



BOARD POLICY ON TAXES AND PILOTS

May 18, 2022

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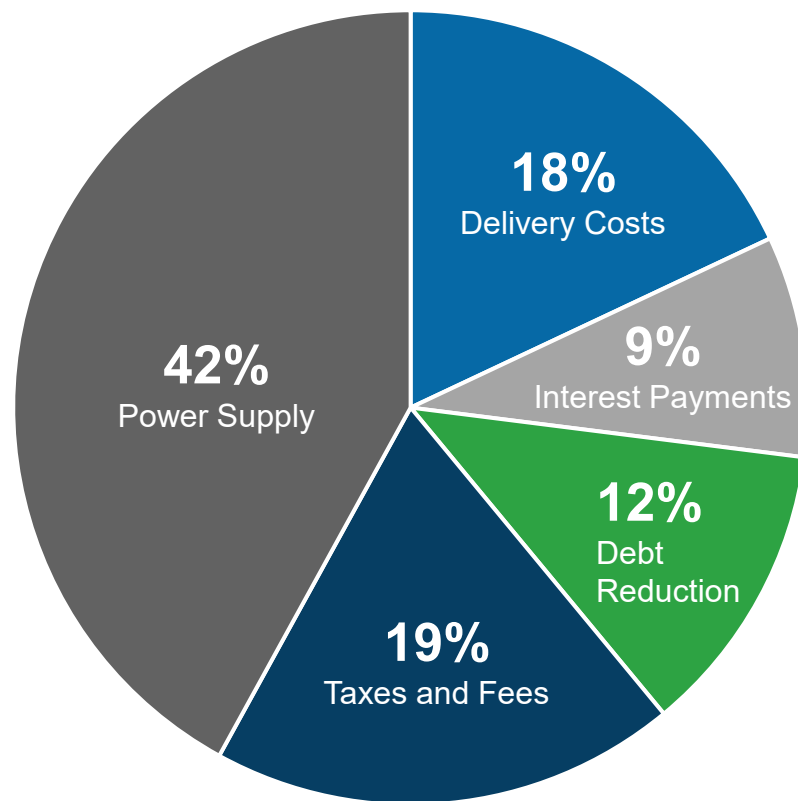
- Pay only such taxes, payments in-lieu-of taxes (PILOTs), assessments, and fees as are required by law or by agreement to reduce excessive cost for customers;
- LIPA to avail itself of the lawful right to challenge excessive tax assessments and payment obligations to minimize the cross-subsidization of taxpayers in some taxing jurisdictions by LIPA's customer-owners in other jurisdictions; and
- Inform customers of the burden of taxes, PILOTs, assessments, and fees in their electric bills.

All Board Policies can be found [here](#).

YEARLY COST TO CUSTOMERS

Taxes were **LIPA's second-largest expense** at \$702 million in 2021, or approximately 19 percent of customer bills – 3x the national average and 2x the New York State average, including:

- **\$179 million** for four power plants
- **\$51 million** for all other power plants
- **\$302 million** for transmission and distribution PILOT payments
- **\$120 million** for sales taxes
- **\$37 million** for revenue-based taxes
- **\$11 million** for State assessments



Taxes are 19% of Customer Bills –
3x National Average

WORKING TOWARDS A FAIR COMPROMISE

- Four legacy steam power plants (Port Jefferson, Northport, E.F. Barrett, and Glenwood Landing) were once the workhorses of the Long Island electric grid but use dated technology and run less and less each year.
- The plants will retire as New York transitions to an entirely fossil-free electric grid.
- LIPA has worked for over a decade to obtain fair assessments on the plants.

