, in part, may “make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority”; and**

**WHEREAS, on August 5, 2020, 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 (the “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 Task Force’s findings, observations, and recommendations to the LIPA Board of Trustees (the “Board”) and the public in a 30-Day Report and a 90-Day Report; and**

**WHEREAS, the Task Force presented the 30-Day Report to the Board at the September 23, 2020 Board Meeting and released it to the public; and**

**WHEREAS, on November 18, 2020, the Task Force presented the 90-Day Report, which provided 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, 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 Task Force Recommendations, the Board 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; and**



**WHEREAS, on December 16, 2020, LIPA’s Chief Executive Officer delivered to the Board the Phase I Options Analysis, and by Resolution directed LIPA’s Chief Executive Officer to further develop the options presented in the Phase I Options Analysis, including to reset the PSEG Long Island relationship and reform the current terms of the current Amended and Restated Operations Services Agreement with PSEG Long Island; and**

**WHEREAS, by Resolution dated March 29, 2021, the Board extended the deadline for the Phase II Options Analysis to the April 2021 Board meeting based on LIPA Staff’s recommendation that providing additional time for negotiations could facilitate offering the Board and public greater choice; and**

**WHEREAS, by Resolution dated April 28, 2021, the Board adopted the Phase II Options Analysis and also, among other directives, directed LIPA’s Chief Executive Officer to continue to pursue renegotiation of the Amended and Restated Operations Services Agreement with PSEG Long Island on terms that fundamentally address the Board’s concerns about PSEG Long Island’s management; and**

**WHEREAS, at the end of June 2021, pursuant to the Board’s direction, LIPA Staff reached a tentative settlement with PSEG Long Island, which delivers concrete improvements in every area outlined as necessary by the Board in the Options Analysis, including stronger protections for LIPA customers, stronger oversight protections for LIPA and the Department of Public Service (“DPS”), and also provides PSEG Long Island’s forfeiture of \$30 million; and**

**WHEREAS, On November 9, 2021, LIPA announced a revised operations services contract and settlement with PSEG Long Island that includes reforms designed to drive performance and accountability, while providing an unprecedented level of oversight of PSEG Long Island's operations; and**

**WHEREAS, on November 23, 2021, DPS sent the Board a letter of recommending that the Board adopt the Second A&R OSA; and**

**WHEREAS, on December 13, 2021, the Board was informed that the current President and Chief Operating Officer (“COO”) of PSEG Long Island had announced his intention to retire; and**

**WHEREAS, the Board wants to ensure a smooth and efficient transition to said COO’s replacement; and**

**WHEREAS, the Board has reviewed and considered the tentative term sheet agreement reached in June 2021 and the Second A&R OSA.**

**NOW, THEREFORE, BE IT RESOLVED, that the Board finds that, subject to following resolution, the provisions of such agreements are reasonable, fundamentally address the Board’s concerns about PSEG Long Island’s management, and are in the best interest of LIPA’s customers; and**

**BE IT FURTHER RESOLVED**, that in light of the recent announcement of the current COO’s intention to retire, the proposed contract should be amended to include provisions related to the prompt replacement of said COO; and

**BE IT FURTHER RESOLVED**, that consistent with the accompanying memorandum, the Chief Executive Officer or his designee is authorized to execute the Second A&R OSA, as amended to include provisions related to the replacement of said COO, and take such other actions necessary and appropriate to effectuate the Second A&R OSA; and

**BE IT FURTHER RESOLVED**, that the Board hereby directs LIPA Staff complete a study by year-end 2023 to evaluate the best course of action in advance of the end of the Second A&R OSA in 2025, and release such study for public for comment. The study shall consider, among other matters, PSEG Long Island’s performance in 2022 and 2023, as well as review of contract renewal, alternative providers, and LIPA management.

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*Acting Chair Fischl stated that the next item on the agenda was the Consideration of Approval of Tariff Changes to be presented by Justin Bell.*

*Mr. Bell presented the following action item and took questions from the Trustees.*

**Requested Action**

The Trustees are requested to approve five proposals to modify LIPA’s Tariff for Electric Service:

- (1) **Long Island Choice Improvements:** Codifying improvements to Long Island Choice that were identified through a stakeholder collaborative proceeding run by the Department of Public Service.
- (2) **Community Distributed Generation (CDG) and Remote Crediting:** Creating a remote crediting option for Value Stack projects, allowing for CDG credits to be returned more easily to host projects, and allowing more CDG projects to qualify for rate codes with lower fixed charges.
- (3) **Customer Benefit Contribution:** Ensuring that newly net metered mass market customers contribute to the cost of essential programs including low-income discounts, energy efficiency, and beneficial electrification.
- (4) **Prolonged Outage Relief:** Suspending daily service charges during prolonged outages.
- (5) **Miscellaneous Clean-up:** Codifying minor changes related to pole attachments, FEMA estimates included in the Delivery Service Adjustment, service initiation

charges for landlord use of vacant commercial spaces, and discontinuation of outdoor lighting service in municipalities with “dark sky” ordinances.

**Long Island Choice Improvements: Background**

The LIPA Board of Trustees originally approved the Long Island Choice program in May 1998 to offer electric customers the opportunity to choose their supplier of electricity or Energy Service Company (ESCO). Long Island Choice is a voluntary program, the goal of which is to allow electric customers to choose their electricity supplier for the commodity portion of electric service.

LIPA serves approximately 1.1 million customers. Over the last fifteen years, the average participation rate of the Long Island Choice program has been less than 1% of customers, with commercial customers representing most of the participation. Over the last three years, participation levels have decreased as shown in the table below largely due to a change in State law that no longer exempted ESCO customers from paying local sales taxes, thereby reducing most of the savings from the program.

<b>Year</b>	<b>Number of Commercial Customers</b>	<b>Number of Residential Customers</b>
<b>2018</b>	<b>3,760</b>	<b>38</b>
<b>2019</b>	<b>1,691</b>	<b>23</b>
<b>2020</b>	<b>116</b>	<b>8</b>

ESCOs and other stakeholders have cited concerns about Long Island Choice and suggestions for more closely aligning the program with statewide policies, including the following:

- The current structure of the Long Island Choice tariff structure is too complicated and confusing.
- ESCOs participating in the program would benefit from the availability of options for consolidated billing and purchase of receivables.
- Consumer advocates cite the need for consumer protections modeled after the Uniform Business Practices adopted by the New York Public Service Commission (PSC or Commission) for ESCOs operating in the rest of the State (Case 98-M-1343), ensuring that consumer protections on Long Island align with State policy;
- ESCOs have requested access to data sharing platforms and protocols that facilitate the customer enrollment process and create ESCO access to appropriate billing and smart meter load data consistent with State policies.
- Various stakeholders have requested the elimination of switching fees.

The DPS initiated its Long Island Choice stakeholder collaborative proceeding in December 2015, with the objective to investigate the potential benefits to Long Island consumers of retail choice and examine what reforms, if any, were needed to achieve them. Also in 2015, the PSC commenced a generic (statewide) proceeding to examine measures to ensure that

ESCO customers in New York pay just and reasonable rates. Multiple parties, including ESCOs and Non-ESCOs and the state's investor-owned utilities participated in this proceeding. In February 2016, upon development of a substantial evidentiary record, the Commission issued an *Order Resetting Retail Energy Markets and Establishing Further Process* in Case 15-M-0127, finding that mass market (residential and small commercial) ESCO customers paid more than the utility's prices for the commodity and that the complaint rate for ESCOs was unacceptably high.

On December 12, 2019, the Commission issued the *Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process* in Case 15-M-0127 (December 2019 Order). The Commission concluded that significant changes to the provisions governing retail access were necessary to provide adequate protections for all New Yorkers. The December 2019 Order was adopted to strengthen protections for mass market customers in the retail energy market by enhancing ESCO eligibility criteria and adopting limitations on the types and prices of products that may be offered to those customers by ESCOs to ensure that those customers receive value from the retail energy market.

In January 2020, several ESCOs filed petitions for rehearing, followed by public comments. On September 18, 2020 the Commission issued the *Order on Rehearing, Reconsideration, and Providing Clarification* (September 2020 Order). In this order, the petitions for rehearing and reconsideration were denied. At the same time, modifications were made to the Uniform Business Practices for ESCO's and were to be implemented 150 days following the order.

Among the reforms adopted by the Commission in its September 2020 Order was that ESCOs shall enroll new residential and small non-residential customers (mass-market customers) or renew existing mass-market customer contracts if at least one of the following conditions are met:

- (A) enrollment includes a guaranteed savings over the utility price, as reconciled on an annual basis;
- (B) enrollment is for a fixed-rate commodity product that is priced at no more than 5% greater than the trailing 12-month average utility supply rate;
- (C) enrollment is for a renewably sourced electric commodity product; or
- (D) enrollment is for a product or service otherwise expressly authorized by the Commission.

On October 16, 2020, DPS issued a notice soliciting comments in the Long Island proceeding. Many parties, including PSEG Long Island, on behalf of LIPA, submitted comments and reply comments proposing numerous improvements to the design of the Long Island Choice program and participated in technical conferences held on March 4, 2021, March 23, 2021, April 13, 2021, and May 5, 2021, to refine the proposal. Each conference facilitated a healthy conversation among stakeholders regarding the future of the Long Island Choice program, including improvements to the way LIPA's Power Supply Charge is calculated and presented to Long Island Choice customers. On October 22, 2021, the DPS staff issued a *Whitepaper on LI Choice Program and Energy Service Companies on Long Island* (Whitepaper), setting forth recommendations to the LIPA Board for adoption of Long Island

Choice improvements identified through the collaborative proceeding. This proposal reflects the recommendations in the Whitepaper.

### **Long Island Choice Improvements: Proposed Action**

The proposed amendments to the Long Island Choice tariff will implement improvements developed in the stakeholder collaborative and recommended by DPS in the Whitepaper.

The proposed changes will:

- (1) Relieve ESCOs of the obligation to bill retail choice customers on LIPA's behalf for LIPA's non-bypassable costs. LIPA will instead recover these costs directly from customers through a "Local Supply Charge" applicable to all customers (bundled service and retail choice including Community Choice Aggregation Programs (CCA). A separate "Market Supply Charge" will apply only to bundled service customers;
- (2) Reduce complexity and increase transparency by eliminating monthly adjustment transactions (called the Bill Credit Adjustment) between the utility and the ESCOs, and the related Long Island Choice Factor on customer bills;
- (3) Offer a consolidated, utility single bill option (including the option for LIPA to purchase the ESCO's receivables);
- (4) Include all the "mass market" consumer protections adopted by the PSC for its regulated utilities in the PSC orders described above, including DPS review of ESCO applications and disputes; and
- (5) Eliminate fees for customers that switch suppliers.

### **Community Distributed Generation and Remote Metering: Background**

In October 2012, LIPA implemented the Remote Net Metering (RNM) program, which allows a non-residential Customer Generator account to become a RNM host and designate a percentage of their net metering credits to satellite accounts held in the same name as the host account (typically the project owner or operator).

