

**LONG ISLAND POWER AUTHORITY**

**MINUTES OF THE 312th MEETING**

**HELD ON DECEMBER 14, 2022**

*The Long Island Power Authority (“LIPA”) was convened for the three hundred and twelfth time at 11:09 a.m. at LIPA’s Headquarters, Uniondale, NY, pursuant to legal notice given on December 9, 2022, and electronic notice posted on the LIPA’s website.*

*The following LIPA Trustees were present:*

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

**Representing LIPA, in person, were Thomas Falcone, Chief Executive Officer; Bobbi O’Connor, General Counsel & Board Secretary; Billy Raley, Senior Vice President of Transmission & Distribution; Donna Mongiardo, Vice President-Controller; Justin Bell, Vice President of Public Policy and Regulatory Affairs; Jen Hayen, Director of Communications; and Andrew Berger, Communications Assistant. Participating via video conferencing were Mujib Lodhi, Chief Information Officer and SVP of Customer Experience; Jason Horowitz, Assistant General Counsel and Assistant Secretary to the Board; and Osman Ahmad, IT-Consultant.**

**Representing the Department of Public Service were Carrie Meek Gallagher, Director; Nick Forst, Assistant Counsel; and Sean Walters, Professional Engineer.**

**Representing Leading Resources was Eric Douglas, Senior Partner.**

*Acting Chair Fischl welcomed everyone to the 312th 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 unanimously adopted by the Trustees based on the memoranda summarized below:*

**1758. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 16, 2022 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 16, 2022 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 (the “Policy”) for the period since the last annual review, adopting certain modifications to the Policy, 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 2021.

**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 2022, LIPA hired an independent third-party consultant to verify that the five recommendations emanating from the 2020 triennial Safety Assessment of PSEG Long Island were implemented. The consultant also performed onsite field observations of PSEG Long Island’s work practices and safety management processes, including a comparison to industry best practices.**
- **In 2023, LIPA is scheduled to conduct the third triennial Safety Assessment of PSEG Long Island.**

**“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.”**

- **LIPA performed an independent review that PSEG Long Island benchmarked its safety performance against a nationwide panel of electric utilities. That benchmarking helps establish programs that improve safety performance. Since 2014 through year-to-date (“YTD”) 2022, there has been an improvement of approximately 80% in both the OSHA Recordable Incident Rate and the OSHA Days Away Rate. PSEG Long Island has surpassed the Board Policy standard of top quartile and is now within top decile performance for both OSHA measures, as compared to industry benchmarked peers. The OSHA Recordable Incident Rate through October 2022 is 0.59 vs. the top quartile and decile benchmarks of 0.97 and 0.76, respectively, and the OSHA Days Away Rate through October 2022 is 5.90 vs. the top quartile and decile benchmarks of 11.65 and 8.51, respectively.**

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

- **LIPA conducted monthly reviews of PSEG Long Island’s safety metrics via the Scorecard process. Additionally, LIPA conducts an in-depth quarterly independent verification and validation (“IV&V”) process for PSEG Long Island’s quantitative safety metrics, as described in the Quarterly Performance Metric Report.**
- **In August 2022, there was a fatality involving a PSEG Long Island contractor while working on the Transmission & Distribution system. This fatality resulted in PSEG Long Island failing to meet the Serious Injury Incident Rate (“SIIR”) metric target.**
- **As part of its IV&V process, LIPA reviewed PSEG Long Island’s motor vehicle accident rate and red-light violation performance. PSEG Long Island’s performance has improved by approximately 55% for both measures, resulting in a 2022 YTD Motor Vehicle Accident Rate performance of 6.96, compared to the top decile peer benchmark of 6.93.**

- The LIPA IV&V of PSEG Long Island’s safety oversight and practices extended to contractors and foreign crews during storm restoration activities indicates that additional work is required in this area; specifically, around virtual training documentation of individual contractor attendees.
- The LIPA IV&V of the Electric Safety Standards pilot program included meeting with both the New York State Department of Public Service (“DPS”) and PSEG Long Island to review current practices and compliance. An expanded pilot program proposal will be considered for 2023.

### **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 procedures, equipment failures, and a lack of adequate training result 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 among its employees and contractors. PSEG Long Island verifies contractor safety records, reviews, authorizes contractor safety plans prior to commencement of work, and conducts required training 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 to manage its service provider by verifying OSHA-related data as part of the current monthly Scorecard meetings. Increased LIPA IV&V 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 captures high hazard related injuries. While we recognize that there has been significant improvement in many of the safety metrics, we must acknowledge that a contractor fatality occurred. Given these circumstances, we believe the management of the safety risk for contractor oversight should be reviewed.

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

LIPA Staff recommends the Board adopt certain amendments to the Policy. First, that the existing standard of safety performance in the top 25 percent of peer utilities, as measured by OSHA Recordable Incidence Rate and OSHA Days Away Rate, be updated to top 10 percent to reflect LIPA’s continued focus on employee and contractor safety. Second, that there be an increased focus on eliminating fatalities and serious injuries to employees, contractors, and members of the public. Finally, that the Policy be updated to reflect the Board’s more recent policy format, starting with a vision statement.

### **Recommendation**

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

### **1759. RESOLUTION APPROVING THE ANNUAL REPORT AND AMENDMENTS TO THE BOARD OF TRUSTEES ON THE BOARD POLICY ON SAFETY**

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 Oversight and Clean Energy Committee of the Board of Trustees has conducted an annual review of the Policy and recommended that the Board find that the Policy has been complied with and that the changes proposed to the Policy are due and proper.

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; and

BE IT FURTHER RESOLVED, that the Board hereby approves the amendments to the Policy as set forth in Exhibit “B”.

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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 Board Policy on Information Technology and Cyber 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**

In December 2019, the Board adopted the Policy on Information and Physical Security. The Policy delineated 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. In 2021, the prior policy was supplanted by the Information Technology and Cybersecurity Policy. The Policy provides that LIPA’s “vision for information technology and cyber security is to use technology to enhance and simplify the customer experience, improve reliability, and minimize operating costs, while ensuring robust, secure technology platforms that provide operational stability and protect customer, employee, and third-party data from unauthorized access or disruption. LIPA supports data privacy by transparently communicating how customer information is collected, used, and disclosed.”

### **Compliance with the Policy**

**This report covers IT and Cyber Security activities from the Board’s December 2021 review to the present. LIPA Staff recommends that, for the reasons set forth below, the Board find that LIPA has substantially complied with the Policy.**

**The 2022 OSA Performance Metrics incorporated seven IT metrics in support of the Policy. The metrics have proven to be a valuable tool to drive improvements to PSEG Long Island IT’s performance and to better align PSEG Long Island’s IT activities to LIPA’s priorities pursuant to the Policy. While there have been a number of successes, performance in some areas continues to fall short of the expected standards. The performance metrics have enhanced LIPA’s ability to identify and to work with PSEG Long Island management to address the remaining weaknesses and gaps in PSEG Long Island’s performance and alignment with LIPA’s priorities. Compliance with each element of the Policy is discussed in detail below.**

**1. “Invest in information technology that supports the efficiency of business operations, promotes innovation, and provides long-term customer value.”**

- The 2022 Performance Metrics incorporate several metrics that support this objective, including two metrics that encompass 30 specific IT projects. Some of the key IT projects are discussed below.**
  - Enterprise Asset Management System (EAMS): In 2022, PSEG Long Island started the planning process to implement a full-fledged EAMS that can plan, schedule, and track all asset, work, maintenance (preventative, predictive, and corrective) and inventory activities, including by work order originator, specific support, failure, cause, parts, materials, supplies, crew time, fleet and equipment used, contractor, and other costs on all LIPA assets (inside and outside plant). The project encountered challenges initially, but LIPA was able to work with PSEG Long Island to bring it on track. An EAMS platform has now been selected, and the RFP to select a system integrator (SI) has been published. We expect the selection of the SI to be completed in early 2023 and the system implementation to start in the second quarter of 2023. The EAMS will facilitate improvements to both reliability and cost on behalf of customers.**
  - Enterprise Time and Attendance System: PSEG Long Island initiated the planning and procurement efforts for a new comprehensive Enterprise Time and Attendance System to address several gaps and inefficiencies that were identified in the current business processes in an assessment conducted by LIPA, including overtime management and time reporting by field personnel. The initiative aims to address existing process deficiencies while improving and enhancing time and work management capabilities. The final selection of a new software platform and systems solution integrator is planned for 2023. The new system will provide improved work scheduling and reduced cost for customers.**
  - Contact Center as a Service: In 2022, PSEG Long Island began the Contact Center as a Service project to provide a fully integrated cloud-based contact center solution allowing for numerous customer-facing improvements,**

including a seamless omnichannel customer experience, improved response time on resolutions, enhanced reporting, and many other enhancements. The project, which addresses Isaias Task Force recommendations 4.04 and 4.05 to integrate the high-volume voice communications design into a more powerful all-encompassing call center design and to develop a more scalable Inbound Contact Center, was significantly delayed; but is now on track for a phased deployment of the new solution in 2023.

- **Standardized Data Access Platform:** The Standardized Data Access Platform project was initiated to implement the Board recommendation to improve LIPA and Department of Public Service (“DPS”) access to PSEG Long Island financial and operational data through a Standardized Data Access Platform comprised of an enterprise-wide data warehouse, a broader data lake, and tools to support reporting and analytics. LIPA significantly reduced the scope of the project in July 2022 out of concern for the project's ability to deliver the original scope. The new scaled-down scope, focused on bringing data into the platform, is targeted for Phase 1 deployment by the end of 2022 in accordance with the Board recommendation, but LIPA remains concerned about project performance.
  - **GIS – Long-Term Plan, Architecture, and Technology Stack Upgrade:** A Geographic Information System (GIS) Upgrade Project is in-flight to upgrade the GIS software and hardware platform to a new version by the end of 2022. The software vendor no longer supports the current version. The new version provides an upgraded map viewer and graphic work design capabilities. The metric project incorporates the development of a comprehensive GIS Long-Term Plan that provides a clear roadmap for leveraging GIS across the enterprise in a manner that optimizes business value, in accordance with a recommendation adopted by the Board.
  - **Enterprise Mobility Strategy including Field Work Management:** Project to define the target mobility and fieldwork management vision, business capabilities, long-term prioritized enterprise mobile plan, and long-term fieldwork management/mobile app strategy. The project is in flight and targeted for completion by the end of 2022. The project will, among other things, enhance timely communication and reduce reliance on manual processes.
  - **LIPA also established an IT System Resiliency metric, which aims to minimize the probability and impact of system failures through well-designed, robust, and thoroughly exercised Disaster Recovery Plans and Business Continuity Plans (BCPs) for critical systems and processes. Performance on this metric is falling well short of the minimum acceptable standards, and LIPA will continue to work with PSEG Long Island to improve results in 2023.**
2. **“Deploy modern grid management technology and data analytics that enhance grid operations, customer service, utility asset management, and demand management, as**

measured by a Smart Grid Maturity Model level consistent with industry best practices (i.e., top 25% of utilities.)”