Northport Generating Station



TAX CERTIORARI TIMELINE

2010

LIPA Commences
Tax Certiorari
Litigation



September 2020

SETTLEMENT
Town of Huntington
Settlement for Northport
Power Plant



December 2018

SETTLEMENT
Town of Brookhaven & Village
of Port Jefferson Settlement
for Port Jefferson Power Plant



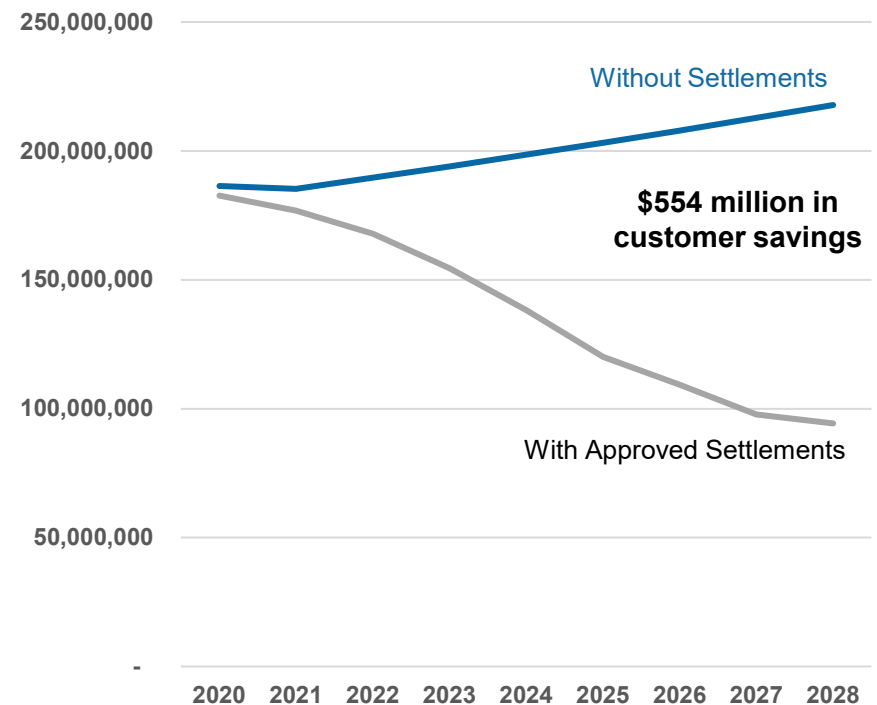
April 2022

SETTLEMENT
Nassau County Settlement for
E.F. Barrett and
Glenwood Power Plants

REACHING A FAIR COMPROMISE: SETTLEMENTS

- ✓ Two settlements have been approved for the Northport and Port Jefferson power plants.
- ✓ The Nassau County settlement has been approved by the county legislature for the E.F. Barrett and Glenwood Landing power plants.
- ✓ As part of the settlements, LIPA waived over \$1 billion in tax refund liabilities potentially owed by the Towns of Huntington & Brookhaven, the Village of Port Jefferson, and Nassau County.
- ✓ LIPA customers will save approximately \$554 million in property tax payments for these four facilities through 2028.
- ✓ While tax payments remain in excess of that required by law, the settlements will continue to support host communities as they adjust to lower taxes.

Customer Savings from Settlements



ADDITIONAL ACTIVITIES

In 2022, LIPA will:

- Effectuate the settlement with Nassau County for the Glenwood Landing and E.F. Barrett power plants.
- Continue to defend against certain Suffolk County municipalities' refusal to comply with the 2% tax cap on LIPA's PILOT payments and complete briefing on LIPA's appeal of the Court's decision ordering LIPA to make additional payments.
 - The City of New York and Nassau County comply with the 2% tax cap.
- Continue to monitor tax bills for overassessments of LIPA substations and take appropriate actions to seek fair tax bills, where appropriate.

FOR CONSIDERATION

May 18, 2022

TO: The Finance and Audit Committee

FROM: Thomas Falcone

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

Requested Action

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

Background

The Board originally adopted the Policy in September 2016, and the last annual review of the Policy was adopted by the Board in May 2021.

Additionally, from 2016 to 2020, LIPA published an annual tax report to update the Board and the public on LIPA’s efforts to reduce the tax burden and lower energy costs for all 1.1 million customers.

Compliance with the Policy

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

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

- Long Island power plants are nationally recognized as among the highest taxed commercial properties in the United States. The excessive tax burden on power plants results in higher operational costs that disadvantage Long Island plants compared to the competitive prices of power in the regional electric markets. As such, LIPA has availed itself of the lawful right to challenge excessive payment obligations on four legacy power plants for each year beginning in 2010.
- In November 2018, LIPA entered into settlement agreements with the Town of Brookhaven and the Village of Port Jefferson to gradually reduce the taxes on the Port Jefferson power plant by 50 percent through 2027. If the taxing jurisdictions fulfill the

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

terms of the settlement, LIPA will waive a refund for back tax years estimated at over \$225 million, plus interest. LIPA has now revised its agreements with the Village of Port Jefferson and the Town of Brookhaven, consistent with the agreement reached for the Northport Power Station, as discussed below.