In April 2016, LIPA implemented the Community Distributed Generation (CDG) program. The purpose of CDG is to expand participation in renewable distributed generation by removing the requirement that the eligible generation be constructed separately and located separately on each customer's site or on another site owned by the customer. This program allows residential or commercial customers to share benefits from a renewable generation facility at some other host location. LIPA's program aligns with the approved CDG programs at other electric utilities of the State. Since the inception of these programs, LIPA, the DPS, the PSC, New York electric utilities and other stakeholders have worked to modify and refine the program to increase its success.

In 2018, the Value Stack tariff was implemented, which changed the compensation of CDG, RNM and other large projects. The Value Stack provides compensation based on the value of electricity exported to the grid, measured in specific value components that include energy, capacity, environmental attributes, and demand reduction. In 2019, the LIPA Board

approved the introduction of the Community Credit. The Community Credit, which became effective August 1, 2019, is provided to CDG projects receiving Value Stack compensation. Unlike the other Value Stack components, however, the Community Credit is not based on a specific value provided to the grid. Instead, the Community Credit is an added incentive designed to encourage further development of CDG in the service territory. Most recently, in January 2021, LIPA implemented CDG Net Crediting, which allows for CDG subscribers to receive a single bill from PSEG Long Island, net of the subscription fees that are forwarded to the CDG host (typically the owner of the project, also known as the project sponsor).

On November 25, 2019, NYSEDA filed a Petition Requesting Additional NY-Sun Program Funding and Extension of Program Through 2025 (the Petition). The Petition seeks an expansion of the NY-Sun program, to both build on its success and to meet the target established under the Climate Leadership and Community Protection Act (CLCPA) to develop a total of 6 GW of distributed solar statewide by 2025. Although Long Island is close to achieving its share of the 6 GW goal (four years ahead of schedule), additional distributed solar is needed statewide to achieve the statewide target. Relevant to this proposal, the Petition outlines changes to utility tariffs that could extend the benefits of distributed solar to more customers. Specifically, the Petition proposed a new Remote Crediting program that would allow Value Stack eligible generation resources to distribute the bill credits they receive for generation injected into the utility system to the utility bills of multiple, separately sited non-residential customers. On May 14, 2020, the Commission issued an Order approving the Petition. As explained below, the Commission's Remote Crediting Program was subsequently expanded to allow residential customers to participate as satellites.

On December 15, 2020, DPS Staff filed the White Paper on Community Distributed Generation Banked Credits, which includes recommendations intended to clarify and standardize banking rules under the CDG program. Under the CDG program, credits are created each month based on an eligible generator's injections of electricity into the utility's distribution system that are distributed to subscribers through their utility bills. Unused credits are retained on the subscriber's account for future use, even after the account is no longer participating in remote net metering.

On May 17, 2021, the Commission issued its Order Clarifying Banking Rules under the CDG Program. The Banked Credits Order clarified rules and processes that apply to the banking of credits for CDG hosts and subscribers (i.e., customers participating in CDG projects, also known as satellites). The Banked Credits Order created additional uniformity in the application of banking rules to CDG projects across the State's investor-owned utilities and provided for consistency in the treatment of credits in a subscriber's bank when the subscriber either closes its utility account or cancels its subscription with a CDG host.

On July 15, 2021, the Commission issued an Order Authorizing Changes to the Remote Crediting Program. In that order, the Commission made two changes to the remote crediting programs of the regulated utilities, authorizing residential customers to participate as satellites and allowing hosts to submit changes adding or removing satellites on a monthly, rather than annual, basis.

## **Community Distributed Generation and Remote Crediting: Proposed Action**

The proposed changes will modify LIPA's Tariff in conformity with the PSC Orders described above by updating the Tariff's CDG banking rules and implementing a Remote Crediting Program allowing customers enrolled in the Value Stack to share their Value Stack credits remotely with satellite accounts. The proposal also modifies the criteria under which Distributed Generation customers are assigned to Service Classifications. Finally, the proposal announces LIPA's intention to extend its existing Community Credit and specify the size of the megawatt tranche for which LIPA's current Community Credit will be available. All these proposals are consistent with the policies of the PSC.

### **(1) Updates to Community Distributed Generation**

#### ***Community Distributed Generation Banking Rules:***

The proposed changes will update the banked credits rules in alignment with the Banked Credits Order by making the following changes. Under the proposal, banked credits will be moved to the CDG host's bank in instances where the subscriber closes the associated utility account or terminates the subscription to the CDG project. Hosts will be required to refund the subscriber any amounts the subscriber paid for any of the banked credits that are returned to the host.

Currently, hosts can make modifications to their allocations on a monthly basis. The monthly allocation allows a host to notify PSEG Long Island of instances where a subscriber has canceled their membership. Customers will not be allowed to subscribe to a new CDG project until all banked credits are returned to the host. PSEG Long Island will require two months before a subscriber can join another host if there is a bank. This is important, not only to avoid any overbilling of subscribers, but also to account for any remaining credits existing in the customer's bank that need to be distributed before the participant transfers to the new host.

#### ***Updates to the Community Credit***

The Community Credit was developed to encourage CDG development in the LIPA territory, by adding an additional payment to the Value Stack Credits. At the time of its origination in August 2019, the Community Credit was set at \$0.0225 per kWh injected to the grid, and later updated to \$0.05 per kWh.

The Community Credit is set administratively in LIPA's Statement of Value Stack Credits. The State's investor-owned utilities, except for Consolidated Edison, have ceased offering a Community Credit, which has been replaced by an upfront Community Adder. Applying the methodology used by the PSC to determine an appropriate limit on ratepayer impacts for the investor-owned utilities, LIPA's maximum allowable annual cost shift from CDG is approximately \$12 million. If LIPA were to allocate all the \$12 million to a 5-cent Community Credit, LIPA would be able to incentivize approximately 200 megawatts of CDG. A higher Community Credit would allow LIPA to incentive fewer megawatts, and a lower Community Credit would allow LIPA to incentive more megawatts. Similarly, Feed-in-Tariffs that result in auction clearing prices at or below 15 cents would allow LIPA to

incentive more community-sized solar projects with the same total cost shift as the 5-cent Community Credit. A Community Adder, on the other hand, would cause a larger cost shift in the year it was paid, but would have a lower net present cost than a similarly beneficial Community Credit, and therefore would allow LIPA to incentivize more megawatts of CDG in the long-run. All these factors need to be balanced to maximize the deployment of CDG within the allowable \$12 million annual cost shift. Accordingly, LIPA proposes that the current block of 5-cent Community Credit be capped at 100 megawatts (the halfway point to 200 megawatts). LIPA has 59 megawatts of Community-Credit-eligible CDG currently in service or in the interconnection queue. When 100 megawatts of CDG have been interconnected or by December 31, 2022, whichever comes first, LIPA will announce a new block of Community Credit, Community Adder, or some combination of the two. In consultation with DPS, industry partners, and other stakeholders, LIPA will develop the new block with the goal of maximizing the deployment of CDG within the allowable cost shift, while providing a clear and sustainable line of sight for the CDG market.

## **(2) Implementation of Remote Crediting**

The proposed tariff changes will implement a Remote Crediting program for Value Stack customers consistent with the PSC Orders described above. Existing Remote Net Metering Projects that are compensated under Value Stack and new applicants will become Remote Crediting projects. Remote Crediting hosts may either be a commercial customer or a residential customer with Farm Operation; religious organization; Community Residence; or post or hall owned or leased by a non-for-profit corporation that is Veterans' Organization. The customer must have distributed generation that is sourced from farm waste, wind, solar, micro-hydroelectric, or fuel cell electric generating equipment or Stand-alone or Hybrid Electric Energy Storage.

A Remote Crediting host may have a total of ten satellite accounts per project, including all satellites that are in the Remote Crediting host account's name. Each satellite may have an unlimited number of utility billing accounts in the same name as the satellite. The Remote Crediting host must allocate the Value Stack Credits on a percentage basis to each of the project's satellites. The Remote Crediting host may make modifications to the allocations on a monthly basis, including allocation of any banked credits. Any unallocated credits will remain in the Remote Crediting host account's bank.

Remote Crediting satellite accounts are permitted to participate in multiple Remote Crediting projects and are permitted to have onsite generation, which is limited to 5 MW of installed capacity. Any unused credits allocated to the Remote Crediting satellite in a billing period will remain in the Remote Crediting satellite account's bank for future use.

## **(3) Assignment to Service Classifications**

LIPA's tariff currently assigns distributed generation customers to a Service Classification based on the higher of the host customer's load or the output of their generator. For example, a commercial customer with 100 kW of load and a 200 kW generator capable of providing community net metering or remote net metering would be assigned to Service Classification



No. 2-MRP (mandatory time of use) which includes all accounts with demand in excess of 145 kW instead of Service Classification No. 2-L which does not require mandatory time of use. Under current PSC policy, the jurisdictional utilities' tariffs assign distributed generation customers to Service Classifications based on the maximum on-site demand, without regard to export capabilities, since any cost implications from exporting power onto the grid are addressed through the interconnection requirements. The proposed modification will provide significant savings to affected CDG projects and participants and will promote greater customer adoption of distributed renewable resources.

### **Customer Benefit Contribution: Background**

On March 9, 2017, the Commission issued its *Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters* (the VDER Transition Order), which formed the first phase of a plan to establish a new system for compensation of distributed energy resources based on the value those resources provide to the electric grid. In the VDER Transition Order, the Commission established the Value Stack as the preferred compensation methodology for distributed generation, and required new CDG projects, remote net-metered projects, and large on-site projects to immediately transition to Value Stack compensation. On December 19, 2017, the LIPA Board adopted Tariff changes implementing the VDER Transition Order in LIPA's service territory.

In addition to establishing the Value Stack, the Commission also directed DPS Staff to initiate further stakeholder outreach to develop a successor to net energy metering (NEM) tariff for mass market customers. DPS Staff subsequently formed several working groups, including the Rate Design Working Group, to assist in developing recommendations for the successor to NEM tariff.

On August 15, 2018, LIPA published a Notice of Proposed Rulemaking in the State Register, notifying stakeholders of the statewide DPS Rate Design Working Group, encouraging stakeholders to participate in the statewide proceeding, and announcing that LIPA intended to take up consideration of the recommended Successor to NEM Tariff upon completion of the DPS stakeholder working groups and issuance of a PSC order. On August 22, 2018, LIPA posted an announcement on its website noticing the same information.

DPS Staff conducted an extensive stakeholder process through the Rate Design Working Group, which included opportunities for submission of proposals by solar industry representatives, environmental advocates, ratepayer protection advocates, and other experts, and multi-stage evaluation of various rate design alternatives. The Rate Design Working Group evaluated the cost shift from net metered solar adopters to other customers at each of New York's investor-owned utilities. LIPA and PSEG Long Island staff partnered with DPS Staff's rate design advisor to perform corresponding analyses for LIPA's service territory, which were publicly presented to the LIPA Board on May 22, 2019, and June 24, 2020 and posted on LIPA's website.

On July 18, 2019, the Climate Leadership and Community Protection Act was signed into law, codifying New York's six gigawatts distributed solar goal. The CLCPA specifically

addressed the State’s need to account for the equity and cost impacts of the clean energy transition, requiring that a minimum of 35% and a target of 40% of the State’s CLCPA-related investments benefit disadvantaged communities. The CLCPA’s passage highlighted the importance of the stakeholder proceeding’s work, sending a clear signal from New York’s elected leaders that the State needs to continue rapidly deploying solar while, at the same time, carefully mitigating the impacts on vulnerable New Yorkers.