- The Smart Grid Maturity Model (SGMM) is a business tool stewarded by the Software Engineering Institute at Carnegie Mellon University. It was originally developed by electric power utilities for use by electric power utilities. The model provides a framework for understanding the current extent of smart grid deployment and capability within an electric utility, a context for establishing strategic objectives and implementation plans in support of grid modernization, and a means to evaluate progress over time toward those objectives.
- In 2022, LIPA engaged a consultant to conduct an SGMM Assessment. A PSEG Long Island Current State view was prepared in the assessment, modeled after a framework from the U.S. Department of Energy (DOE) Next Generation Distribution System Platform (DSPx) reference from the Modern Distribution Grid Project.
- The preliminary assessment, which is still subject to further refinement, recommended numerous areas for technology investment, such as Advanced Metering Infrastructure (AMI), Distributed Energy Resources Management Systems (DERMS), and Advanced Distribution Management System (ADMS). Some of these initiatives are incorporated into PSEG Long Island 2022/2023 performance metrics:
  - AMI: AMI enhancement work completed during 2022 included improved AMI integration with the Outage Management System (OMS). In 2022, LIPA completed the comprehensive review of the AMI deployment and identified opportunities to enhance the application of the AMI platform to deliver value to our customers. LIPA incorporated a business-driven 3-Year Roadmap into the PSEG Long Island 2023 performance metrics. The plan will include LIPA recommendations and identify additional initiatives to enhance operational efficiencies, emergency communication, and customer experience. In addition, the plan will include business objectives aligned to achieve the business vision with an implementation based on value and dependency prioritization and cost estimates. The 2023 metrics will also include piloting commercial disconnects, resolving collector loading and system validation and estimation to improve AMI data availability and consistency.
  - DERMS: DERMS is a software platform used to manage a group of distributed energy resource (DER) assets—such as rooftop photovoltaic solar panels, behind-the-meter batteries, or a fleet of electric vehicles—to deliver grid services and balance demand with supply to help utilities achieve mission-critical outcomes. The in-flight DER Visibility pilot project (U2.0) is expected to complete in 2023. The DERMS will allow for greater integration of DER into the operations of the electric grid.
  - ADMS: An ADMS is a modular software platform that enables the full suite of distribution grid management and optimization tools, including functions that automate outage restoration and optimize the performance of the distribution grid. ADMS functions being developed for electric utilities include fault location, isolation, and restoration; volt/var optimization; conservation



through voltage reduction; peak demand management; and support for microgrids and electric vehicles. ADMS provides benefits for the customer and the utility through a strong couple to a robust OMS, and drives more efficiency with the dispatching of crews and improved ETR calculations, restoration, and customer communications. The modular approach allows LIPA to implement the functionality in a prioritized manner with considerations to costs and benefits. To this end, the development of an ADMS Long-Term Roadmap to drive implementation decisions and investments was incorporated into the 2022 performance metrics and is expected to be completed by the end of this year, with a Phase 1 project for the deployment of advanced ADMS modules scheduled to initiate in 2023.

3. **“Ensure the capacity of the information technology organization to deliver reliable, robust, and resilient systems, as measured by a Capability Maturity Model Integration level of 3 or higher.”**
  - In October 2022, in accordance with Performance Metric IT-1 and IT-2. PSEG Long Island reported that it had completed the steps needed to operate on a go-forward basis for all IT projects at a CMMI Level 3 maturity for the “Doing” and “Managing” categories.
    - In November 2022, LIPA engaged a third-party vendor, an ISACA|CMMI Elite Partner, to conduct a CMMI Benchmark Appraisal of the PSEG Long Island IT department. The review engagement is expected to complete in January 2023.
    - PSEG Long Island is working on filling positions per a LIPA-funded IT re-organization to improve organizational capacity.
4. **“Regularly upgrade information and operational technology systems to maintain all systems within their active service life and under general support from the product vendor.”**
  - Metric IT-4, System and Software Lifecycle Management, was established to ensure all IT and OT assets managed by PSEG Long Island on behalf of LIPA, including but not limited to computers, communications equipment, networking equipment, hardware, software, and storage systems, are within their active service life and under general support from the product vendor.
  - A Plan to replace or upgrade end-of-life assets within two (2) years was submitted to and approved by LIPA.
5. **“Conduct quarterly internal vulnerability assessments and annual third-party vulnerability assessments and penetration testing of all information and operational technology systems and promptly mitigate vulnerabilities”**
  - PSEG Long Island Cybersecurity: PSEG Long Island has reported that they have completed the Annual Penetration testing in the third quarter of 2022. PSEG Long Island is currently working on developing plans to remediate the vulnerabilities

- identified in the testing. PSEG Long Island has reported that they have a weekly program of vulnerability scanning of all IT assets.
- **LIPA Cybersecurity:** LIPA’s vulnerability management team meets weekly and reviews vulnerabilities identified in systems managed by LIPA using a real-time vulnerability management/reporting tool. The team creates the remediation plan for newly identified vulnerabilities based on their criticality and reviews the remediation status of previously identified vulnerabilities. LIPA has also implemented tools to provide 24X7 monitoring and notification of any new vulnerabilities identified. The vulnerability reporting tool sends daily alerts to the Cybersecurity team.
6. “Maintain a level of 3 or higher on the NIST Cybersecurity Framework, as evaluated annually through an independent assessment”
- LIPA and PSEG Long Island have adopted the NIST Cybersecurity Framework (CSF) to drive improvements to 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, Processes, and Technology to implement defense in depth for the enterprise.
  - LIPA has also established a cybersecurity default metric for PSEG Long Island under the reformed PSEG Long Island contract, effective April 1, 2022, to achieve and maintain NIST CSF Tier 3. The reformed contract provides LIPA with the right to terminate the contract should PSEG Long Island fail to maintain compliance, which provides a strong incentive for improvement. LIPA has hired a third-party evaluator for an independent review of PSEG Long Island's cyber readiness relative to the metric. We expect this work to be completed in the first quarter of 2023. LIPA will conduct an annual independent review of PSEG Long Island's NIST Cyber Security Framework compliance status.
  - LIPA issued an RFQ in the third quarter to engage a third-party evaluator for an independent assessment of LIPA’s cyber security posture using the NIST CSF Framework, as well as vulnerability assessment and penetration testing of LIPA’s managed systems. LIPA is currently in the process of evaluating vendor responses, and we expect the work to commence in the first quarter of 2023.
7. “Communicate how customer information is collected, used, and disclosed and ensure that, if confidential customer information is shared with a third-party for a business purpose, the third-party has robust information security practices.”
- PSEG Long Island collects customers’ information to provide electric service. The policy posted on the LIPA website describes what personal information is collected, when it is collected, how it is used, how this information is protected, and under what circumstances that information may be shared with a third party. LIPA is working with PSEG Long Island to have this policy published on the PSEG Long Island website and to confirm its implementation.

#### **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 are several risks related to the Policy both for LIPA and PSEG Long Island. For LIPA, these risks include a cyber event resulting from unauthorized access to LIPA-managed systems that results in material financial losses, impact to LIPA’s day-to-day operations, or the organization’s reputation. For PSEG Long Island, these include a “cyberattack on the EMS/BCS systems that disables or allows someone to access control of the system operationally, resulting in the inability to operate the system effectively.” Also, the breach of personally identifiable information (PII) could result in fraud, financial impact, and negative public perception.

Cybersecurity and PII for both LIPA and PSEG Long Island were rated medium-level risks. LIPA’s Department of Innovation and Information Technology mitigates these risks with concurrent oversight of PSEG Long Island’s IT department. Several of the mitigation actions noted in the Report are the completion of the annual penetration testing with remediation plans being developed for vulnerabilities identified, the adoption of the NIST cybersecurity framework with a goal of maintaining a level 3 or higher assessment, and the adoption of a Cyber Security Default Metric.

In light of the extensive efforts detailed in this Policy of both LIPA’s Department of Innovation and Information Technology and PSEG Long Island’s IT department, we believe these risks are being adequately managed.

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

LIPA Staff has reviewed the Policy and recommends no change at this time.

#### **Recommendation**

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

#### **1760. RESOLUTION APPROVING THE ANNUAL REPORT TO THE BOARD OF TRUSTEES ON THE BOARD POLICY ON INFORMATION TECHNOLOGY AND CYBER SECURITY**

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WHEREAS, the Board Policy on Information Technology and Cyber Security (the “Policy”) was approved by the Board of Trustees in November 2021; 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.

### **Requested Action**

The Trustees are requested to authorize (i) the issuance of up to \$1,450,000,000 aggregate principal amount of Electric System Revenue Bonds (the “Authorized Bonds”) for the purposes described below; and (ii) to enter into interest rate or basis swaps (“Financial Contracts”) in connection with the Authorized Bonds or existing bonds, and to terminate such Financial Contracts if necessary or advantageous.

### **Background on Plan of Finance**

LIPA’s 2023 Plan of Finance includes the following elements:

- Issuance of the Authorized Bonds in a principal amount no greater than \$650,000,000 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.
- Issuance of the Authorized Bonds in an amount no greater than \$800,000,000 for the purpose of generating annual debt service and/or present value savings by refunding LIPA Bonds or refinancing any outstanding debt of UDSA and to refinance variable-rate debt of the Authority coming due. These bonds will supplement existing remaining authorization of \$640,000,000 for the same purposes.
- Funding amounts due for the termination of Financial Contracts entered into in connection with any Authorized Bonds or refunded bonds.
- Entering into Financial Contracts, including forward starting swaps, in connection with the Authorized Bonds or existing bonds, in an amount of up to \$2,000,000,000, should doing so provide debt service savings or mitigate interest rate risk.