- In November 2020, LIPA entered into a settlement with the Town of Huntington and the Northport-East Northport School District for the Northport Power Station. The settlement will reduce LIPA's annual property tax payments by 47% of 2020 levels by 2027. If the taxing jurisdictions fulfill the terms of the settlement, LIPA will waive a refund for back tax years estimated at over \$650 million, plus interest. In addition, LIPA will make a total of \$3 million and \$14.5 million in payments to the Town and school district, respectively, in exchange for their discontinuing appeals of the court's ruling that LIPA is entitled to challenge its tax assessments.
- In February 2022, LIPA entered into a settlement agreement with Nassau County for the E.F. Barrett and Glenwood Landing generating stations to gradually reduce taxes on those plants by 47% through 2027. That settlement was approved by the Nassau County Legislature on April 25, 2022. If the taxing jurisdictions fulfill the terms of the settlement, LIPA will waive a refund for back tax years estimated at over \$700 million, plus interest. In addition, LIPA has proposed settlements with the Island Park and Northshore school districts in exchange for their discontinuing appeals of the court's ruling that LIPA is entitled to challenge its tax assessments.
- LIPA and PSEG Long Island have implemented procedures to ensure that PILOTs on each annual bill related to transmission and distribution equipment owned by LIPA do not exceed 102% of the prior calendar year's payment, consistent with the provisions of the LIPA Reform Act.
- LIPA continues to defend itself in litigation challenging the 2% PILOT cap on transmission and distribution property in certain Suffolk County jurisdictions. On April 1, 2021, a court in Suffolk County ruled that (1) LIPA's properties acquired from LILCO are not exempt from real property taxation for tax years 2014/15 through 2019/20 by reason of the LIPA's failure to timely challenge their unlawful assessment as non-exempt, taxable properties by the Town Assessors during those tax years; and (2) compelling LIPA to pay over to Suffolk County the unpaid real property taxes levied against the transmission and distribution properties for tax years 2014/15 through 2019/20, with interest and penalties in the amount of approximately \$66.7 million. In October, 2021, a judgment was entered for the 2014/15 through 2020/21 tax years. LIPA has appealed that judgment. In addition, LIPA filed petitions to the towns in Suffolk County to mark LIPA's properties as exempt. Certain towns have marked the properties exempt, but have not issued bills that conform to the 2% cap on LIPA PILOT increases. Other towns have not acted on LIPA's petitions. LIPA does not believe that this litigation will have a material adverse impact on its business.
- As previously reported to the Board, LIPA has undertaken a review of substations across the service territory. The review found several substations that were assessed in excess of their value. Accordingly, LIPA began filing challenges on several over-assessed substations, and it will continue to monitor and challenge, where appropriate, assessed

valuations of substations.

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

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

The Policy provides that LIPA should “Inform customers of the burden of taxes, PILOTs, assessments, and fees in their electric bills.”

- LIPA Staff regularly meets with media, stakeholders, and local leaders to discuss the impact of taxes on energy bills.
- LIPA Staff also provides a quarterly update to LIPA’s Community Advisory Board that includes a standing item on tax reduction efforts across the service territory.

Annual Review of the Policy

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

Recommendation

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

Attachments

Exhibit “A” Resolution

RESOLUTION RECOMMENDING APPROVAL OF THE REPORT TO THE BOARD OF TRUSTEES ON THE BOARD POLICY ON TAXES AND PILOTs

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

WHEREAS, the Board adopted the last annual review of the Policy in May 2021.

NOW, THEREFORE, BE IT RESOLVED, that consistent with the accompanying memorandum, the Finance and Audit Committee hereby recommends that the Board adopt a resolution finding that LIPA has complied with Policy for the period since the last annual review and approving the annual report to the Board.

Dated: May 18, 2022