This statewide stakeholder outreach and collaboration process culminated in the *Rate Design for Mass Market Net Metering Successor Tariff Whitepaper* on December 9, 2019 (Whitepaper). The Whitepaper recommended a balanced and gradual approach—essentially a multi-year “bridge” to a future of more accurate and advanced rate design for mass market distributed generation customers. The bridge recommended in the Whitepaper retained the basic structure of Phase One NEM and added a simple, new mechanism to begin addressing the costs shifted from customers with NEM to other customers. The Whitepaper extensively detailed the working group process and stakeholder input that went into developing the recommendations.

To begin addressing the NEM cost shift, the Whitepaper recommended a Customer Benefit Contribution (CBC) charge for all mass market customers who interconnect distributed generation and enroll in NEM on or after January 1, 2022. The CBC is designed to ensure that net metering customers contribute (as do other customers) to the cost of essential programs that all customers are eligible for, like utility bill discounts for low-income customers, energy efficiency, and clean heating and cooling programs. The Whitepaper invited further public comments on the recommendations, rate design principles, delivery rate and compensation options, and rate design grandfathering considerations.

All parties who filed formal comments on the DPS Whitepaper, including the Clean Energy Parties, were generally supportive of the CBC, although many commenters recommended modifications. The Clean Energy Parties, for example, commented that the CBC should be capped at \$.50/kW and should include only low-income customer bill discounts.

On June 24, 2020, LIPA published a draft CBC on its website and publicly presented the CBC at an open meeting of the LIPA Board. LIPA’s draft CBC followed the methodology developed in the statewide stakeholder proceedings (as LIPA’s earlier public notices had indicated).

On July 16, 2020, the PSC issued its *Order Establishing Net Metering Successor Tariff* (Successor Order). In adopting the recommended CBC with modifications, the PSC concluded in the Successor Order that “the CBC will ensure that Phase One NEM customers contribute at an appropriate level to programs that create broad societal benefits.”

The Successor Order and CBC embodied the compromise that had been carefully woven together by stakeholders over the previous three years. Some stakeholders had urged the Commission to address the NEM cost shift more expeditiously. Others had urged a more gradual approach. In the end, all parties remained generally supportive of the compromise they had created together in years of working group meetings. Indeed, as recently as June

14, 2021, the Clean Energy Parties (including NYSEIA) commented that, “the CEP will continue to support this compromise” as long as the CBC rates are calculated correctly and remain “roughly in the range of the values initially presented to the Commission.”

Following additional stakeholder process and comments, the PSC issued its *Order Establishing Net Metering Successor Tariff Filings with Modifications* on August 13, 2021, in which the PSC concluded that “Phase One NEM, with the addition of the CBC, balances the need to move compensation towards a more cost-based orientation with the importance of offering a simple and well-understood methodology to the Distributed Energy Resource industry.” The August 2021 Order directed the investor owned utilities to file final CBC Tariffs by December 15, 2021.

On September 22, 2021, LIPA filed a second Notice of Proposed Rulemaking, again reminding stakeholders of its intention to adopt a CBC in line with the statewide proceeding and PSC NEM Successor Orders. On the same date, LIPA publicly posted its final CBC Tariff (nearly three months ahead of the investor-owned utilities). LIPA’s final CBC rate is lower than the draft CBC published by LIPA in June 2020, and lower than the draft CBCs of every major New York utility.

#### **Customer Benefit Contribution: Proposed Action**

The proposed Tariff changes will implement a CBC for all net metered on-site mass-market customers who install distributed generation using NEM-eligible technologies connected on or after January 1, 2022. The CBC Charge will assist in recovering revenues that support the low income program, energy efficiency and electrification programs, and renewable power costs not avoided by distributed generation. Customers will be billed the CBC by multiplying the daily CBC charge applicable to that customer’s rate class by the nameplate capacity rating in kW DC of the customer’s electric generating equipment. The customer-specific CBC Charge will be applied to each customer bill by multiplying the customer-specific CBC charge by the number of days in that bill. The CBC rate per day will be published on the Statement of Customer Benefit Contribution and will be updated annually on January 1 of each year to account for DPS-approved changes in the specific public benefit program costs.

**How the CBC is Calculated.** The CBC calculation first determines the amount collected for each public benefit program from customers in the separate service classes on a \$/kWh basis. The public benefit programs are limited to costs for the low-income program, energy efficiency and electrification programs, and the portion of LIPA’s renewable power costs not avoided when customers add onsite renewable generation. The low-income program recovery is allocated based on delivery revenues in each service class. Recovery of the costs of the remaining programs are allocated based on budgeted kWh in each service class. The program recovery is summed for each service class and then divided by the budgeted kWh in that service class to establish the \$/kWh public benefit cost. The \$/kWh public benefit cost is then multiplied by the annual kWh production of 1kW system by technology. Finally, the rate is converted to a daily charge by dividing by 365 days.

As discussed below (in the Public Comments section of this memorandum), in response to comments received from NYSEIA and other stakeholders, LIPA staff proposes to phase the CBC in over three years, to limit the impact on customers currently considering the installation of solar.

In 2022, the results of the calculation of the \$/kWh public benefit cost will be multiplied by one third ( $\frac{1}{3}$ ) to set the charge. In 2023, the calculation will be performed again, and the resulting \$/kWh public benefit cost multiplied by two-thirds ( $\frac{2}{3}$ ) to set the charge. In 2024 and beyond, the results of the calculation of the \$/kWh public benefit cost will be used to set the charge, with no adjustment.

### **Prolonged Outage Relief: Background**

In 2012, LIPA instituted several temporary billing and collection policies with respect to the recovery efforts resulting from Superstorm Sandy, some of which included: (1) waiving the daily service and meter charges for all customers for fourteen days, to reflect the period when service was being restored throughout the system. (2) suspension of other billing related charges such as No Access Charges.

In November 19, 2013, the PSC issued an order setting forth policies regarding prolonged outages. The Order directed the regulated utilities in the State to make tariff amendments implementing new customer outage credits and other consumer protections relating to prolonged outages. In the Order, the definition of a “Prolonged Outage” is as an outage resulting from an emergency in which electricity customers are out of service for a continuous period exceeding three days and in which the 16 NYCRR Part 105 regulations governing utility outage preparation and system restoration apply.

Under the terms of the PSC Order, for any event resulting from an emergency in which electric customers are out of service for a period exceeding three days, utilities will credit customer charges incurred during the period of the outage. Credits will apply for any customer the utility knows or reasonably believes was out of service for a period exceeding three days, and upon request from any customer that contacts the company and credibly claims they experienced an outage of such duration. The utility will suspend all collection-related activities including terminations of service for non-payment for at least seven days.

For outages exceeding three days following an emergency, any residential or non-residential customer who notifies the utility and provides evidence that his/her financial circumstances have changed because of the event will result in all collection-related activities including terminations of service for non-payment being suspended for at least 14 days.

### **Prolonged Outage Relief: Proposed Action**

The proposed changes will update the LIPA Tariff to adopt policies consistent with the Commission’s Order in Case 13-M-0061 as it applies to any future Prolonged Outages that may impact the LIPA service territory.

**In the event of a Prolonged Outage, LIPA will attempt to determine the outage duration of each affected customer. If LIPA reasonably believes that a customer was out of service for a period exceeding three calendar days, a credit for the daily service charge experienced during the outage will be applied to the customer's account. The credit will be equal to the Daily Service Charge for the customer's Service Classification identified in the Tariff, multiplied by the number of calendar days the customer experienced an outage.**

**In addition to credits associated with a Prolonged Outage, LIPA is proposing to adopt additional policies related to collection activities in the event of a Prolonged Outage, which include the following:**

- All collection-related activities including terminations of service for non-payment with the exception of issuance of service termination notices and assessment of security deposits, will be suspended for customers that LIPA knows or reasonably believes experienced a Prolonged Outage. The suspension will last for a minimum of seven calendar days from the beginning of a Prolonged Outage.**
- All collection-related activities including terminations of service for non-payment with the exception of issuance of service termination notices and assessment of security deposits will be suspended for 14-days from the beginning of a Prolonged Outage for any residential or nonresidential customers who notifies LIPA and provides evidence that his/her financial circumstances have changed because of a Major Storm.**

#### **Miscellaneous Tariff Changes: Proposed Action**

**LIPA staff proposes the following miscellaneous Tariff changes:**

**Pole Attachment Fee. Staff proposes to clarify that the pole attachment fee associated with customer-owned equipment served under Service Classification No. 10 that attach to LIPA owned poles is \$7.04. Staff also proposes to remove an unnecessary distinction between communications equipment and all other types of equipment. The purpose of these changes is to remove potential ambiguity as to the applicability of LIPA's pole attachment fees to specific types of attachments.**

**Service Initiation Charge. Staff proposes a modification to clarify that landlords who assume responsibility for electric service in a commercial space previously occupied by a tenant may be charged the Service Initiation Charge if the usage exceeds six (6) kWh per day. The purpose of this change is to remove ambiguity that previously existed in the Tariff. This process will review the energy usage on the account after a nonresidential account is transferred to a landlord for the period between the termination of the account by the prior tenant and the establishment of a new electric account. Should usage exceed six (6) kWh per day will incur the \$60 Service Initiation Charge in all cases where service or meter connections are not required.**

**Dusk to Dawn SC-7A.** Following a request from the Town of Southampton, due to a local dark sky initiative, Staff proposes to update the tariff eligibility under Service Classification 7A to preclude customers in a district, at the request of a local government. The specific request from the Town of Southampton would preclude customers located in the unincorporated areas within the Town of Southampton from having lights offered under Service Classification 7A. Staff proposes to remove all existing lights on or before March 31, 2022.

**Delivery Service Adjustment.** Staff proposed to update the DSA Storm language to indicate that estimated anticipated reimbursements from FEMA and other governmental agencies will reduce the amount sought from our customers, with estimates reconciled to actuals in subsequent DSA periods when the final reimbursement amounts become known. This change will allow deferral of costs that are expected to be reimbursed.

### **Financial Impacts**

**Long Island Choice Improvements.** Restructuring of the Power Supply Charge proposal described above will be revenue neutral at the system level and will not result in cross-subsidies among customer classes or between Long Island Choice participants and non-Long Island Choice participants. Bundled service customers will experience no discernable difference as the sum of the Market Supply Charge and the Local Supply Charge will equal the Power Supply Charge based on the currently authorized calculation.

**Removing the BCA plus Power Supply Charge to ESCOs and replacing it with the Local Power Supply Charge to customers** will have an immaterial revenue impact for Long Island Choice customers. There are slight differences in the method of calculation, but both calculations were and are designed so that Long Island Choice participants would not create cost shifting to non-Long Island Choice participants.

**The removal of the LIC Factor is a needed correction to the current tax calculation.** This correction will not materially change the taxes paid by participating or non-participating customers.

**The Information Technology expenditures to implement these changes are estimated at \$150,000 for capital costs to implement the proposed changes to the billing of the Market Supply and Local Supply components of the Power Supply Charge.** Estimates for the cost of implementing the Consolidated Bill Option with Purchase of Receivables is \$1.8 million.