### **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, the Chief Financial Officer, and the Vice President -- Controller are each authorized to sell all Bonds issued 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 LIPA. 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 LIPA’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 to designate, as necessary, the underwriters, remarketing agents, or swap counterparties, as applicable, assigned to each bond series from the approved list of firms. The total authorized amount of Authorized Bonds will be \$1,450,000,000, of which no more than \$650,000,000 may be used to pay or reimburse the Authority for 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 and \$800,000,000 of which may be used to refund outstanding fixed or variable rate bonds of the Authority or UDSA. The Authorized Bonds may also be used to fund amounts due for the termination of Financial Contracts entered into in connection with any Authorized Bonds or refunded bonds.**

### **Financial Contracts**

**LIPA has determined that it may be appropriate to enter into one or more interest rate or basis swaps (“Financial Contracts”) including forward starting swaps, relating to the Authorized Bonds or existing bonds of the Authority, should they provide debt service savings or mitigate interest rate risk for the Authorized Bonds or existing bonds of the Authority, 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 \$2,000,000,000 is requested. The Authority may also extend the tenor of existing Financial Contracts. 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 LIPA’s Executive Risk Management Committee, per the Board’s Policy on Interest Rate Exchange Agreements.**

**To the extent that any LIPA Bonds associated with Financial Contracts are refunded, or to the extent that doing so would provide debt service savings, mitigate interest rate risk, or be otherwise in the interest of the Authority, LIPA may also seek to terminate such Financial Contracts, reallocated them to other bonds or notes of the Authority, or assign them to other counterparties.**

### **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 (i) the issuance of up to \$1,450,000,000 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, (ii) the execution and delivery of one or more new Financial Contracts and termination of new or existing Financial Contracts, and (iii) such actions as are necessary to carry out the transactions contemplated by the Financing Orders.**

**1761. AUTHORIZATION RELATING TO THE ISSUANCE OF ELECTRIC SYSTEM GENERAL REVENUE BONDS FOR THE PURPOSES OF FUNDING COSTS OF SYSTEM IMPROVEMENTS AND CERTAIN OTHER COSTS, EXECUTION AND DELIVERY OF CERTAIN FINANCIAL CONTRACTS, AND ACTIONS NECESSARY TO CARRY OUT UDSA FINANCING ORDERS**

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**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 or outstanding obligations of UDSA (collectively, the “obligations to be refunded”), which Authorized Bonds shall be in an aggregate principal amount not to exceed \$1,450,000,000, of which no more than \$650,000,000 in principal amount shall be issued for the purpose of funding Costs of System Improvements; 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-Third Supplemental Resolution (the “Thirty-Third 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 or mitigate interest rate risk by entering into one or more such Financial Contracts in an aggregate notional amount of up to \$2,000,000,000 relating to all or a portion of the Authorized Bonds or other outstanding Bonds of the Authority, or extending existing Financial Contracts, 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, to the extent that bonds or notes associated with the Financial Contracts authorized hereby, or other Financial Contracts of the Authority, are refunded or doing so would provide debt service savings, mitigate interest rate risk, or would otherwise be advantageous to the Authority, it is anticipated that such Financial Contracts 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, Chief Financial Officer, or Vice President -- Controller; and**

**WHEREAS, the decision as to which specific strategy or strategies to be employed in connection with such new or existing Financial Contracts 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, Chief Financial Officer, or Vice President -- Controller, 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; and**

**WHEREAS, the Authority may determine to request the Utility Debt Securitization Authority ("UDSA") to issue bonds to permit the Authority to refinance a portion of the Authority's debt and to finance system resiliency costs (as defined in Part B of Chapter 173, Laws of New York, as amended (the "LIPA Reform Act")) pursuant to the Restructuring Cost Financing Orders Nos. 7, 8, and 9 previously approved by the Board (the "Financing Orders").**

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

- 1. The Thirty-Third 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-Third 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, Chief Financial Officer, and Vice President – Controller are each authorized to sell all Bonds issued on a negotiated basis either (i) to one or more of the firms approved pursuant to the Authority's most recent procurement for underwriting for resale to investors or (ii) by private placement to one or more investors or financial institutions. The Chief Executive Officer, Chief Financial**

**Officer, and Vice President -- Controller 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.**

- 3. Each of the Chief Executive Officer, Chief Financial Officer, and Vice President -- Controller 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 2022, with such modifications thereto as the Chief Executive Officer, Chief Financial Officer, and Vice President -- Controller, 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, Chief Financial Officer, or Vice President -- Controller 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, Chief Financial Officer, or Vice President -- Controller, which approval in each case shall be conclusively evidenced by the execution thereof by the Chief Executive Officer, Chief Financial Officer or Vice President -- Controller.**
- 4. Each of the Chief Executive Officer, Chief Financial Officer, and Vice President -- Controller 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-Third 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 or UDSA, each of the Chief Executive Officer, Chief Financial Officer, and Vice President -- Controller is hereby authorized to engage in a tender offer or exchange of outstanding bonds or notes of the Authority or UDSA, 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 the Chief Executive Officer, Chief Financial Officer, or Vice President -- Controller 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 necessary and appropriate to effectuate such determinations and details. A copy of such Note 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.

7. The Chief Executive Officer, Chief Financial Officer, and Vice President -- Controller 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.
8. The Chief Executive Officer, Chief Financial Officer, and Vice President -- Controller are, and each of them hereby is, authorized to enter into Financial Contracts in an aggregate notional amount of up to \$2,000,000,000 relating to the Authorized Bonds or other Bonds of the Authority, or to extend the tenor of existing Financial Contracts, 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, Chief Financial Officer, or Vice President -- Controller 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 or Vice President -- Controller 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 or Vice President -- Controller, and (iv) otherwise be in accordance with the Guidelines and substantially in the form of Financial Contracts 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 Financial Contracts, 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 Financial Contracts, that (a) the use of such Financial Contracts 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 Financial Contracts are both manageable and reasonable in relation to the potential benefits; and (c) the proposed Financial

**Contracts are necessary or convenient in the exercise of the power and functions of the Authority under the Act.**

- 9. The Chief Executive Officer, Chief Financial Officer or Vice President -- Controller are each authorized to allocate or reallocate new or existing Financial Contracts to such 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 Financial Contracts or to the extent that doing so would provide debt service savings, mitigate interest rate risk, or would otherwise be advantageous to the Authority 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.**
- 10. Each of the Chief Executive Officer, Chief Financial Officer or Vice President -- Controller are hereby further authorized to prepare and execute necessary documents, agreements, and certificates and to take all such actions as are necessary or proper to carry out the transactions contemplated by the Financing Orders including, but not limited to, providing for the issuance by UDSA of its Restructuring Bonds (as defined in the LIPA Reform Act), refunding outstanding bonds of UDSA or the Authority, conducting tender offers for outstanding bonds of UDSA or the Authority, financing system resiliency costs (as defined in LIPA Reform Act). In addition preparing and executing the documents forms of which were previously approved by the Authority in connection with the adoption of the Financing Orders, each of the Chief Executive Officer, Chief Financial Officer or Vice President -- Controller is authorized to prepare and execute such other documents, including but not limited to disclosure documents, continuing disclosure agreements, tender documents, escrow agreements, and other necessary documents, each in substantially the forms as prior transactions, as are necessary or proper to carry out the transactions contemplated by the Financing Orders.**
- 11. Each of the Chief Executive Officer, Chief Financial Officer, and Vice President -- Controller 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.**

- 12. This resolution shall take effect immediately.**

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**1762. THIRTY-THIRD 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 \$1,450,000,000 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 \$650,000,000;

(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 2023 (the "Series 2023 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 2023 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 2023 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, by the Resolution of the Authority entitled “Thirty-First Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 16, 2020, by the Resolution of the Authority entitled “Thirty-Second Supplemental Resolution authorizing Electric System General Revenue Bonds” adopted December 16, 2021, 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 Chief Executive Officer's Report to be presented by Thomas Falcone.*

*Mr. Falcone presented the Chief Executive Officer's 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 from the Department of Public Service to be presented by Carrie Gallagher, Nick Forst and Sean Walters from the Department of Public Service.*

*Ms. Gallagher and representatives from DPS presented the Briefing from the Department of Public Service and took questions from the Trustees.*

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*Acting Chair Fischl stated that the next item on the agenda was the Consideration of Approval of LIPA's 2023 Budget and Performance Metrics and Amendment to the 2022 Budget to be presented by Thomas Falcone.*

*After requesting a motion on the matter, which was seconded, 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 ("LIPA") is requested to adopt a Resolution: (i) approving the 2023 Performance Metrics; (ii) approving the proposed 2023 Operating and Capital Budgets (the "Budget") which sets forth the revenue, grant, other income, and expenditure forecasts for the year ending December 31, 2023; and (iii) amending the 2022 Operating and Capital Budgets as described below and specified in Exhibit "A."

## **2023 PSEG Long Island Performance Metrics**

The Second Amended and Restated Operations Services Agreement (“OSA”) includes performance standards (the “Performance Metrics”) for all the management services PSEG Long Island provides to LIPA. Approximately \$21 million of Variable Compensation (as contractually adjusted for inflation) is at risk annually based on these performance standards.

The Performance Metrics are designed to be objectively verifiable and reasonably achievable levels of performance. The funds to achieve this performance are also budgeted, tying realistic plans and budgets to measurable outcomes each year. In 2022, there were 96 Performance Metrics distributed across all the management services provided to LIPA and its customers. These 2022 Performance Metrics were established as part of negotiations of the reformed OSA that became effective in April 2022.

For 2023 and future years, the metrics are set independently by LIPA and the Department of Public Service (“DPS”) pursuant to a process specified in the OSA, whereby LIPA Staff proposes Performance Metrics that further the objectives specified in the Board’s Policies for the strategic direction of the utility, the DPS reviews and recommends each such metric (the “DPS Recommended Metrics”), and the Board considers each DPS Recommended Metric. The Board may then approve each DPS Recommended Metric or return the metric to DPS for additional review, modification, and recommendation. The Board may consider metrics individually.

For 2023, LIPA Staff proposed 99 Performance Metrics. In a letter dated November 4, 2022 (attached as Exhibit “B”), the DPS recommended 93 Performance Metrics, rejected six metrics, and further recommended modifications to twenty metrics. The 2023 Proposed Performance Metrics presented to the Board on November 16, 2022, as part of the 2023 Proposed Budget incorporate the DPS 2 recommendations. The proposed 2023 Performance Metrics for the Board’s review and approval are provided in Exhibit “C.”

The LIPA Board has requested that Staff provide a quarterly report to the Board on PSEG Long Island’s progress as compared to the 2023 Performance Metrics and an annual evaluation. Pursuant to the LIPA Reform Act and OSA, LIPA’s independent annual evaluation of PSEG Long Island’s performance is first submitted to the DPS for their review and recommendation before Variable Compensation is paid to PSEG Long Island.

Many of the proposed 2023 Performance Metrics contain “exclusion” language for specified events and situations, including for delays directed or requested by LIPA or business conditions that arise that LIPA determines or agrees are beyond the reasonable control of PSEG Long Island. Exceptions typically include requests for extensions to due dates; clarifications and changes to project scopes, requirements, or methodology in the best interest of the metric objective; and opportunities for PSEG Long Island to take corrective action and resubmit a deliverable. LIPA Staff grants exceptions and exclusions if, in our judgment, it is in the best interest of achieving the metric objective, as LIPA’s primary emphasis is on delivering a favorable result for customers.

Any exceptions or exclusions provided to PSEG Long Island related to a metric are reported to the Board in the quarterly and annual reports. As provided for in Exhibit “A,” the Board delegates to LIPA Staff the ability to administer the exception and exclusion process in furtherance of the Board’s objectives.

### **2023 Operating and Capital Budgets**

The proposed 2023 Budget totals \$5.071 billion, including an Operating Budget of \$4.209 billion and a Capital Budget of \$862.0 million (attached as Exhibit “D”). The proposed 2023 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 proposed 2023 Budget is consistent with the Board’s Policy on Fiscal Sustainability (the “Financial Policy”), to provide clean, reliable, and affordable energy through strategies that prudently manage and safeguard LIPA’s assets and result in the lowest long-term cost to customers.

The policy seeks to achieve AA-category credit ratings via reducing LIPA’s debt-to-assets ratio from 92 percent to 70 percent or less by 2030. This is accomplished by maintaining fixed-obligation coverage ratios of no less than 1.40x on LIPA-issued debt and lease payments; and 1.20x on the combination of LIPA-issued debt, UDSA-issued debt, and lease payments.

For 2023, the proposed budget recommends LIPA fund 72% of the \$862.0 million Capital Budget from debt issues. The 2023 Capital Budget increases investments in Transmission and Distribution Reliability by \$50.5 million, Information Technology systems by \$9.6 million, and Storm Hardening by \$13.0 million. 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 2023. As a result, the 2023 Capital Budget reflects approximately \$42.8 million in pending project authorization reserve funding for these PSEG Long Island initiatives within LIPA’s approved Capital Budget, in the manner contemplated by the OSA. LIPA Staff will release such funds from the reserve to PSEG Long Island’s Capital Budget upon LIPA management’s approval of final project justification documents, as prescribed in the OSA. LIPA will inform the Board of the associated budget modification during the year.

### **Changes from the 2023 Proposed Budget**

Staff recommends certain adjustments to the Proposed Budget presented to the Board on November 16, 2022. The 2023 Budget presented herein includes the following changes: (i) a

decrease to the 2023 PSEG Long Island Capital Budget by \$28.9 million, primarily driven by an adjustment to projects planned in the Other General Plant category; (ii) the transfer of funds initially reflected in a pending project authorization reserve to the PSEG Long Island 2023 Capital Budget as LIPA approves the final project justification documents; (iii) a decrease to the 2023 Utility 2.0 Operating Budget by \$1.2 million to reflect the DPS Utility 2.0 Recommendations (attached as Exhibit “F”); (iv) a decrease to the 2023 Utility 2.0 Capital Budget by \$2.4 million to reflect the DPS Utility 2.0 Recommendations (attached as Exhibit “F”); and (v) an increase from \$1.0 million to \$2 million in funding for Regional Clean Energy Hubs, a program under development on Long Island and the Rockaways between LIPA and the New York State Energy Research and Development Authority.

### **Estimated Residential Customer Bills in 2023**

The monthly electric bill for the average residential customer is projected to be \$175.41 in 2023, which is \$18.93 per month or 9.7% below the 2022 average of \$194.34. The primary driver of the projected decrease are lower power supply costs, a forecasted decline in average customer usage, and refunds to customers in 2023 resulting from favorable budget performance in 2022 for storm restoration costs, debt service, and sales. If customer usage was assumed to remain flat at 2022 levels, the average residential customer bill in 2023 would be projected at \$183.98 per month, which is \$10.35 or 5.3% below the actual bill in 2022.

### **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 2023 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. The 2023 target for the Revenue Decoupling Mechanism is \$1.9 billion.

In response to stakeholder requests from community solar providers, LIPA also proposes to modify the rate design of Service Classification No. 2 - Large General and Industrial Service With Multiple Rate Periods (“2-MRP”) by reducing the service charge to approximately half the current level, from \$13.50 to \$7.00 per day for secondary voltage customers. The revenues forgone by the reduction in the service charge will be collected by increasing the demand charges for Rate Period 2 and Rate Period 3. This modification will be revenue neutral to the 2-MRP class. The proposed modification will bring LIPA’s rates for this class of commercial customers into greater alignment with the other New York electric utilities and will ensure that demand-related costs are recovered through demand charges.

### **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 that range by month from plus \$23 million to minus \$41 million, as shown in the table below.

Allocation of Intra-Year Power Supply Capacity Costs (\$ millions)	
January	(\$30.459)
February	(\$40.706)
March	(\$3.567)
April	\$3.034
May	\$9.773
June	\$15.439
July	\$10.895
August	\$23.305
September	\$12.330
October	\$9.802
November	(\$0.180)
December	(\$9.666)
Total	\$0.000

### **2023 Utility 2.0 Plan**

The 2023 Proposed Budget includes \$17.8 million (including the carryover) in Capital funding and \$11.3 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 “F”).

Initiatives funded by the Utility 2.0 Program include the development of utility storage and residential customer-owned storage capacity, data transparency and analytics initiatives, enhanced DER visibility for grid operators, smart home electrical panels, 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.

### **2023 Energy Efficiency Plan**

The 2023 Proposed Budget includes \$93.5 million in Operating Revenue for initiatives proposed in the PSEG Long Island's 2023 Energy Efficiency and Renewable Plan. The proposed funding of the Energy Efficiency and Renewable Plan is consistent with the DPS recommendation (attached as Exhibit "F").

### **LIPA Information Technology**

The Proposed Operating and Capital Budgets include \$19.8 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 enterprise resource planning system, case management, financial management, planning, and modeling, Human Resource management, cloud migration, cybersecurity planning, implementation and review, IT strategic planning, performance management, business process improvement initiatives, System Resiliency (DRP/BCP/IRP), Emergency Response Planning, quality assurance of various IT initiatives within LIPA, independent verification and validation review of designs, plans, 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 2022 Capital Budgets**

LIPA is recommending approval of an amendment to the PSEG Long Island Capital Budget to allow for the carryover of Capital projects from 2022 to 2023 and to reflect the inclusion of new "Emergent" projects in the 2022 Budget. The proposed amendment will result in an overall decrease to the 2022 PSEG Long Island Capital Budget by \$36.7 million, which is comprised of a decrease of \$75.5 million associated with the carryover of Capital projects offset by an increase of \$38.8 million to reflect the addition of Emergent project. As a result, the amended 2022 Capital Budget will be \$746.0 million.

### **Public Comment on the 2023 Performance Metrics and Budgets**

LIPA held three public comment sessions regarding the 2023 Performance Metrics and Budget. The sessions occurred on Wednesday, November 16 and Thursday, November 17. One session was held in Nassau County, one session was held in Suffolk County, and the third session was an evening virtual session. The Board also accepted public comments at its November 16 Board meeting on all agenda items, as is its normal practice, and LIPA accepted written comments via email. Comments regarding the performance metrics and budget were received from one speaker, Fred Harrison of Merrick. Mr. Harrison's comments included (a) a suggestion to provide the public with more time to review the performance metric and budget documents prior to the public comment sessions; (b) the importance of sourcing low-cost renewable energy especially given the cost volatility of fossil fuels; (c) the need to continue to lower all costs; and (d) applauding LIPA's efforts to seek federal grants. 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. PSEG Long Island's responses to the public comments are attached hereto as Exhibit "G."

### **Recommendation**

Based upon the foregoing, I recommend approval of the above-requested action by the 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.*

### **1763. APPROVAL OF THE 2023 PERFORMANCE METRICS AND OPERATING AND CAPITAL BUDGETS AND AMENDMENT OF THE 2022 CAPITAL BUDGET**

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 Second Amended and Restated Operations Services Agreement ("OSA") includes performance standards for all the management services PSEG Long Island provides

**to LIPA and the metrics are set independently by LIPA and DPS each year in the manner prescribed in the contract; and**

**WHEREAS, these Performance Metrics are designed to be objectively verifiable and reasonably achievable levels of performance, and the funds to achieve this performance are also budgeted, tying realistic plans and budgets to achievable, measurable outcomes each year; and**

**WHEREAS, for 2023, LIPA has proposed and DPS has recommended 93 performance metrics distributed across all the management services provided to LIPA and its customers (the “2023 Performance Metrics”); 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 2023 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 \$19.8 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; and**

**WHEREAS, the proposed Budget and associated rate adjustments would increase LIPA’s 2023 revenues by less than this threshold, and such, the proposed Budget contains rate updates consistent with the LIPA’s Purpose and Vision, Board Policies, and the LIPA Reform Act; and**

**WHEREAS, LIPA presented its proposed 2023 Operating and Capital Budgets to the Board of Trustees on November 16, 2022, held three public comment sessions on November 16 and 17, 2022 and accepted written public comments; 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 2023 Operating and Capital Budgets, associated rate adjustments, and the 2023 Performance Metrics; and**

**NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves the 2023 Performance Metrics, as provided for in Exhibit “C” in the accompanying memorandum, and hereby delegates to LIPA Staff, in its discretion, the ability to provide PSEG Long Island exceptions within and from the 2023 Performance Metrics in furtherance of the metric objectives and the Board’s Policies; and**