**Community Distributed Generation and Remote Crediting Updates.** There will be no financial impact to LIPA or its customers for the changes to the CDG banking rules. To the extent that the proposed changes facilitate greater participation in Distributed Generation, the associated Value Stack payments are deemed fully compensatory for the increased generation provided by these renewable distributed resources.

**LIPA staff estimates that twenty (20) existing CDG and RMN Projects will be eligible to change their Service Classification under the tariff proposal. The estimated revenue decrease to LIPA will be \$71,000.**

**Placing a MW cap on the Community Credit will have no impact on current revenues as the CDG currently in service or in the pipeline will be unaffected. Future spending may be impacted if subsequent blocks of Community Credit are replaced by a Community Adder, which is paid in the first year of operation rather than across the 25-year lifetime of the project.**

**Customer Benefits Contribution. The CBC will not change the total revenues recovered by LIPA. The revenues expected to be recovered through the CBC will be offset by lowering the revenues recovered through base rates. The CBC will reduce the costs shifted from NEM to other customers. Customers who enroll in NEM on or after January 1, 2022, will incur an additional charge on their bill based on the size of the system, the technology type and their service classification.**

**The implementation of the CBC Charge will cost \$150 thousand in capital expenditures to make updates to the billing system. There are no associated operational expense with the CBC Charge.**

**The CBC Charge is estimated to collect \$90,667 in 2022. This assumes approximately 51,000 kW of DC capacity for mass market installations spread equally through the 12 months of the year.**

**Base rates for 2022 have been lowered by an equivalent amount, resulting in no change in total revenues. In 2023, the CBC Charge is estimated to collect \$544,000, which consists of the entire 51,000 kW installed in 2022 (\$362,667) plus the additional 51,000 kW added equally through the 12 months of 2023 (\$181,333). Base rates in 2023 will be lowered by an equivalent amount.**

**Prolonged Outage Relief. The financial impact of this proposal depends on unpredictable factors.**

**For illustrative purposes, a prolonged outage that impacts 100,000 residential customers for an average of 4 days would result in credits totaling \$176,000.**

**Miscellaneous Tariff Changes. The financial impact of updating the pole attachment fee by approximately 14% results in \$79,000 of additional annual revenue.**

**There is no material financial impact from the proposed change to the service initiation charge as the occurrence is minimal.**

**The removal of approximately 120 “Dusk to Dawn” light fixtures under Service Classification 7A in the unincorporated areas located in the Town of Southampton will result in revenue loss of approximately \$58,000 based on 2020 annual revenue.**

**There is no financial impact from the proposed inclusion of estimated FEMA reimbursements in the Delivery Service Adjustment. With the proposed change, customers will experience bill reductions from FEMA reimbursements in earlier periods.**

### **Department of Public Service Input**

**The DPS has provided a letter recommending adoption of these tariff modifications, which is attached as an exhibit. The proposed tariffs incorporate the DPS's recommendations. The DPS also provided feedback and input throughout the process of developing the tariffs, which was reflected in the original proposals filed on September 22, 2021.**

**Though not part of these proposed Tariff changes, the DPS recommendation urged LIPA to continue working with the DPS and other stakeholders in the Energy Affordability proceeding to develop and propose changes to LIPA's low-income customer discounts consistent with the statewide approach developed in that proceeding. LIPA commits to continuing that work expeditiously and intends to develop enhanced low-income customer discounts agreeable to the DPS.**

### **Public Comments**

**LIPA held virtual public comment sessions on the proposed tariff changes on November 29th and also solicited written comments. Transcripts of the virtual public comment sessions and copies of the written comments are attached as exhibits and the comments are summarized here, together with responses from LIPA Staff.**

**Thirteen (13) speakers attended and spoke at the public comment sessions, including five speakers representing environmental advocacy groups, four speakers on behalf of solar industry, two individual Long Island homeowners, one member of the Suffolk County Legislature, and one representative of the Long Island Progressive Coalition.**

**Twenty-three (23) LIPA stakeholders submitted written comments, including four local elected officials, one solar industry trade group, one solar and storage developer, one CCA administrator, and sixteen LIPA residential customers. Two consumer advocates, the Utility Intervention Unit and the Public Utilities Law Project, have indicated to LIPA staff that they intend to submit letters in support of LIPA's CBC proposal.**

**Twenty-five (25) unaffiliated individuals who reside outside of LIPA's service territory also submitted written comments.**

**Summary of Comments on Long Island Choice. During the Long Island Choice stakeholder collaborative proceeding, several parties filed comments directly with the DPS. Those comments are publicly posted on the DPS website and were summarized and addressed in the DPS Whitepaper on Long Island Choice, which is attached hereto as an exhibit. We encourage readers to refer to the DPS Whitepaper's discussion of those comments.**



Two parties submitted comments to LIPA on the Long Island Choice proposal, Lynn Arthur of Peak Power LI and Sustainable Southampton's Green Advisory Community, and Mike Gordon of Joule Assets, a CCA administrator. Both were generally in support of the proposal, and recommended modifications. Both commented that LIPA should specifically list the Local Supply Charge components related to the Long Island Choice proposal, should include a Merchant Function Charge in its Tariff, and should take steps to enable CCAs to enroll customers in CDG.

**Staff response:** As recommended by DPS, the calculation of the Market Supply Charge and the Local Supply Charge in the proposal is performed by backing out the market supply costs of all the items that are recoverable in LIPA's Power Supply Charge. The costs that remain will be recovered through the Local Supply Charge. This approach has been defined within the proposed tariff leaves and favorably reviewed by the Department. In the Long Island Choice collaborative proceeding, the working group examined each line item of LIPA's power supply costs. Many of the line items have a market component, which per the defined methodology is subtracted from the total to calculate the residual local supply costs. The Department has also reviewed the proposed split of power supply cost line items into their market and local components and made recommended specific adjustments, all of which LIPA has accepted. The Department will continue to exercise oversight of the monthly Power Supply Charge calculation and its disaggregation in market and local components to ensure that LIPA is appropriately recovering its power supply costs in the Market Supply Charge and Local Supply Charge. LIPA staff is committed to providing the results of its monthly power supply charge calculation and its component market supply and local supply charges on the published Long Island Choice Statement. These statements are available publicly on the LIPA website for customers and other stakeholders to remain informed.

Regarding the Merchant Function Charge, LIPA notes that the DPS Whitepaper recommended that LIPA establish a Merchant Function Charge, which should be either identified on the Long Island Choice Statement or in customer bills. LIPA agrees that a Merchant Function Charge should be established, and notes that the Tariff redline attached hereto has been amended to include the Merchant Function Charge in the Long Island Choice Statement, pursuant to the DPS recommendation. LIPA does not currently have the capability to add the Merchant Function Charge as a separate line item on customer bills, but it will be included as a component in the Market Supply Charge.

With respect to CDG participation in CCA, we note that these issues are currently under consideration in a statewide generic PSC proceeding. On November 22, 2021, the PSC directed DPS staff to develop a Whitepaper with recommendations on the use of CCA mechanisms to enroll customers in CDG. LIPA staff advises the Board to await the outcome of the statewide proceeding before taking further action without the benefit of the extensive record being developed in that proceeding.

**Summary of Comments on Community Distributed Generation and Remote Crediting Update.** Three parties submitted comments on the CDG and Remote Crediting Update proposal, including Borrego Solar, Lynn Arthur of LI Peak Power and the Sustainable Southampton Green Advisory Community, and Mike Gordon of Joule Assets. All three commenters generally supported the proposal and recommended modifications. Specifically, all three commenters urge LIPA to make a decision expeditiously regarding whether to further extend the Community Credit, transition to a Community Adder, or a combination of both. The commenters believe these incentives are important to further deployment of CDG in LIPA's service territory. Borrego Solar also recommended that LIPA convene a stakeholder process to fully consider these changes, and advised that LIPA should take into consideration the forthcoming NYSERDA solar roadmap. Ms. Arthur and Mr. Gordon also commented that LIPA should offer net crediting for volumetric CDG projects.

**Staff response:** LIPA staff agrees that visibility regarding LIPA's future plans for CDG incentives is highly beneficial to CDG developers and participants. LIPA commits to share its CDG incentive plans publicly and seek input from stakeholders as those plans are developed, with sufficient advance notice to avoid disrupting the CDG market. LIPA will also review and incorporate the NYSERDA solar roadmap as appropriate, to the extent it affects LIPA's CDG incentives. LIPA notes that its CDG incentives will need to be carefully balanced to achieve our share of the State's overall solar deployment goals and other CLCPA goals, while at the same time managing ratepayer impacts and working within available budgets.

Regarding net crediting for CDG projects, LIPA notes that net crediting is already available for Value Stack CDG projects. Net crediting for volumetric CDG projects, which presents additional IT and billing-related implementation challenges, is the subject of an ongoing PSC proceeding, which LIPA is closely monitoring. LIPA staff will recommend further action once a reasonable pathway to implementation has been identified through the statewide process.

**Summary of Customer Benefits Contribution Comments.** As noted in the background section above, seven parties filed comments on the DPS CBC Whitepaper, including the Clean Energy Parties, of which the New York Solar Energy Industry Association (NYSEIA) is a member, the Utility Intervention Unit, the City of New York, utilities, NYPA, the Office of General Services, and Distributed Sun. All seven were generally supportive of the State's efforts to address the NEM cost shift through the CBC, as a bridge to future AMI-enabled rate designs.

Eleven commenters spoke at LIPA's public comment sessions in opposition to the CBC, including several representatives of NYSEIA (which has since voted to support a compromise involving a phased-in CBC, as discussed below), Legislature Bridget Fleming of the Suffolk County Legislature, three environmental groups, two homeowners, and a representative of the Long Island Progressive Coalition. Four local elected officials submitted letters opposing the CBC. NYSEIA submitted a letter opposing the CBC, which was later withdrawn based upon a compromise proposal reached between LIPA staff and NYSEIA to (1) phase-in the CBC over three years, (2) develop a plan to introduce a Time-

of-Day rate that will become the standard rate for residential customers, and (3) fund an additional declining block of residential storage incentives when the current block is depleted. On December 14, 2021, NYSEIA's Board of Directors voted to support this compromise approach, including the phased-in CBC.

Fifteen LIPA residential customers submitted written comments opposing the CBC. One LIPA residential customer submitted comments supporting the CBC, as discussed below. Twenty-four individuals residing outside of LIPA's service territory, most of whom are members of Climate Reality, an environmental advocacy group, also submitted comments opposing LIPA's CBC. Two individuals submitted comments opposing Con Edison's CBC, which is not the subject of this proposal. The comments addressed similar themes, arguing that: (1) the CBC will deter solar adoption, making it more difficult for Long Island to achieve its share of the State's clean energy mandates, (2) the CBC will make solar less economic for NEM customers, (3) the CBC is based on analysis that undervalues solar energy, and (4) the process followed to develop and implement the CBC was too short or otherwise insufficient. NYSEIA and its members also commented that (5) it is unfair to make solar customers pay for public benefit costs other than low-income customer discounts, (6) the CBC creates uncertainty because it can be updated annually and is not fixed over the lifetime of each solar installation. Several commenters also suggested that LIPA should focus more on other options such as deployment of smart meters and time-of-use rates. One commenter observed that the size of the rooftop solar system used in LIPA's examples (6 kW) is below the average sized system on Long Island.

One commenter submitted written comments in support of the CBC, arguing that solar customers who remain connected to the grid should pay their fair share, and that failing to require solar customers to pay their fair share shifts the burden onto communities facing power plant closures.

**Staff response: (1) LIPA's climate actions speak louder than words. Actions LIPA has taken to accelerate the clean energy transition include:**

- Supporting deployment of more solar *capacity* (as a share of load) and more distributed solar *projects* (by any measure) than any other New York utility
- Building more utility-procured solar capacity than any other New York utility
- Procuring New York's first offshore wind farm (which was until recently the largest offshore wind procurement in the United States)
- Building New York's first utility-scale energy storage system

Over 3,500 megawatts of renewable generation and storage are already in service or under procurement, to be interconnected on Long Island. That represents over 60% of LIPA's total generation capacity.

That said, LIPA staff strongly *agrees* with commenters that we cannot afford to slow down or to lose time in the race to decarbonize the electric grid. Our service territory consistently deploys around 6,000 solar projects each year, more than a third of the projects deployed each year in the entire State. In most years, we deploy more solar

projects than any other New York utility. LIPA staff cherishes Long Island's leadership in this area. We will carefully monitor the impact of the CBC on Long Island's solar market, to ensure the pace of deployment remains steady, taking additional course-corrective actions if needed.

The CLCPA requires us to consider the equity and cost impacts of the clean energy transition, balancing the need to continue rapidly deploying carbon-free energy while, at the same time, carefully mitigating the impacts on vulnerable New Yorkers. NEM is at odds with this requirement because—without the CBC—NEM exacerbates inequity. Higher income customers are significantly more likely to adopt rooftop solar than lower income customers. As a result, subsidizing the bill savings of NEM customers has a regressive effect: it transfers wealth from low-income customers to high-income customers. Addressing the fairness problem that NEM creates is simply the right thing to do.

(2) LIPA staff recognizes that the CBC will reduce the lifetime bill savings from a typical financed solar system by 7% and a typical out-of-pocket system by less than 5%. At the same time, customers will still experience savings from day one—both bill savings and savings net of any loan payments. In other words, the CBC does not make the investment uneconomic. And the CBC will not significantly change the time it takes for a solar system to pay for itself. These solar project economics are explained at length in LIPA's online CBC factsheet. Moreover, with LIPA's new AMI-enabled time-of-use rates, launched earlier this year, customers who add solar or storage and enroll in these rates can save even more now than in previous years.

To address NYSEIA's concern that the CBC significantly diminishes the first-year savings of a customer with a financed system, LIPA staff proposes to phase in the CBC over three years. With this change, the 2022 CBC rates will be set at one-third of the originally proposed rates. NYSEIA had estimated that the CBC would reduce first-year savings of a financed system by 50%. Using the same assumptions that NYSEIA used but applying the phase-in, LIPA estimates the 2022 CBC will reduce the customer's first-year savings by only 16.5% (compared to NYSEIA's previous estimate of 50%).

(3) The analysis performed over multiple years in the statewide Rate Design Working Group and Successor to Net Metering proceeding was rigorous, collaborative, and inclusive of a broad array of stakeholder groups. That analysis was repeated for Long Island. As in the rest of the State, the analysis shows that customers who install solar receive subsidies worth considerably more than the value of solar, even when fully valuing the energy, capacity, distribution, and environmental benefits that solar provides. This cost shift is described in detail above. Moreover, the CBC recovers only a small portion of the cost shift. LIPA's CBC, in particular, recovers approximately 12% of the cost shift attributable to each customer that adds solar.

(4) The mass market phase of the Successor to Net Metering proceeding has taken place over more than three years. LIPA stakeholders have been on notice since no

later than 2018 of LIPA's intention to implement the reforms identified in the proceeding, and they have known the results of LIPA's initial CBC calculation since mid-2020. The proceeding was and remains open to participation by any interested party and has included active representation of a broad set of stakeholder interests, including solar advocates, environmentalists, consumer advocates, utilities, regulators, and state agencies. Representatives of the same solar advocacy groups now commenting on LIPA's proposal participated in the stakeholder working groups and supported the CBC as a compromise solution.

(5) LIPA staff appreciates NYSEIA's support for inclusion of low-income customer discounts in the CBC, particularly because the NEM cost shift disproportionately affects low-income customers, as explained in LIPA's CBC factsheet. In LIPA staff's view, the other public benefit costs proposed to be recovered in the CBC are equally appropriate.

These essential programs include energy efficiency, clean heating and cooling, and renewable power costs not avoided by distributed generation. All customers—including net metering customers—benefit from these programs. In fact, many customers who enroll in net metering also apply for and receive incentives for heat pumps, energy efficient appliances, smart thermostats, and so on. Even those who do not participate directly receive benefits because these programs lower costs for everyone.

(6) LIPA understands the solar industry's preference for the CBC to be fixed over the lifetime of a solar system. However, utility rates are cost-based. Like other components of the utility's rates, it is impossible and unworkable to forecast public benefit costs several decades into the future. Locking in a below-cost rate, alternatively, would undermine the CBC's purpose of ensuring that all customers contribute their fair share to the cost of these essential programs. More importantly, locking in the CBC is not necessary. The bill savings experienced by a net metering customer (and the corresponding cost shift) increase over time. Because the CBC recovers only a fraction of the cost shift, the customer's bill savings will continue to increase over time, even if the CBC also increases with inflation.

As an additional safeguard, the CBC is limited to the approved costs of specifically defined programs. Any future increases in the CBC would need to be reviewed and recommended by the DPS. Assemblyman Englebright points out in his comments that LIPA's forecasted revenues from the CBC will increase to \$815,000 in 2023. This estimated increase is caused *entirely* by new solar systems being enrolled in net metering—the estimate does not assume any change in the CBC. Finally, Assemblyman Englebright takes issue with language in the Tariff that the CBC could include “other costs as recommended by the Department of Public Service and approved by the LIPA Board of Trustees.” This language exists solely so that LIPA can adapt if future statewide PSC proceedings result in changes to the State's approach. Like the process to date, any such changes would go through an open and

participatory statewide PSC process, with stakeholder comments, before consideration by the LIPA Board in an open meeting.

No public comments were received on the Prolonged Outage Relief or Miscellaneous proposals.

**Recommendation:**

For the foregoing reasons, I recommend that the Trustees approve the modifications to the Tariff for Electric Service described herein and set forth in the accompanying resolutions.

*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.*

**1694. APPROVAL OF MODIFICATIONS TO LIPA’S TARIFF RELATED TO LONG ISLAND CHOICE IMPROVEMENTS**

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WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Customer Value and Affordability, which sets forth the Board’s commitment to establishing rates and tariffs that are generally comparable to similarly situated regional utilities and consistent with New York Public Service Commission policy; and

WHEREAS, the Board has reviewed the proposal and determined that the proposal is consistent with LIPA’s mission and values, including as set forth in the Board Policy on Customer Value and Affordability; and

WHEREAS, the Department of Public Service is supportive of this proposal; and

WHEREAS, following the issuance of public notice in the State Register on September 22, 2021, public hearings were held on November 29, 2021, by phone and video conference accessible to participants in Nassau and Suffolk County, and the public comment period has since expired;

NOW, THEREFORE, BE IT RESOLVED, that for the reasons set forth herein and in the accompanying Memorandum, the proposed modifications to LIPA’s Tariff are hereby adopted and approved to be effective January 1, 2021; and be it further

RESOLVED, that the Chief Executive Officer and his designees are authorized to carry out all actions deemed necessary or convenient to implement this Tariff; and be it further

**RESOLVED, that the Tariff amendments reflected in the attached redlined Tariff leaves are approved.**

**\*\*\***

**1695. APPROVAL OF MODIFICATIONS TO LIPA'S TARIFF RELATED TO COMMUNITY DISTRIBUTED GENERATION AND REMOTE CREDITING UPDATES**

**WHEREAS, the Board of Trustees of the Long Island Power Authority ("LIPA") has adopted a Board Policy on Resource Planning, Energy Efficiency and Renewable Energy, which sets forth the Board's commitment to integrating cost-effective distributed energy production and storage technologies into the Authority's electric transmission and distributions system, and enabling the economic and secure dispatch of resources deployed within the distribution system and within customer premises (the "Board Policy on Resource Planning"); and**

**WHEREAS, the LIPA Board of Trustees of the has adopted a Board Policy on Customer Value and Affordability, which sets forth the Board's commitment to establishing rates that are generally comparable to similarly situated regional utilities and consistent with New York Public Service Commission policy; and**

**WHEREAS, the LIPA Board of Trustees has reviewed the proposal and determined that it is consistent with LIPA's mission and values as set forth in the Board's policy statements, including the Board Policy on Resource Planning and the Board Policy on Customer Value and Affordability; and**

**WHEREAS, the Department of Public Service is supportive of this proposal; and**

**WHEREAS, following the issuance of public notice in the State Register on September 22, 2021, public hearings were held on November 29, 2021, by phone and video conference accessible to participants in Nassau and Suffolk County, and the public comment period has since expired;**

**NOW, THEREFORE, BE IT RESOLVED, that for the reasons set forth herein and in the accompanying Memorandum, the proposed modifications to LIPA's Tariff are hereby adopted and approved to be effective January 1, 2021; and be it further**

**RESOLVED, that the Chief Executive Officer and his designees are authorized to carry out all actions deemed necessary or convenient to implement this Tariff; and be it further**

**RESOLVED, that the Tariff amendments reflected in the attached redlined Tariff leaves are approved.**

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**1696. APPROVAL OF MODIFICATIONS TO LIPA'S TARIFF RELATED TO THE CUSTOMER BENEFIT CONTRIBUTION**

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**WHEREAS, the Board of Trustees of the Long Island Power Authority ("LIPA") has adopted a Board Policy on Resource Planning, Energy Efficiency and Renewable Energy, which sets forth the Board's commitment to integrating cost-effective distributed energy production and storage technologies into the Authority's electric transmission and distributions system, and enabling the economic and secure dispatch of resources deployed within the distribution system and within customer premises (the "Board Policy on Resource Planning"); and**

**WHEREAS, the LIPA Board of Trustees of the has adopted a Board Policy on Customer Value and Affordability, which sets forth the Board's commitment to establishing rates that are generally comparable to similarly situated regional utilities and consistent with New York Public Service Commission policy; and**

**WHEREAS, the LIPA Board of Trustees has reviewed the proposal and determined that it is consistent with LIPA's mission and values as set forth in the Board's policy statements, including the Board Policy on Resource Planning and the Board Policy on Customer Value and Affordability; and**

**WHEREAS, the Department of Public Service is supportive of this proposal; and**

**WHEREAS, following the issuance of public notice in the State Register on September 22, 2021, public hearings were held on November 29, 2021, by phone and video conference accessible to participants in Nassau and Suffolk County, and the public comment period has since expired;**

**NOW, THEREFORE, BE IT RESOLVED, that for the reasons set forth herein and in the accompanying Memorandum, the proposed modifications to LIPA's Tariff are hereby adopted and approved to be effective January 1, 2021; and be it further**