**BE IT FURTHER RESOLVED, that the Board hereby requires LIPA Staff to report quarterly to the Board on the status of the 2023 Performance Metrics; and**

**BE IT FURTHER RESOLVED , that consistent with the accompanying memorandum, the Board of Trustees hereby approves the 2023 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 project justification documents in the manner prescribed in the OSA; and**

**BE IT FURTHER RESOLVED, that the Board hereby approves amendment to LIPA’s 2022 Capital Budget to defer capital projects to 2023 and address new Emergent projects totaling approximately \$36.7 million; and**

**BE IT FURTHER RESOLVED, that the Board hereby approves LIPA’s financing of the requirements of the 2023 and 2024 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.**

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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.*

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

### **Requested Action**

The Trustees are requested to approve the following proposals to modify LIPA's Tariff for Electric Service:

1. **Interconnection Cost Sharing: Modifying LIPA's interconnection procedures to align with New York State's cost sharing framework.**
2. **Large Renewable Host Community Benefit Program: Implementing the statewide program enabling annual bill credits for customers located in a Renewable Host Community.**
3. **Long Island Choice Program: Increasing the "shoppable" portion of the bill and further aligning with the statewide retail choice framework.**
4. **Prolonged Outage Credits and Reimbursements: Providing \$25 daily bill credits and food and medicine spoilage reimbursements for customers experiencing prolonged outages during widespread outage events.**
5. **Solar Communities Customer Benefit: Providing bill credits to low and moderate income customers who participate in the Solar Communities program.**

### **Interconnection Cost Sharing: Background**

On October 29, 2020, the Interconnection Policy Working Group ("IPWG"), which is composed of New York electric utilities and other stakeholders, filed a petition with the New York Public Service Commission (the "Commission" or "PSC") seeking an amendment to the Statewide Standardized Interconnection Requirements ("SIR") to add new rules for the sharing of interconnection-enabling upgrade costs. The IPWG Petition proposed to allow Distributed Energy Resource ("DER") project developers to utilize a pro rata concept under which a project pays only for the specific distribution hosting capacity assigned to it, as opposed to the entire cost of the upgrade. The proposal was intended to remove barriers to the interconnection of DERs, consistent with the goals of the Climate Leadership and Community Protection Act ("CLCPA").

On July 16, 2021, the Commission adopted the IPWG cost-sharing proposal with modifications. Although LIPA is not subject to Commission jurisdiction, LIPA Staff believes the statewide approach to cost-sharing has merit, is fair to ratepayers and developers of DERs, and supports the achievement of CLCPA goals.

### **Interconnection Cost Sharing: Proposed Action**

Consistent with the July 2021 Order, LIPA Staff proposes two substantive modifications to the SGIP. The proposed changes are as follows:

- **Cost-Sharing Proposal:** Under the current SGIP, the developer of the interconnection project that triggers a need for a LIPA system modification (“Triggering Project”) bears 100 percent of the upgrade cost. The IPWG proposed to implement a new cost-sharing proposal that would utilize a pro-rata concept under which a project pays only for the specific distribution hosting capacity assigned to it, as opposed to the entire cost of the upgrade. The proposal would apply to two categories of distribution system modifications: (1) Utility-Initiated Upgrades, and (2) Market-Initiated Upgrades.

For Utility-Initiated Upgrades, LIPA would bear the cost of the in-kind replacements, and the participating projects would pay pro rata shares of the costs of the incremental DER-related upgrade. For substation-level Market-Initiated Upgrades, the first project to exceed the capacity rating of the existing equipment and the projects with later queue positions that would also require the upgrade would be charged for the specific distribution hosting capacity associated with their portion of the upgrade. For distribution/sub-transmission line upgrades, the Triggering Project will provide the full cost estimate for the upgrade subject to refund if additional projects use the enabled capacity within ten years.

This proposal is intended to remove the current financial barriers to DER developers, fairly allocate the cost of distribution system upgrades to individual DG/ESS projects and provide cost certainty to Triggering Project and subsequent project developers.

The proposal has one key difference from the statewide framework. Regarding Market- Initiated Upgrades, and for Unsubscribed Capacity in the Capital Project queues, LIPA proposes a ten-year period, as opposed to a five-year period for pro rata reimbursement from later interconnecting projects that benefit from the same qualifying upgrade. A ten year period will increase the likelihood that those responsible for the increased costs will bear them, in a proportionate manner, and reduces the likelihood of those costs being borne by ratepayers. The DPS supports this modification.

- **Proposed Rules for Combining DG Applications:** Staff proposes to add a new section to the SGIP (Section I.F) that would allow applicants of certain DG projects to combine the projects for the purpose of PSEG Long Island’s study and review. This proposal would apply to DG projects with complete applications that are (1) sequential in PSEG Long Island’s queue, (2) located on the same or adjacent parcels, (3) compensated at the same rate, and (4) do not exceed 5 MW. This proposal will streamline the study and review of certain DG projects in PSEG Long Island’s queue.

Staff also proposes various minor changes to the SGIP to further conform the SGIP to the Statewide SIR, as shown in the attached redline.

### **Interconnection Cost Sharing: Financial Impact**

This proposal would have the potential to increase the utility's contribution to capital projects that are not fully paid for by the interconnection developers. To mitigate the risk to ratepayers, unassigned project costs shall be capped at 2% of a utility's distribution and sub-transmission electric capital investment budget per fiscal year. In 2022 that cap would be \$11,123,297. A tracking mechanism would be established to monitor the capital dollars and participants will be notified each year of the point at which cost sharing is no longer available due to the cap.

### **Interconnection Cost Sharing: Stakeholder and DPS Comments**

Three public comment sessions were held on the Tariff proposals and written comments were also solicited from interested stakeholders. Comments on the Interconnection Cost Sharing proposal were received from the New York Solar Energy Industries Association ("NYSEIA") and are summarized here.

- First, NYSEIA recommended that LIPA and PSEG Long Island adopt cost sharing transparency principles and data sharing processes aligned with those recently adopted by the State's investor-owned utilities and approved by the PSC.
  - LIPA Staff Response: LIPA Staff agrees that PSEG Long Island should assess the alignment of its data transparency principles and data sharing processes with those of the State's investor-owned utilities. Any modifications needed to bring those principles and processes into greater alignment with statewide policy should be presented to the Long Island Interconnection Working Group for its consideration, in collaboration with DPS Staff. Interested stakeholders may also raise proposed modifications for evaluation by the Working Group. PSEG Long Island should also ensure that its data transparency principles and data sharing processes conform with the Policy on Values of Responsiveness and Integrity adopted by the LIPA Board of Trustees and are aligned with the transparency principles being developed in the ongoing transmission planning proceeding in Case 20-E-0197.
- Second, NYSEIA recommends that utility-initiated Multi-Value Distribution ("MVD") upgrades should be expanded to include (1) sub-transmission and distribution lines and (2) upgrades that are constructible within a 36-month time period.
  - LIPA Staff Response: The proposal was designed to be as consistent as possible with the statewide cost sharing framework. Under the statewide framework, utility initiated MVD upgrades include Bank Upgrades and

**3V0 Upgrades that are constructible within 24 months. LIPA Staff is open to other types of upgrades being considered for inclusion in the framework, however, we believe there is value in a uniform statewide approach and recommend that any categorical changes to upgrade eligibility should be considered by the statewide Coordinated Grid Planning Process and the statewide Interconnection Working Group, which has broader participation than the Long Island Interconnection Working Group, including a full panoply of statewide stakeholders and subject matter experts. To the extent there are Long Island-specific considerations, such considerations may be raised in the Long Island Interconnection Working Group. LIPA staff notes that, in addition to the interconnection cost sharing framework, other venues exist for the socialization of costs for T&D upgrades that expand hosting capacity, such as the T&D upgrades proposed in the utility hosting capacity studies and proceedings under the Accelerated Renewable Energy Growth and Community Benefit Act.**

- **Third, NYSEIA recommends that the timeline for funding of Market-Driven upgrades should be extended from 90 days to 180 days of completion of the CESIR study, with a 30% payment to be due as of the original 90-day deadline instead of the full 100%.**
  - **LIPA Staff Response: LIPA Staff is open to consideration of this modification, however, we reiterate that the cost-sharing procedures should be aligned with the statewide framework and that any substantive modifications should receive full consideration by the appropriate stakeholder interconnection working groups. We further advise that special consideration be given to ensuring that Long Island ratepayers are not unduly or unwittingly subject to greater financial exposure than the rest of the State's ratepayers.**
- **Fourth, NYSEIA recommends that PSEG Long Island prepare a review and report on the new cost sharing provisions after one year, including any recommended refinements, for consideration by the Long Island Interconnection Working Group.**
  - **LIPA Staff Response: LIPA Staff agrees and proposes that PSEG Long Island conduct a 1-year review and report for consideration by the working group. The DPS recommended adoption of the Interconnection Cost Sharing proposal. The DPS also recommended that LIPA and PSEG Long Island develop a proposal in collaboration with Staff to better align with statewide data transparency principles by providing developers access to cost sharing information without undue burden. DPS explained that the approach should be consistent with the process of the NYS IOUs, which would increase its effectiveness at attracting DER development. DPS notes that the Commission has directed DPS**

Staff to address the need for improved data transparency in the ongoing transmission planning proceeding in Case 20-E-0197 and recommends that LIPA and PSEG Long Island follow that proceeding and consider how the results of that process can be implemented in the service territory. LIPA Staff agrees and incorporates these recommendations herein.

### **Large Renewable Host Community Benefit Program: Background**

The Accelerated Renewable Energy Growth and Community Benefit Act<sup>6</sup> (the “Act”), effective April 3, 2020, required the Commission to establish a program under which owners (“Renewable Owners”) of Major Renewable Energy Facilities (“MRE Facilities”)<sup>7</sup> would provide benefits to residential utility customers in communities where MRE Facilities are located (“Renewable Host Communities”).

The Act also provides that LIPA shall establish a program in its service territory to achieve the same objectives as the Commission-regulated utilities in the State. On February 11, 2021, the Commission issued an *Order Adopting a Host Community Benefit Program*.<sup>10</sup> The Order established a Host Community Benefit Program to be administered by the PSC-regulated electric utilities. By this proposal, LIPA proposes to adopt the same program in its service territory.