**RESOLVED, that the Chief Executive Officer and his designees are authorized to carry out all actions deemed necessary or convenient to implement this Tariff; and be it further**

**RESOLVED, that the Tariff amendments reflected in the attached redlined Tariff leaves are approved.**

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**1697. APPROVAL OF MODIFICATIONS TO LIPA'S TARIFF RELATED TO PROLONGED OUTAGE RELIEF**

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**WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Customer Value and Affordability, which sets forth the Board’s commitment to establishing rates and tariffs that are generally comparable to similarly situated regional utilities and consistent with New York Public Service Commission policy; and**

**WHEREAS, the Board has reviewed the proposal and determined that the proposal is consistent with LIPA’s mission and values, including as set forth in the Board Policy on Customer Value and Affordability; and**

**WHEREAS, following the issuance of public notice in the State Register on September 22, 2021, public hearings were held on November 29, 2021, by phone and video conference accessible to participants in Nassau and Suffolk County, and the public comment period has since expired;**

**NOW, THEREFORE, BE IT RESOLVED, that for the reasons set forth herein and in the accompanying Memorandum, the proposed modifications to LIPA’s Tariff are hereby adopted and approved to be effective January 1, 2021; and be it further**

**RESOLVED, that the Chief Executive Officer and his designees are authorized to carry out all actions deemed necessary or convenient to implement this Tariff; and be it further**

**RESOLVED, that the Tariff amendments reflected in the attached redlined Tariff leaves are approved.**

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**1698. APPROVAL TO MODIFICATIONS TO LIPA’S TARIFF RELATED TO MISCELLANEOUS CHANGES**

**WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Customer Value and Affordability, which sets forth the Board’s commitment to establishing rates and tariffs that are generally comparable to similarly situated regional utilities and consistent with New York Public Service Commission policy; and**

**WHEREAS, the Board has reviewed the proposal and determined that the proposal is consistent with LIPA’s mission and values, including as set forth in the Board Policy on Customer Value and Affordability; and**

**WHEREAS, following the issuance of public notice in the State Register on September 22, 2021, public hearings were held on November 29, 2021, by phone and video conference accessible to participants in Nassau and Suffolk County, and the public comment period has since expired;**

**NOW, THEREFORE, BE IT RESOLVED**, that for the reasons set forth herein and in the accompanying Memorandum, the proposed modifications to LIPA’s Tariff are hereby adopted and approved to be effective January 1, 2021; and be it further

**RESOLVED**, that the Chief Executive Officer and his designees are authorized to carry out all actions deemed necessary or convenient to implement this Tariff; and be it further

**RESOLVED**, that the Tariff amendments reflected in the attached redlined Tariff leaves are approved.

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*Acting Chair Fischl stated that the next item on the agenda was the Consideration of Approval of LIPA’s 2022 Budget and Amendment to the 2021 Budget to be presented by Tamela Monroe.*

*Ms. Monroe 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 adopt a Resolution: (i) approving the proposed 2022 Operating and Capital Budgets (the “Budget”) which sets forth the revenue, grant, other income, and expenditure forecasts for the year ending December 31, 2022; (ii) amending the 2021 Operating and Capital Budgets; and (iii) establishing regulatory accounting treatment to allow proper alignment of revenue and costs associated with the New York State Attorney General settlement designated to low-to-moderate income programs and for the deferral of recovery of potential impacts of the Suffolk County Property Tax Litigation, as described below and specified in Exhibit “A”.

**Background on 2022 Operating and Capital Budgets**

The proposed 2022 Budget totals \$4.694 billion, including an Operating Budget of \$3.911 billion and a Capital Budget of \$782.8 million (attached as Exhibit “B”). The proposed 2022 Operating Budget funds delivery and power supply costs, taxes, and debt service. The Capital Budget funds long-life infrastructure investments such as transmission, substations, poles, and wires. In addition, the Operating and Capital Budgets fund investments in various information technology projects, services, and commodities needed to support system operations.

The monthly electric bill for the average residential customer is projected to be \$169.26 in 2022, which is \$3.56 per month or 2.1% below the 2021 average of \$172.82. The primary driver of the projected decrease are lower power supply costs partially offset by adjustments to the bill resulting from storm restoration costs, debt service, and sales.

The proposed 2022 Budget is consistent with the Board’s Policy on Debt and Access to the Credit Markets (the “Financial Policy”), which seeks to reduce LIPA’s borrowing and interest cost and maintain the LIPA’s credit ratings at a minimum of A2/A/A. The 2022 Budget reflects an increase in the fixed rate obligation coverage to 1.40x, as approved by the Board in December 2021. Although, the Board’s Financial Policy also calls for generating sufficient cash flow from revenues to maintain the issuance of new debt as a percentage of capital spending at 64% or less as measured on a three-year rolling average, for 2022, the proposed budget recommends LIPA fund 71% of the \$782.8 million Capital Budget from debt issues due to the need to increase capital investments to meet the Board’s strategic priorities. It is proposed that LIPA increase investments in Transmission and Distribution Reliability by \$55.9 million, Information Technology systems by \$32.1 million, and Storm Hardening by \$19.2 million. To mitigate the impact of the increased capital spending, the increased fixed obligation coverage ratio will produce an additional \$39.2 million in operating revenue to fund these capital investments. LIPA projects the percentage of the Capital Budget funded from debt issues will decrease steadily over the next few years, achieving the Board target of 64% by 2025.

LIPA is proposing a PSEG Long Island Capital Budget to the Board for approval based on its assessment of the detailed project descriptions. However, for certain initiatives, LIPA and PSEG Long Island continue to evaluate data related to such projects, the development of which will continue through the first quarter of 2022. As a result, the 2022 Capital Budget reflects approximately \$4.9 million reserve funding for these PSEG Long Island initiatives, within LIPA’s approved Capital Budget. Further, LIPA requests that the Board provide LIPA management the authorization to release such funds from the reserve to PSEG Long Island’s Capital Budget upon LIPA management’s approval of final project justification documents. LIPA will inform the Board of the associated budget modification during the year.

#### Changes from the 2022 Proposed Budget

There have been adjustments to the Proposed Budget presented to the Trustees on November 17, 2021. The 2022 Budget presented herein includes the following adjustments: (i) an increase to the 2022 PSEG Long Island Capital Budget by \$22.9 million to reflect the carryover of funds from 2021 to 2022 to align with updated project schedules, (ii) an decrease to the 2022 Utility 2.0 Operating Budget by \$410,000 to reflect the final Department of Public Service (the “DPS”) recommendations, (iii) the transfer of funds initially reflected in a pending project authorization reserve to the PSEG Long Island 2022 Operating and Capital Budgets, as LIPA received final information on related project and initiatives, and (iv) the balance of changes increasing the 2022 Storm Budget by \$1.8 million.

#### Annual Budget and Rate Updates

Under the New York Public Authorities Law as amended by the LIPA Reform Act (P.A.L. § 1020 et seq.), LIPA and PSEG Long Island are required to submit a proposed rate increase to the New York DPS for review if it would increase the rates and charges by an amount that would increase LIPA’s annual revenues by more than 2.5% of the total annual revenues. The

proposed budget and associated rate adjustments would increase LIPA’s 2022 revenues by less than this threshold. The delivery rate adjustments will be effectuated through a pro rata increase to all Service Classifications and rate components.

**Allocation of Intra-Year Power Supply Capacity Costs**

In December 2015, the Trustees approved a regulatory asset to allow for a greater share of the recovery of certain fixed generation capacity costs in the Power Supply Charge (“PSC”) from customers during the summer months consistent with when the generation capacity is needed rather than recovering these fixed costs equally through the year. Staff believes this accurately reflects cost causation in electric rates. The December 2015 approval by the Trustees specified that the schedule of deferrals and amortization of such costs in future years would be presented in future budgets.

There is no net impact on an annual basis from the reallocation of these costs within the year, with allocations by month from plus \$19 million to minus \$30 million, as shown in the table below.

Allocation of Intra-Year Power Supply Capacity Costs (\$ millions)	
January	(\$19.747)
February	(\$30.157)
March	(\$6.840)
April	(\$3.581)
May	\$7.487
June	\$10.337
July	\$17.784
August	\$19.081
September	\$13.386
October	\$2.394
November	\$1.159
December	(\$11.303)
<b>Total</b>	<b>\$0.000</b>

**2022 Utility 2.0 Plan**

The 2022 Proposed Budget includes \$40.0 million (including the carryover) in Capital funding and \$13.9 million in Operating funding for Utility 2.0 initiatives. The amounts budgeted for Utility 2.0 plan initiatives reflect programmatic and budgetary adjustments recommended by the DPS in its recommendation to the LIPA Board regarding the Utility 2.0 Plan (attached as Exhibit “D”).

Initiatives funded by the Utility 2.0 Program include the previously approved full deployment of Smart Meters, expanded customer outreach and information initiatives to

increase customer awareness of programs to reduce energy usage, and support for beneficial electrification such as electric vehicle make ready initiatives.

Pursuant to the DPS recommendation, PSEG Long Island tracks all Utility 2.0 project costs and reconciles these costs within the Utility 2.0 Program funding levels on an annual basis. Further, DPS recommends that budget variances be addressed exclusively as part of future Utility 2.0 filings. As a result, LIPA follows regulatory accounting treatment to properly align Utility 2.0 Program revenue recognition with the timing of expenses.

### **2022 Energy Efficiency Plan**

The 2022 Proposed Budget includes \$92.8 million in Operating Revenue for initiatives proposed in the PSEG Long Island’s 2022 Energy Efficiency and Renewable Plan. The proposed funding of the Energy Efficiency and Renewable Plan is consistent with the DPS recommendation (attached as Exhibit “D”).

### **LIPA Information Technology**

The Proposed Operating and Capital Budgets include \$21.9 million for Information Technology (“IT”) professional services and commodities that are expected to be procured off the contracts negotiated by the New York State Office of the General Services (NYS-OGS) and Federal Supply Schedules (General Service Administration, GSA).

IT professional services include management support and expert assistance outside the scope of service for LIPA’s current IT consulting services contracts. These services would be billed on a fixed hourly labor rate or at a fixed cost, as applicable, on an as-needed basis to support various IT system implementation initiatives as well as operational and oversight support functions. Over the next five years, the professional services that are anticipated include system design and architecture to support LIPA IT infrastructure upgrades, data analytics, a data warehouse, advanced analytics, an enterprise document and record management system, intranet, website, time and attendance initiatives, system integration and implementation of IT helpdesk, inventory management, enterprise resource planning system, case management, financial management, planning, and modeling, Human Resource management, cloud migration, cybersecurity planning, implementation and review, IT strategic planning, business process improvement initiatives related to various IT systems implementations, quality assurance of various IT initiatives within LIPA, independent verification and validation review of design, systems and programs implementation managed by PSEG Long Island, and Oversight Support.

Commodities to be procured include hardware, software licenses, software, applications, cloud services, cybersecurity and systems monitoring and management subscription services, system and data center hosting, telephony, telecom, audiovisual, video conferencing support and services on an as-needed basis in the ordinary course of business and continued maintenance of the existing hardware and software.

### **Amendment of the 2021 Operating and Capital Budgets**

The Budget reflects the approved amendment related to a property acquisition completed in August 2021, increasing PSEG Long Island's Capital Budget by \$27.1 million. LIPA further recommends PSEG Long Island's Capital Budget be amended to allow for the carryover of Capital projects from 2021 to 2022, for: (i) \$9.1 million in Information Technology projects, (ii) \$8.8 million in delayed fleet purchases, (iii) \$4.4 million associated with a delay in receipt of a substation transformer, and (iv) \$0.7 million associated with the Dusk to Dawn Program.

LIPA is also recommending approval of an amendment to increase the 2021 PSEG Long Island Operating Budget by \$6.0 million related to (i) an increase of \$5.5 million for Enhanced Vegetation Management and (ii) \$0.5 million for Low-to-Moderate Income Heat Pump Program which is being funded by a settlement received from the New York State Attorney General and is reflected in other income. The amount of the recommended amendment is \$1.1 million higher than the amount reflected in the preliminary Proposed Budget presented on November 17, 2021 due to the increased amount for Enhanced Vegetation Management reflecting an increased level of hazardous tree removal that PSEG Long Island will be able to complete in 2021.

#### **Accounting for 2021 Settlement Funds Used for Home Comfort Plus Program**

In 2021, LIPA received funds from the New York State Attorney General Office as a settlement to resolve outstanding issues with LIPA's past service provider. Such funds are designated to be used to enhance the rebate program for low-to-moderate income customers to upgrade their home heating systems with clean electric heat pumps. The 2021 Operating Budget as discussed above is being amended to reflect the \$0.5 million expended in 2021 with the balance of the funds, \$4.0 million, deferred to the 2022 Operating Budget. This program is revenue requirement neutral as LIPA will defer the remaining proceeds from the settlement funds to 2022 revenue to properly align with projected spending.

Regulatory Accounting for the Litigation Related to Certain Payments in Lieu of Taxes By statute, LIPA makes payments in lieu of taxes (PILOTs) for real property it acquired from LILCO.

Beginning in calendar year 2015, the LIPA Reform Act capped LIPA's PILOT payments to no more than 2% higher than the prior calendar year. In 2017, LIPA received notices from Suffolk County claiming to enforce liens against certain of LIPA properties for alleged unpaid real estate taxes. LIPA filed a legal action to negate any attempt by Suffolk County to enforce the alleged tax liens and filed suit against the ten Suffolk County towns to ensure that they comply with the annual 2% limit on growth in such payments. On April 1, 2021, the Supreme Court, Suffolk County issued a Decision and Order that found: (1) LIPA's transmission and distribution (T&D) properties are not exempt from real-property taxation for tax years 2014/15 through 2019/20 by reason of LIPA's failure to timely challenge its unlawful assessment as non-exempt, taxable properties by the Town Assessors during those tax years; and (2) compelling LIPA to pay to Suffolk County the unpaid real property taxes levied against the T&D properties for tax years 2014/15 through 2019/20, with interest and penalties in the amount of approximately \$67 million. A judgment was entered on October

8, 2021, that includes the 2014/15 to 2020/21 tax years. LIPA filed its notice of appeal from that judgment.

LIPA pays the PILOT amounts it is authorized to pay by law and sets its budgets as such. Although LIPA is entitled to a stay of enforcement of the judgment pending its appeal and is not paying this penalty until such time, if deemed necessary, in accordance with generally accepted accounting principles, LIPA must record this contingent liability. To ensure customers are not burdened with this levy until LIPA completes its appeal process, LIPA is requesting the Board approve deferral of recovery of such costs from its customers unless and until LIPA is required to submit payment for such judgement. LIPA cannot predict the outcome or timing of the appeal.

#### **Public Comment on the 2022 Operating and Capital Budgets**

LIPA held two virtual public comment sessions regarding the 2022 Budget. Both sessions occurred on Monday, November 29, 2021, with the first session held during the day and the second session held in the evening.

Comments regarding the budget were received from one speaker, Fred Harrison of Merrick. Mr. Harrison commented on (a) the potential savings associated with municipalization, (b) the importance of sourcing low-cost renewable energy, (c) the need to continue LIPA's efforts to pursue property tax savings, and (d) the need to seek out available federal funds. LIPA staff agrees that the issues identified by Mr. Harrison are important factors to consider in LIPA's long-term planning and cost reduction efforts. We will continue to keep these issues front and center in development of future budgets and work plans. LIPA also accepted written comments. To date, no written comments have been received.

#### **Public Comment on the Utility 2.0 and Energy Efficiency Plan**

As discussed above, the Budget reflects adjustments recommended by the DPS in its Utility 2.0 and Energy Efficiency Plan Recommendations. The DPS solicited public comments on PSEG Long Island's Utility 2.0 and Energy Efficiency Plan, which are provided to the Board for their consideration and publicly available on the DPS's website.<sup>1</sup> PSEG Long Island's responses to the public comments are attached hereto as Exhibit "E".

#### **Recommendation**

Based upon the foregoing, I recommend approval of the above requested action by adoption of a resolution in the form of the draft resolution 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 resolution was approved by the Trustees.*

**1699. APPROVAL OF THE 2022 OPERATING AND CAPITAL BUDGETS  
AND AMENDMENT OF THE 2021 BUDGETS**

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**WHEREAS, the Long Island Power Authority (“LIPA”), through its wholly owned subsidiary, the Long Island Lighting Company d/b/a LIPA, owns the electric transmission and distribution 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 (the “Board”) is required to approve annual budgets for LIPA’s operations and for capital improvements; and**

**WHEREAS, the proposed 2022 Budget incorporates Operating and Capital Budgets for the operation and maintenance of the transmission and distribution system, customer services, business services and energy efficiency and renewable energy programs which are predicated on improving storm response and restoration, customer satisfaction, reliability and storm hardening; and**

**WHEREAS, the proposed Operating and Capital Budgets include \$21.9 million for Information Technology (“IT”) professional services and commodities that may be procured off the contracts negotiated by the New York State Office of the General Services (“NYS-OGS”) and Federal Supply Schedules; and**

**WHEREAS, the resolution is being adopted in accordance with the requirements of section 1.150-2 of the applicable Treasury Regulations, as evidence of LIPA’s intent to finance certain of its capital expenditures through the issuance of debt; and**

**WHEREAS, under the New York Public Authorities Law as amended by the LIPA Reform Act (P.A.L. § 1020 et seq.), LIPA and PSEG Long Island are required to submit a proposed rate increase to the New York State Department of Public Service for review if it would increase the rates and charges by an amount that would increase LIPA’s annual revenues by more than 2.5% of total annual revenues. The proposed Budget and associated rate adjustments would increase LIPA’s 2022 revenues by less than this threshold. Therefore, the proposed Budget contains rate updates consistent with the LIPA’s Mission, Board Policies, and the LIPA Reform Act; and**

**WHEREAS, LIPA presented its proposed 2022 Operating and Capital Budgets to the Board of Trustees on November 17, 2021 and held two public comment sessions on November 29, 2021; and**



**WHEREAS, the memorandum accompanying this resolution includes a schedule of deferrals and amortization of certain generation capacity costs within the months of the year to affect the more accurate reflection of cost causation in electric rates within each month of the year; and**

**WHEREAS, the Finance and Audit Committee (the “Committee”) of the Board of Trustees recommended approval of the 2022 Operating and Capital Budgets and associated rate adjustments.**

**NOW, THEREFORE, BE IT RESOLVED, that consistent with the accompanying memorandum, the Board of Trustees hereby approves the 2022 Operating and Capital Budgets and associated rate adjustments, which are attached hereto; and**

**BE IT FURTHER RESOLVED, that the Board hereby approves granting LIPA the authority to release funds from the Capital reserve into PSEG Long Island’s Capital Budget upon LIPA management’s receipt and approval of the pending information; and**

**BE IT FURTHER RESOLVED, that the Board hereby approves amendment to LIPA’s 2021 Capital Budget to defer capital projects totaling approximately \$22.9 million to 2022; and**

**BE IT FURTHER RESOLVED, LIPA’s financial statements are prepared in accordance with generally accepted accounting principles as prescribed by the Governmental Accounting Standard Board (“GASB”); and LIPA is subject to existing GASB No. 62, which outlines regulatory accounting for entities or operations which are rate regulated, the Board hereby approves the establishment of a regulatory accounting treatment to allow proper alignment of revenue and costs associated with the New York State Attorney General settlement designated to low-to-moderate income programs and for the deferral of recovery of potential impacts of the Suffolk County Property Tax Litigation; and**

**BE IT FURTHER RESOLVED, that the Board hereby approves LIPA’s financing of the requirements of the 2022 and 2023 Capital Budgets, as adjusted from time to time, through a combination of internally-generated funds and the issuance of LIPA tax-exempt or taxable debt and authorizes the Chief Executive Officer or his designers to evidence such intent by appropriate certifications; and**

**BE IT FURTHER RESOLVED, the Chief Executive Officer or his designee be, and hereby is, authorized to execute and effect agreements to engage IT professional services and commodities consistent with the accompanying memorandum; and**

**BE IT FURTHER RESOLVED, that the Board hereby authorizes the Chief Executive Officer and his designees to carry out all actions deemed necessary or convenient to implement this resolution.**

**\*\*\***

*Acting Chair Fischl stated that the next item on the agenda was the Isaias Task Force Progress Discussion and Consideration of the Adoption of the Task Force Quarterly Report to be presented by Mujib Lodhi.*

*Mr. Lodhi presented the Isaias Task Force Progress Discussion.*

*Mr. Lodhi 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 the third Isaias Task Force (the “Task Force”) Quarterly Report (the “Quarterly Report”), 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 investigation 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.

The Task Force presented a 30-Day Report to the Board on September 23, 2020, and a 90-Day Report to the Board on November 18, 2020. As set forth in Appendix 2 and Appendix 3 of the 90- Day Report, the Task Force provided actionable recommendations for the Board’s consideration (the “Task Force Recommendations”).

Between November 2020 and this Board meeting, the Board adopted various Project Implementation Plans (PIPs) for the Task Force Recommendations and directed PSEG Long Island to resubmit certain PIPs to address the Board’s objectives better.

Additionally, between December 2020 and this meeting, the Board adopted recommendations covering operational areas, including risk management, budgeting and reporting, real estate, asset management, inventory management, collections, affiliate services, strategic planning, information technology, small generator interconnection, workforce management, and data access, among others (the “Management Recommendations”).

In total, the Board has adopted 168 recommendations resulting in 146 PIPs, which are in various stages of implementation by PSEG Long Island. The Board has directed LIPA Staff

to submit quarterly status updates on the implementation of each of these PIPs in the form of Quarterly Reports. The Board adopted the first Quarterly Report on June 23, 2021, and the second Quarterly Report on September 22, 2021. The Quarterly Reports address the status of each recommendation based on PSEG Long Island’s monthly status reporting to LIPA. The reports also describe the status of LIPA’s independent verification and validation of the remediation of each recommendation.

### **The Third Quarterly Report**

The third Quarterly Report, attached hereto as Exhibit “B,” summarizes the status of each of the Task Force and Management Recommendations. The Quarterly Report pays particular attention to describing the progress made since September 2021.