### **Large Renewable Host Community Benefit Program: Proposed Action**

#### **Program Overview**

The Program will provide an annual bill credit to eligible residential electric utility customers with premises located in a Renewable Host Community for each of the first ten years that an MRE Facility operates in that Renewable Host Community. The Renewable Owner will fund the bill credits by paying LIPA an annual fee (“Program Fee”) of \$500 per megawatt (“MW”) of nameplate capacity for solar generation facilities, and \$1,000 per MW of nameplate capacity for wind generation facilities. The Program Fee would be provided to LIPA by December 1 of each year for ten years, beginning with the year in which the MRE Facility begins operations. The Program Fee, less an administrative fee of 0.05%, will be distributed by LIPA equally among the residential utility customers within the Renewable Host Community for a period of ten years. In the event more than one MRE Facility is located within the same Renewable Host Community, residential electric utility customers would receive a bill credit for each MRE Facility. The bill credit will be provided on the first electric bill of the calendar year, after all other adjustments have been applied.

If an MRE Facility is located in one or more Renewable Host Communities served by multiple utilities, LIPA will coordinate with the Renewable Owner and other utilities in advance of December 1 to identify the total number of residential customers owed a bill credit for the particular MRE Facility and the proportion of those customers served by each utility. The Renewable Owner would then transfer the proportional amount of the Program Fee to each utility.

The Program does not apply to generation facilities arising from solicitations issued prior to April 3, 2020.

#### **Identification of Major Renewable Energy Facility**

NYSERDA shall provide to LIPA by November 1 of each year, consistent with the Order, a list identifying each MRE Facility in LIPA's service territory required to pay the Program Fee that year, and the amount of each MRE Facility's Program Fee. In the event LIPA does not receive the required Program Fee from a Renewable Owner by December 1 of a given year, LIPA shall notify NYSERDA, which will then make all reasonable efforts to cause the Renewable Owner to pay the Program Fee in a timely fashion.

#### **Calculation of Credit**

The calculation of the individual customer bill credits will be determined by dividing the dollar amount of any MRE Facility Program Fees, less any administrative fees, by the number of eligible customers in the Renewable Host Community. In the event an MRE Facility is sited in multiple towns or cities, the bill credit will be applied equally to residential electric utility customers in each of the towns or cities within which the MRE Facility is sited.

The bill credit will appear on the first electric bill of the calendar year for residential electric utility customers within the Renewable Host Community in which the MRE Facility is located, after all other adjustments have been applied. Any amount of the credit in excess of a customer's balance on that first bill will roll over and be applied to the subsequent month's bill, after all other adjustments have been made, until the bill credit has been depleted.

If a customer discontinues service while a credit remains, LIPA shall provide that amount to the customer as it would any remaining credit balance. In the instance of new or changing occupants of a residence in a Renewable Host Community, the customer on record as of the first billing period of the calendar year will be entitled to the full bill credit for that year. If there is an account transfer, the bill credit will stay with the customer or will be disbursed to the customer if they leave LIPA's service territory. For the applicable residence, the new customer would begin receiving the bill credit in the next bill credit implementation cycle and would not receive a proration of the bill credit for that Program year.

#### **Large Renewable Host Community Benefit Program: Financial Impact**

The financial impact to LIPA and its non-participating ratepayers is expected to be immaterial, as program implementation and administration are inherently manual processes that can be handled by existing staff, and the bill credits are to be funded by third party developers.

## **Large Renewable Host Community Benefit Program: Stakeholder and DPS Comments**

Three public comment sessions were held on the Tariff proposals and written comments were also solicited from interested stakeholders. No comments were received from the public on the Large Renewable Host Community Benefit Program.

The DPS recommended adoption of the Large Renewable Host Community Benefit Program.

## **Long Island Choice Program: Background**

The LIPA Board of Trustees originally approved Long Island Choice in May 1998 to offer electric customers the opportunity to choose their supplier of electricity. Long Island Choice is a voluntary program designed to give consumers greater choice in selecting their energy supplier. The program allows electric customers to choose an alternative supplier for the commodity portion of their electric service such as an Energy Services Company (“ESCO”) or Community Choice Aggregator (“CCA”).

The New York Department of Public Service (“DPS”) initiated a stakeholder collaborative proceeding in December 2015 to assess Long Island Choice (“Long Island Choice Proceeding”). DPS’s objective was to investigate potential benefits to Long Island consumers from retain choice and examine what reforms, if any, were needed to achieve them.

On October 16, 2020, DPS issued a notice soliciting comments in the Long Island Choice Proceeding to address the potential benefits of retail competition for the LIPA service territory. Many parties, including PSEG Long Island on behalf of LIPA, participated in stakeholder technical conferences and submitted comments. In its comments, PSEG Long Island included proposed enhancements to the Long Island Choice program and Power Supply Charge, featuring a disaggregation of the Power Supply Charge into a bypassable Market Supply Charge and a non-bypassable Local Supply Charge. Other parties commented on the proposal and participated in technical conferences held on March 4, 2021, March 23, 2021, April 13, 2021, and May 5, 2021 to refine the proposal. The conferences facilitated a healthy conversation among stakeholders on the future of Long Island Choice, including improvements to the way LIPA’s power supply charges are calculated and presented to Long Island Choice customers. DPS filed a whitepaper in October 2021 summarizing and discussing the issues addressed in the technical conferences and recommending that the Board adopt improvements proposed in the Proceeding.

The majority of the recommendations from the Long Island Choice Proceeding were adopted by the LIPA Board on December 15, 2021 and implemented in 2022. This proposal contains the remaining recommendations not already adopted.

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

The proposed amendments to Long Island Choice will:



- (1) enhance Long Island Choice by implementing a Merchant Function Charge generally consistent with the programs of other electric utilities in New York State; and
- (2) establish the purchase of receivables rate for ESCOs that elect to take part in the Consolidated Bill Option with Purchase of Receivables.

### **Merchant Function Charge**

Staff proposes to implement a Merchant Function Charge for all customers receiving supply from LIPA. The Merchant Function Charge will be bypassable (i.e. waived) for customers who participate in Long Island Choice. This proposal provides greater transparency for LIPA customers into power supply related costs and increases the portion of the customer bill for which Choice customers may obtain services with an alternative supplier such.

The Merchant Function Charge is a mechanism that recovers the following costs associated with providing full requirements service:

- (1) Electricity Supply Procurement: These costs are based on LIPA's budgeted amount for electric supply procurement.
- (2) Electricity Supply Credit and Collection: These costs are based on LIPA's budgeted amount for electric supply credit and collection.
- (3) Electricity Supply Uncollectible Expenses: These costs are based on LIPA's budgeted amount of electric supply uncollectible costs.
- (4) Debt Service on Purchased Power Costs: These costs are based on the budgeted amount of debt service on electric supply.

Currently, these costs are included in LIPA's rates for Delivery Service applicable to all Delivery Service customers, including Long Island Choice participants. The Merchant Function Charge will be calculated based on the costs identified above divided by the budgeted annual (kWh) sales and presented on a Statement that LIPA staff will update annually or as needed due to changes in the underlying budgeted expenses.

### **Consolidated Bill Option with Purchase of Receivables**

In 2021, the LIPA Board approved a Consolidated Bill Option with Purchase of Receivables, making the Long Island Choice program more consistent with the rest of the State's retail choice programs and providing greater convenience for participating customers. This proposal supplements the 2021 proposal by establishing the formula and components to be used in setting the purchase of receivables rate.

The purchase of receivables rate recovers the utility's cost of performing collection services on behalf of ESCOs that elect the Consolidated Bill Option with Purchase of Receivables. This practice is standard among the State's investor-owned utilities and has been approved by the Commission for the regulated utilities. Staff proposes to follow the same procedures governing purchase of receivables already in place at New York's investor-owned utilities. The purchase of receivables rate consists of a percentage factor that reflects the likely

amount of uncollectible ESCO charges billed by LIPA and the administrative cost for performing the collection services, which is estimated to be approximately 1%. PSEG Long Island, as LIPA's service provider, will enter into a contract with each ESCO that enrolls in the Consolidated Bill Option with Purchase of Receivables. Under said contract, PSEG Long Island will remit the ESCO charges (less the purchase of receivables factor) to the ESCO and assume full responsibility to recover the revenue from participating customers. As with all collection activity, residential customers will be entitled to the full protections of the Home Energy Fair Practices Act ("HEFPA"). LIPA will adjust the factor annually going forward, based on actual experience, so that the amount remitted to ESCOs tracks LIPA's actual recovery of those charges on an accurate and up-to-date basis.

The purchase of receivables rate is equal to Electricity Supply Credit and Collection costs, plus the Electricity Supply Uncollectible Expense costs and Debt Service on Purchased Power Costs derived for the Merchant Function Charge, calculated as a percentage of budgeted market supply revenues.

#### **Long Island Choice Program: Financial Impact**

Because the purchase of receivables rate is designed to recover the costs associated with offering this option, the proposal will have no financial impact on LIPA and its customers.

#### **Long Island Choice Program: Stakeholder and DPS Comments**

Three public comment sessions were held on the Tariff proposals and written comments were also solicited from interested stakeholders. Comments on the Long Island Choice Program proposal were received from one stakeholder, representing Peak Power LI and Choice Community Power, and are summarized here.

- The commenter supported the concept of the Merchant Function Charge ("MFC") and Purchase of Receivables option. However, the commenter recommended that costs proposed to be included in the MFC are too narrowly defined and should also include the cost of procuring capacity. The commenter opined that recovery of capacity-related costs from Long Island Choice customers will not enable a competitive supply market to flourish on Long Island.
  - LIPA Staff Response: The MFC was developed pursuant to specific recommendations issued by DPS in the Long Island Choice collaborative and is designed to be consistent with the MFCs in effect at the State's investor-owned utilities, which do not contain capacity costs. In the Long Island Choice collaborative, PSEG Long Island identified each of LIPA's power supply costs by budget line item and classified each as bypassable or non-bypassable. The Power Supply Charge was unbundled into separate (bypassable) Market Supply Charges and (non-bypassable) Local Supply Charges, and those modifications were adopted by the LIPA Board of Trustees on December 15, 2021. LIPA Staff does not recommend re-opening those settled decisions at this time.

**The DPS recommends adoption of the Long Island Choice proposal.**

### **Prolonged Outage Credits and Reimbursements: 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 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.**

**On November 19, 2013, the New York Public Service Commission issued an order setting forth policies regarding prolonged outages applicable to the State’s investor-owned utilities.<sup>15</sup> In the 2013 order, the Commission defined a “Prolonged Outage” as an outage resulting from an emergency in which electricity customers are out of service for a continuous period exceeding three days and for which the 16 NYCRR Part 105 regulations governing utility outage preparation and system restoration apply. The Commission ordered that, for any event resulting from an emergency in which electric customers are out of service for a period exceeding three days, the regulated utilities must credit customer charges incurred during the period of the outage. LIPA adopted conforming changes to its Tariff on December 15, 2021. Pursuant to the 2021 changes, credits for daily service charges will apply for any customer LIPA knows or reasonably believes was out of service for a period exceeding three days, or upon request from any customer that contacts LIPA and credibly claims they experienced an outage of such duration. LIPA will suspend all collection-related activities including terminations of service for non-payment for at least 7 days.**

**In addition, for outages exceeding three days following an emergency, any residential or nonresidential customer who notifies LIPA and provides evidence that their financial circumstances have changed because of the event will have all collection-related activities, including terminations of service for non-payment, suspended for at least 14 days.**

**In July 2022, the Commission issued an order in Case 22-M-0159 implementing the provisions of Public Service Law § 73, which requires utilities to provide customers with bill credits of \$25 per day and reimbursement for food and medicine reimbursement in the event of a widespread prolonged outage. The July 2022 Order directed the investor-owned utilities in the State to make tariff amendments necessary to implement the terms of Public Service Law § 73.**

### **Prolonged Outage Credits and Reimbursements: Proposed Action**

**LIPA Staff proposes to modify the Tariff such that, in the event of a Widespread Prolonged Outage, customers will be provided with bill credits and reimbursement for spoiled food and/or prescription medication on the same terms as customers of the investor-owned utilities. In the event of a Widespread Prolonged Outage, LIPA Staff’s proposal would provide: (1) a bill credit of \$25 to eligible residential customers for each calendar day of service outage that occurs after the first three days of the Widespread Prolonged Outage; (2) reimbursement to eligible residential customers, up to \$235, for any food that spoils due to**

lack of refrigeration resulting from a Widespread Prolonged Outage if the residential customer provides an itemized list, or up to \$540 if the customer provides proof of loss; (3) reimbursement to eligible residential customers, up to the amount of the actual loss, for prescription medications that have spoiled due to lack of refrigeration resulting from a Widespread Prolonged Outage if the residential customer provides an itemized list and proof of loss; and (4) reimbursement to eligible small business customers, up to \$540, for any food that spoils due to lack of refrigeration resulting from a Widespread Prolonged Outage, if the small business customer provides an itemized list and proof of loss. To receive reimbursement for spoiled food and/or prescription medication, residential and small business customers<sup>20</sup> are required to provide LIPA with itemized lists and/or proof of loss within 14 days following the end of the Widespread Prolonged Outage.

Pursuant to Public Service Law § 73 and the July 2022 Order, the regulated investor-owned utilities may petition the Commission for a waiver of the credit/reimbursement requirements and the Commission may grant the waiver if doing so is “fair, reasonable, and in the public interest.”<sup>21</sup> Because LIPA is not subject to Commission jurisdiction, Staff proposes an alternative approach to apply the same standard: Following a Widespread Prolonged Outage, if LIPA Staff believes waiving the credit/reimbursement provisions is fair, reasonable, and in the public interest, LIPA Staff will request that the DPS issue a recommendation to LIPA. Upon recommendation of the Department of Public Service, LIPA will determine if a waiver of the credit/reimbursement provisions is “fair, reasonable, and in the public interest.”

#### **Prolonged Outage Credits and Reimbursements: Financial Impact**

In the event of a Widespread Prolonged Outage that, for example, impacts 100,000 residential customers for an average of four days, the resulting credits would be \$2.5 million for the \$25 credit for the subsequent calendar day of service outage occurring after the initial three days of the outage, and \$23.5 million for reimbursement of \$235 for food spoilage. However, the proposal will have no financial impact on LIPA because the lost revenues will be recovered in the Revenue Decoupling Mechanism (“RDM”). The actual amount of the bill credits applied to affected customers would depend on a number of factors such as: the total number and type of customers affected by the outage, duration of the outage, whether an itemized list or receipts are provided, and whether the loss involves spoiled food or medication.

#### **Prolonged Outage Credits and Reimbursements: Stakeholder and DPS Comments**

Three public comment sessions were held on the Tariff proposals and written comments were also solicited from interested stakeholders. No comments from the public were received on the Prolonged Outage Credits and Reimbursements proposal.

The DPS recommends adoption of the Prolonged Outage Credits and Reimbursements proposal with modifications, which have been incorporated herein. First, the DPS recommended that LIPA’s waiver of daily service charges for customers experiencing prolonged outages should be expanded to include daily meter charges. Second, DPS

recommends that qualified customers should automatically receive outages credits within 30 days and be able to apply for reimbursement for spoiled food and medicine in the event of a widespread prolonged outage, unless the utility applies for a waiver. Third, the DPS recommended that customers should have the ability to request monetary reimbursement, since customers with low bills (such as LMI or solar customers) could take many months to fully utilize their bill credits. Fourth, the DPS recommended that the process for a utility-initiated waiver of the prolonged outage reimbursements should more closely align to the statewide approach, except that any waiver proposed by LIPA staff should be subject to a DPS review and recommendation to the LIPA Board of Trustees. The original proposal included a waiver provision that would have effectively shifted the burden to the DPS to initiate a waiver recommendation, which would have differed from the approach in effect at the rest of the State's major utilities. Fifth, the DPS recommended that reimbursements be applied only to customers who have experienced an outage lasting longer than 72 hours. The original proposal would have provided reimbursements to any customer whose sustained outage affected any part of three calendar days. The DPS recommendation better aligns the proposal with the statewide approach and has been adopted in the attached Tariff leaves. Sixth, the DPS recommended that PSEG Long Island develop a communication plan regarding prolonged outage credits and reimbursements to be included in its Emergency Response Plan.

LIPA staff agrees with these DPS recommendations and has incorporated them into the proposal. For clarification, we note that customers carrying a credit balance on their account are always entitled to request monetary reimbursement, so this recommendation does not require changes to the proposal. Regarding the waiver provision, we note that the DPS is free to direct any recommendations issued under this provision to either the LIPA Board or the LIPA CEO.

Delegation of authority from the LIPA Board to the LIPA CEO will be determined by applicable LIPA Board policies then in effect.

#### **Solar Communities Customer Benefit: Background**

LIPA has a long history of promoting the expansion of renewable energy resources on Long Island.

LIPA began offering net energy metering and other solar incentives nearly two decades ago. LIPA has supported the development of over 67,000 distributed solar projects totaling 851 megawatts (DC) of capacity.

LIPA also strives to expand access to renewable solar resources to customers that cannot install solar panels on their property for many reasons, such as not having suitable exposures to capture the solar rays (e.g., orientation and shading situations), living in multi-family buildings or shared living spaces (such as a condominium) where the customer cannot access the roof space, the high upfront investment needed for rooftop solar, or renting a home and therefore being unable to make the long-term commitment that solar installations require.

Like the rest of the State's major electric utilities, LIPA offers third-party administered community solar, where a larger solar facility is built at a host site, and the output of the solar system is distributed to the satellite participants for their benefit. There are currently 12 megawatts of Community Distributed Generation (CDG) projects on Long Island, comprising roughly 1.3% of the 914 megawatts of completed distributed solar projects on Long Island.

### **Solar Communities Feed-In Tariff**

In May 2020, the LIPA Board of Trustees approved tariff amendments implementing the Solar Communities Feed-In Tariff ("FIT"), effective June 1, 2020. The Solar Communities FIT was designed specifically to: (1) create additional community solar development, (2) enable cost efficiencies by utilizing LIPA's customer acquisition and marketing functions, (3) lower the cost of project financing by offering a stable price for the duration of the project's contract, and (4) provide enhanced energy cost savings opportunities to participating LMI customers. Through the Solar Communities FIT, LIPA solicits bids from eligible solar generation projects and enters into Power Purchase Agreements ("PPA") with successful bidders. Pursuant to the PPAs, LIPA purchases solar photovoltaic electric capacity and energy, ancillary services, and environmental attributes at a fixed price per kWh for a fixed term of 20 years.

The Solar Communities FIT has an enrollment target of 25 MW (DC), which can be increased up to 40 MW (DC) by LIPA at any time. Through the Solar Communities FIT, 17.5 MW (DC) have been awarded. The FIT is now closed for new project applications; however, there are an additional 16 projects representing 15.24 MW (DC) on the waitlist who may be awarded if their bid price is reduced below the awarded bid price cap of \$0.1463/kWh or if any awarded projects drop out.

### **Solar Communities Customer Benefit: Proposed Action**

LIPA Staff proposed a Solar Communities Discount Program to provide bill credits to eligible LMI customers based on the output of the solar photovoltaic renewable resources participating in the Solar Communities FIT. The maximum allowable number of participants for the Solar Communities Discount Program will depend on the amount of DC capacity that is procured through the FIT.

### **LMI Customer Enrollment:**

Subject to available quantities of contracted solar resources under the Solar Communities FIT, LMI customers enrolled in Tiers 1-3 of LIPA's Low-Income Program will be eligible to participate, except for customers that are receiving renewable credits by other means or programs. LMI customer enrollments will be awarded through an annual random lottery process, and selected customers will have the opportunity to opt-out of the Solar Communities Discount Program if they choose not to participate.

The number of participants will be determined in January of each year based on the projection of solar generation to be received from the Solar Communities FIT projects. The expected output in kWh of projects that have reached commercial operation will be divided by the average annual LMI customer usage in kWh to determine the number of eligible LMI customers that can participate in the Solar Communities Discount Program. Available solar generation output in kWh will be updated each year as new projects reach commercial operation.