### **Recommendation**

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 resolution was approved by the Trustees.*

### **1700. RESOLUTION ADOPTING THE ISAIAS TASK FORCE QUARTERLY REPORT**

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, 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, on August 5, 2020, 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 (“Task Force”) that was charged with both providing actionable recommendations and overseeing PSEG Long Island’s remediation activities; and**

**WHEREAS, the Task Force presented the 30-Day Report to the Board at the September 23, 2020 Board Meeting and released it to the public; and**

**WHEREAS, on November 18, 2020, the Task Force presented the 90-Day Report, which provided 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, the Board has adopted additional recommendations since December 2020 to address management deficiencies outside the scope of the Task Force review; and**

**WHEREAS, the Board has requested written Quarterly Reports with a comprehensive summary of the status of the implementation of all of the Board-adopted recommendations until all such recommendations have been completed; and**

**WHEREAS, on June 23, 2021, the Board adopted the first Quarterly Report; and**

**WHEREAS, on September 22, 2021, the Board adopted the second Quarterly Report; and**

**WHEREAS, LIPA Staff has submitted to the Board the third Quarterly Report for the Board’s approval.**

**NOW, THEREFORE, BE IT RESOLVED, that the Board adopts the Quarterly Report.**

**\*\*\***

*Acting Chair Fischl stated that the next item on the agenda was the Consideration of the Annual Report on the Board Policy on Governance and Agenda Planning to be presented by Bobbi O’Connor.*

*Ms. O’Connor 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 adopt a resolution: (i) finding that LIPA has complied with the Policy on Board Governance and Agenda Planning (the “Policy”) for the period since the last annual review on the Policy; and (ii) approving the annual report for the Policy, which resolution is attached hereto as Exhibit “A.”

## **Background**

By Resolution No. 1323, dated September 21, 2016, the Board adopted the Policy. The Policy provides that the “members of the Board of Trustees of the Long Island Power Authority are fiduciaries who are collectively entrusted with responsibility for the Authority, including ensuring LIPA achieves its mission and values for the benefit of its customer-owners. The Chief Executive Officer of the Authority, including acting through the Authority’s service provider, is responsible for implementing the Board’s policies and the day-to-day operations of the Authority.”

The Board conducts an annual review of the Policy and considers as part of its annual review whether LIPA has remained in compliance with the Policy and whether any updates or revisions should be made to the Policy. The Board last reviewed and amended the Policy in December 2020.

## **Compliance with the Board Policy on Governance and Agenda Planning**

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

The Policy provides that the Board will “Use the expertise of individual members to enhance the understanding of the Board as a body, without allowing the expertise of individual members or staff to substitute for the judgment of the Board as a whole.”

- Trustees are assigned by the Chair to Board Committees based, in part, on their individual experience outside of LIPA. In 2021, Trustees Cockfield and Goroff were assigned to the Oversight and Clean Energy Committee, and Trustee Anderson Campbell was assigned to the Governance, Planning and Personnel Committee.
- The Trustees have adopted a Board Policy Governance process to provide clear direction to LIPA Staff from the Board, acting as a whole, rather than Trustees acting as individual members, including the Board Policy on Trustee Communication.
- The Trustees have annually conducted a survey and review of their collective performance, and have instituted improvements to the Board’s governance, such as a facilitated process to review and enhance the Board Policy governance model,

changes to Committee charters, a process to receive constructive feedback from staff on the Board's performance, and better use of the Board's time through judicious use of a Consent Agenda for consensus and ministerial items.

The Policy provides that the Board will “Direct and control the Authority through the careful establishment of broad written policies reflecting the Board’s values and perspectives for the benefit of the Authority’s customer owners. The Board’s major policy focus will be on the intended long-term impacts, not on the administrative means of attaining those impacts, which are the role of the chief executive and service provider.”

- The Board has over the course of seven years, adopted approximately 30 policies that focus on the intended long-term impacts, rather than the administrative means of achieving those impacts. New policies are developed, and existing policies are revised at the direction of the Board to address LIPA’s long-term plans and values or adapt to changing circumstances in the industry or within LIPA’s operations.
- In 2021, the Board adopted a new policy on Asset Management.
- In 2021, the Board hired Leading Resources, Inc. to conduct a review of the Board policy structure and to facilitate working group discussions to amend certain Board policies to better align with LIPA’s vision for the utility. At the November 2021 meeting, the Board adopted updated policies on LIPA’s Purpose and Vision, Transmission and Distribution Operations, Customer Experience, and Information Technology and Cyber Security.
- With Leading Resources, Inc., the Board has formed additional working groups to review the following policies in 2022: Resource Planning and Clean Energy; Customer Value and Affordability; Role of LIPA Trustees; Staffing and Employment; Values of Responsiveness and Integrity; and Trustee Communications.

The Policy provides that “the Board will monitor the Board’s process, performance and activities in comparison to its governance objectives” and “Monitor the Board’s process, performance and activities in comparison to its governance objectives.”

- The Board policies are reviewed by the Board or appropriate Committee annually for compliance purposes. The annual reports include information relating to performance and activities in furtherance of the Board’s governance objectives. In addition, the Governance, Planning and Personnel Committee (the “Governance Committee”) conducts an annual review of the overall effectiveness of the Board.
- The Board Policy Implementation Reports are available on the LIPA’s website.

The Policy provides that the Board “Pursue continual board education and development across all areas of the Authority’s operations and Board activities, including orientation of new members in the Board’s fiduciary duties, governance process, and periodic discussion of governance process improvement.”

- LIPA Staff regularly provides the Board with training opportunities, including those requested by the Trustees, in a variety of different areas, including governance, utility operations and trends, electric rates, and finance. For example, in November 2021, the Board had a presentation from Carl Mas of NYSERDA describing certain surveys undertaken by the Climate Action Council in furtherance of the Climate Leadership and Community Protection Act.

The Policy provides that “the Board will establish and maintain an outline of the core competencies required for an effective Board member (see, Appendix A of the Policy); establish and maintain an outline of the core competencies required for an effective Chairperson and Committee Chairs (see, Appendix A of the Policy); and establish and maintain a list of Trustee expectations to ensure that all Trustees have a common understanding of the requirements for a productive and engaged Board member (see, Appendix B of the Policy).”

- The Board has adopted both a set of core competencies and a list of expectations for all Trustees and specifically for the Chairperson and Committee Chairs, which are reviewed annually.

The Policy provides that the Board “Systematically monitor the performance of the Chief Executive Officer and service provider relative to the policies of the Board relating to its mission and values and any limitations established by Board policy. To do so, the Board will adopt a schedule developed as part of the annual Board agenda planning process...”

- Annually, the Governance Committee reviews the performance of the Chief Executive Officer relative to the policies of the Board.
- Annually, LIPA Staff provides the Board with the proposed agenda for all Board meetings for the Board’s review and comment. Likewise, the Secretary to the Board provides periodic reports relating to compliance with each policy, as appropriate.
- LIPA’s Service Provider regularly provides the Trustees with information relating to the Service Provider’s performance under the Amended and Restated Operations Services Agreement.

### **Proposed Changes to the Board Policy**

LIPA Staff has completed its annual review of the Policy and has no suggested amendments 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.

*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 resolution was approved by the Trustees.*

### **1701. RESOLUTION APPROVING THE REPORT TO THE BOARD OF TRUSTEES ON THE BOARD GOVERNANCE AND AGENDA PLANNING POLICY**

WHEREAS, the Board Governance and Agenda Planning Policy (the “Policy”) was originally approved by the Board of Trustees by Resolution No. 1323, dated September 21, 2016; and

WHEREAS, the Policy was last amended by the Board pursuant to Resolution No. 1505, dated December 18, 2019; 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 the Policy for the period since the last annual review and approves the annual report to the Board.

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*Acting Chair Fischl stated that the next item on the agenda was the Consideration of Appointment of a General Counsel to be presented by Thomas Falcone.*

*Mr. Falcone presented the following action item and took questions from the Trustees.*

## **Requested Action**

The Trustees are requested to approve a resolution appointing Bobbi O’Connor as General Counsel to the Board of the Authority and its wholly-owned subsidiary, Long Island Lighting Company d/b/a LIPA (collectively “LIPA”), effective December 15, 2021.

## **Background**



Anna Chacko, LIPA's current General Counsel, has informed the Chief Executive Officer ("CEO") of her intention to resign effective December 31, 2021. Typically, LIPA would commence a search to identify external candidates to fill the General Counsel role, in addition to identifying any qualified internal candidates. In this case, LIPA has an exceptionally strong internal candidate in Bobbi O'Connor. I believe that, given the strength and experience of the internal candidate and Ms. O'Connor's willingness to serve, it is appropriate to appoint Ms. O'Connor without conducting a wider search.

Ms. O'Connor has been with LIPA since November 2013 when she was hired as Assistant General Counsel in charge of commercial matters. In June 2014, upon the unexpected resignation of LIPA's then General Counsel, the Board appointed Ms. O'Connor to serve as Acting General Counsel until a permanent replacement could be identified. In December 2014, when a new General Counsel was hired, Ms. O'Connor was promoted to Deputy General Counsel. In July 2017, Ms. O'Connor moved from the legal department to the Office of the CEO to focus on LIPA's strategic planning initiatives. Since then, the CEO has assigned Ms. O'Connor responsibility for Human Resources, Enterprise Risk Management, and Internal Audit, expanding her knowledge of the business side of LIPA's operations.

I believe this background, in addition to her strong legal experience, prior legal service, prior experience as a senior LIPA officer, and knowledge of LIPA and its affairs, make Ms. O'Connor uniquely qualified to take over the daily management of LIPA's Office of General Counsel with an annual salary of \$302,500. This is below the level of compensation Ms. O'Connor can earn as a General Counsel in the private sector and is well-supported for a professional of Ms. O'Connor's caliber. Additionally, Ms. O'Connor will continue to serve the Board in the role of Secretary. Ms. Chacko will remain on staff through year end to assist Ms. O'Connor with the transition.

### Recommendation

Based on the foregoing, I recommend approval of the above-requested action.

*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 resolution was approved by the Trustees.*

### 1702. APPOINTMENT OF GENERAL COUNSEL

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RESOLVED, that Ms. Bobbi O'Connor be, and hereby is, appointed General Counsel to the Board of the Long Island Power Authority (the "Authority") and its wholly-owned subsidiary, Long Island Lighting Company ("LIPA"), effective on December 15, 2021 with an annual salary of \$302,500, until the earlier of her resignation or removal; and be it further

**RESOLVED**, that the incumbent of the position of General Counsel shall be an officer of the Authority and its subsidiary, LIPA, within the meaning of the Authority's enabling legislation (Chapter 517 of the Laws of 1986), as amended, including Section 1020-bb of the Public Authorities Law, and all other applicable laws.

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*Acting Chair Fischl then stated that the final agenda item, Secretary's Report on Board Policies and Communications, would be in written submission only, and available at the Long Island Power Authority website for viewing.*

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*Acting Chair Fischl then announced that the next Board meeting is scheduled for Thursday, February 17, 2022 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:*

**1703. EXECUTIVE SESSION – PURSUANT TO SECTION 105 OF THE PUBLIC OFFICERS LAW**

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**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.

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*At approximately 1:48 p.m. the Open Session of the Board of Trustees was adjourned on a motion to enter into Executive Session.*