Participants will be selected through a random lottery process. A customer that is selected and does not opt-out of the program will receive a \$10 monthly bill credit for twelve months (365 days), beginning February 1. Participants will continue to receive the credit for the full year, notwithstanding changes in their LMI status or the total kWh available through the Solar Communities FIT during the year. The credit cannot be transferred to new service locations. The number of participants in subsequent years will be adjusted based on the amount of generation from Solar Community FIT projects. Going forward, LMI customers that have already participated in the Solar Communities Discount Program will be removed from the lottery pool of LMI customers until all eligible customers have been offered the opportunity to participate.

#### **Solar Communities Customer Benefit: Financial Impact**

As proposed, the Solar Communities Discount Program is expected to provide \$0.36 million<sup>24</sup> in bill credits for up to 3,000 LMI customers when the program is fully subscribed. At full solar development, the Solar Communities Discount Program will provide an estimated \$0.48 million in savings relative to procuring the same quantity of community distributed generation through the VDER Tariff. The estimated annual administrative cost of the Solar Communities Discount Program is \$0.3 million. The Solar Communities Discount Program totals an estimated \$0.2 million per year ( $\$0.36 - \$0.48 + \$0.3$ ) to expand access to solar generation to low-income customers.

#### **Solar Communities Customer Benefit: Stakeholder and DPS Comments**

Three public comment sessions were held on the Tariff proposals and written comments were also solicited from interested stakeholders. Comments on the Solar Communities Customer Benefit proposal were received from one stakeholder, representing Peak Power LI and Choice Community Power, and are summarized here.

- The commenter recommended that participants in other solar programs, such as third-party administered CDG, should also be eligible for participation in Solar Communities. The commenter observed that, in the Expanded Solar for All proceeding, the PSC directed National Grid to open a similar program to dual participation with third-party CDG. The commenter opined that participants in Solar Communities would be disadvantaged because they would be excluded from simultaneously participating in third-party CDG, which— according to the commenter—would provide customers bill savings up to 20% greater than the savings provided by Solar Communities.

- **LIPA Staff Response:** The Solar Communities program was designed to increase the total number of low-income customers enrolled in a community solar program, and to do so at a lower cost to non-participants than is possible with third-party CDG. Third-party CDG projects currently do not have enough spots to serve all low-income customers and, unlike Solar Communities, third-party CDG projects generally are not dedicated to serving *only* low-income customers. Nevertheless, LIPA Staff recommends that PSEG Long Island perform a one-year review and report on the Solar Communities program. The report should consider the eligibility modifications recommended by Peak Power LI and Choice Community Power and recommend any enhancements to the program, including enhancements to the dollar amount of the customer bill credits to ensure the credits are comparably sized to third-party CDG programs. The report should consider the extent to which dual participation is consistent with the above objectives of the Solar Communities program, statewide policy, and the LIPA Board's policies on Customer Value, Affordability and Rate Design, and Clean Energy and Power Supply. In its one-year report, PSEG Long Island should also report on the program's administrative costs, as recommended by the DPS.

The DPS recommends adoption of the Solar Communities Customer Benefit proposal, including the restriction on dual participation at the inception of the program. DPS observed that this restriction will ensure LMI customers who are not currently served by any distributed solar projects are prioritized for the proposed program. DPS also recommended that LIPA and PSEG Long Island track and report on the program's administrative costs. LIPA agrees with this recommendation and has incorporated it into the proposal.

### **Public Comments**

LIPA held three public comment sessions on the proposed tariff changes on November 16<sup>th</sup> and 17<sup>th</sup>, 2022, and solicited written comments through November 28<sup>th</sup>. Transcripts of the public comment sessions and a compendium of written comments received are attached as exhibits, and the comments are summarized above, together with responses from LIPA Staff.

### **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.*



**1764. APPROVAL OF MODIFICATIONS TO LIPA’S TARIFF RELATED TO  
INTERCONNECTION COST SHARING**

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**WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Customer Value, Affordability, and Rate Design, which sets forth the Board’s commitment to establishing rates and tariffs that equitably allocate costs, provide customers with the opportunity to save money, employ innovative rate designs, and encourage conservation, efficient use of energy resources, and the transition to a carbon-free economy; and**

**WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Clean Energy and Power Supply, which sets forth the Board’s commitment to achieving a zero-carbon electric grid by 2040, while meeting or exceeding LIPA’s share of the clean energy goals of New York’s Climate Leadership and Community Protection Act, including those for renewables, offshore wind, distributed solar, and storage.; 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, Affordability, and Rate Design and the Board Policy on Clean Energy and Power Supply; 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 14, 2022, public hearings were held on November 16 and November 17, 2022, 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, 2023; 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.**

**\*\*\***

**1765. APPROVAL OF MODIFICATIONS TO LIPA’S TARIFF RELATED TO THE  
LARGE RENEWABLE HOST COMMUNITY BENEFIT PROGRAM**

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**WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Customer Value, Affordability, and Rate Design, which sets forth the Board’s commitment to establishing rates and tariffs that equitably allocate costs, provide customers with the opportunity to save money, employ innovative rate designs, and encourage conservation, efficient use of energy resources, and the transition to a carbon-free economy; and**

**WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Clean Energy and Power Supply, which sets forth the Board’s commitment to achieving a zero-carbon electric grid by 2040, while meeting or exceeding LIPA’s share of the clean energy goals of New York’s Climate Leadership and Community Protection Act, including those for renewables, offshore wind, distributed solar, and storage.; 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, Affordability, and Rate Design and the Board Policy on Clean Energy and Power Supply; 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 14, 2022, public hearings were held on November 16 and November 17, 2022, 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, 2023; 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**

**\*\*\***

**1766. APPROVAL OF MODIFICATIONS TO LIPA’S TARIFF RELATED TO THE LONG ISLAND CHOICE PROGRAM**

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**WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Customer Value, Affordability, and Rate Design, which sets forth the Board’s commitment to establishing rates and tariffs that equitably allocate costs, provide customers with the opportunity to save money, employ innovative rate designs, and**

encourage conservation, efficient use of energy resources, and the transition to a carbon-free economy; and

WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Clean Energy and Power Supply, which sets forth the Board’s commitment to achieving a zero-carbon electric grid by 2040, while meeting or exceeding LIPA’s share of the clean energy goals of New York’s Climate Leadership and Community Protection Act, including those for renewables, offshore wind, distributed solar, and storage.; 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, Affordability, and Rate Design and the Board Policy on Clean Energy and Power Supply; 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 14, 2022, public hearings were held on November 16 and November 17, 2022, 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, 2023; 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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#### **1767. APPROVAL OF MODIFICATIONS TO LIPA’S TARIFF RELATED TO PROLONGED OUTAGE CREDITS AND REIMBURSEMENTS**

WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Customer Value, Affordability, and Rate Design, which sets forth the Board’s commitment to establishing rates and tariffs that equitably allocate costs, provide customers with the opportunity to save money, employ innovative rate designs, and encourage conservation, efficient use of energy resources, and the transition to a carbon-free economy; and

WHEREAS, the Board of Trustees of the Long Island Power Authority (“LIPA”) has adopted a Board Policy on Clean Energy and Power Supply, which sets forth the Board’s

commitment to achieving a zero-carbon electric grid by 2040, while meeting or exceeding LIPA's share of the clean energy goals of New York's Climate Leadership and Community Protection Act, including those for renewables, offshore wind, distributed solar, and storage.; 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, Affordability, and Rate Design and the Board Policy on Clean Energy and Power Supply; 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 14, 2022, public hearings were held on November 16 and November 17, 2022, 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, 2023; 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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#### **1768. APPROVAL OF MODIFICATIONS TO LIPA'S TARIFF RELATED TO THE SOLAR COMMUNITIES CUSTOMER BENEFIT PROGRAM**

WHEREAS, the Board of Trustees of the Long Island Power Authority ("LIPA") has adopted a Board Policy on Customer Value, Affordability, and Rate Design, which sets forth the Board's commitment to establishing rates and tariffs that equitably allocate costs, provide customers with the opportunity to save money, employ innovative rate designs, and encourage conservation, efficient use of energy resources, and the transition to a carbon-free economy; and

WHEREAS, the Board of Trustees of the Long Island Power Authority ("LIPA") has adopted a Board Policy on Clean Energy and Power Supply, which sets forth the Board's commitment to achieving a zero-carbon electric grid by 2040, while meeting or exceeding LIPA's share of the clean energy goals of New York's Climate Leadership and Community Protection Act, including those for renewables, offshore wind, distributed solar, and storage.; 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, Affordability, and Rate Design and the Board Policy on Clean Energy and Power Supply; 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 14, 2022, public hearings were held on November 16 and November 17, 2022, 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, 2023; 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.**

**\*\*\***

*Acting Chair Fischl stated that the next item on the agenda was the Isaias Task Force Outage Management System Independent Verification and Validation Testing Update to be presented by Mujib Lodhi.*

*Mr. Lodhi presented the Isaias Task Force Outage Management System Independent Verification and Validation Testing Update and took questions from the Trustees.*

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*Acting Chair Fischl stated that the next item on the agenda was the Discussion of the Board Policies on Strategic Planning and Oversight; Diversity, Equity, and Inclusion; and Purpose and Roles of LIPA Trustees to be presented by Eric Douglas from Leading Resources.*

*Mr. Douglas presented the Discussion of the Board Policies on Strategic Planning and Oversight; Diversity, Equity, and Inclusion; and Purpose and Roles of LIPA Trustees and took questions from the Trustees.*

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*Acting Chair Fischl stated that the last 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.*

*After requesting a motion on the matter, which was seconded, 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 of 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 the Policy in December 2021.

#### **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 2022, no new Trustees were assigned to any 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 eight 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 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. In 2022, the Board adopted updated policies on, among others, Clean Energy and Power Supply; Customer Value, Affordability and Rate Design; Fiscal Sustainability, and Economic Development and Community Engagement. With Leading Resources, Inc., the Board will form additional working groups, as needed, to review other policies in 2023.**

**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 2022, the Board had a presentation from Dennis Pidherny from Fitch Ratings on trends, key drivers and utility fundamentals from the perspective of the financial community.

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 written 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 Second 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.*

### **1769. 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 then announced that the next Board meeting is scheduled for Wednesday, February 15, 2023.*

*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:*

**1770. 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 12:46 p.m. the Open Session of the Board of Trustees was adjourned on a motion to enter into Executive Session.*

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