

FOR CONSIDERATION

March 29, 2023

TO: The Board of Trustees

FROM: Thomas Falcone

SUBJECT: Consideration of Approval of the Financial Package

Requested Action

The Board of Trustees (the “Board”) of the Long Island Power Authority (the “LIPA”) is requested to adopt a resolution approving the review of the Board Financial policies (i.e., Prompt Payment and Interest Rate Exchange Agreements).

Background

In accordance with the New York State Public Authorities Law (“PAL”) and governance best practices, the Board has adopted the Board Policy on Prompt Payment and the Board Policy on Interest Rate Exchange Agreements. LIPA Staff has reviewed these policies and recommends no changes to either policy.

Recommendation

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

Attachments

Exhibit “A” Resolution

Exhibit “B” Board Policy on Prompt Payment

Exhibit “C” Board Policy on Interest Rate Exchange Agreements

RESOLUTION APPROVING THE REVIEW OF THE FINANCIAL PACKAGE

WHEREAS, in accordance with the New York State Public Authorities Law (“PAL”) and governance best practices, the Board has adopted Board Policy on Prompt Payment and the Board Policy on Interest Rate Exchange Agreements; and

WHEREAS, LIPA Staff has reviewed these policies and recommends no changes to either policy at this time.

NOW, THEREFORE, BE IT RESOLVED, the Board of Trustees hereby approves the review of the Board Policy on Prompt Payment and the Board Policy on Interest Rate Exchange Agreements, as provided in the attached memorandum.

Dated: March 29, 2023

Board Policy: **Prompt Payment**
Policy Type: **Compliance Policy**
Monitored by: **Governance Committee**
Board Resolution: **#1344, approved March 29, 2017**



Section 1.1 Purpose and Applicability

- (a) The purpose of this policy is to implement Section 2880 of the Public Authorities Law by detailing the Authority's policy for making payment promptly on amounts properly due by the Authority under Contracts. This policy constitutes the Authority's prompt payment policy as required by that Section.
- (b) This policy generally applies to payments due by the Authority to a person or business in the private sector under a Contract it has entered into with the Authority. This policy does not apply to payments due:
 - 1) under the Eminent Domain Procedure Law;
 - 2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
 - 3) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any public authority or public benefit corporation; or to its employees when acting in or incidental to their public employment capacity;
 - 4) if the Authority is exercising a legally or authorized set-off against all or part of the payment; or
 - 5) if other State or Federal law, rule, or regulation specifically requires otherwise.

Section 1.2 Definitions: As used in this policy, the following terms shall have the following meanings:

- (a) "Authority" means the Long Island Power Authority, its wholly-owned subsidiary Long Island Lighting Company d/b/a LIPA and d/b/a Power Supply Long Island, including when acting on behalf of the Utility Debt Securitization Authority.

- (b) “Contract” means an enforceable agreement entered into between the Authority and a Contractor.
- (c) “Contractor” means any person, entity, partnership, private corporation or association providing goods, property or services to the Authority pursuant to a Contract.
- (d) “Designated payment office” means the office within the Authority to which a proper invoice is to be submitted by a Contractor.
- (e) “Payment” means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due to a Contractor and payable under all applicable provisions of a Contract to which this policy applies and of law, including but not limited to provisions for retained amounts or provision which may limit the Authority’s power to pay, such as claims, liens, attachments, or judgments against the Contractor which have not been properly discharged waived or released. Payment shall be deemed to occur on the date the Authority places the funds in the mail addressed to the Contractor, or, in the event payment is made electronically, on the date on which the Authority initiates the electronic transfer.
- (f) “Payment due date” means the date by which payment must occur, in accordance with the provisions of Section 1.3 through 1.5 of this policy, in order for the Authority not to be liable for interest pursuant to Section 1.6.
- (g) “Prompt payment” means a payment within the time periods applicable pursuant to Sections 1.3 through 1.5 of this policy in order for the Authority not to be liable for interest pursuant to Section 1.6.
- (h) “Proper invoice” means a written request for a Contract payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property, or services delivered, or rendered by the Contractor in such form, and supported by such other substantiating documentation, as the Authority may reasonably require, including but not limited to any requirements set forth in the Contract.
- (i) “Public holiday” shall have the meaning ascribed to it in New York General Construction Law § 24.
- (j) “Receipt” of an invoice
 - 1) “Receipt” of an invoice means:
 - A. If the payment is one for which an invoice is required, the later of;
 - i. the date on which a proper invoice is actually received in the designated payment office during the normal business hours; or
 - ii. the date by which, during normal business hours; the Authority has actually received all the purchased goods, property, or services

covered by a proper invoice previously received in the designated payment office.

- B. If a Contract provides that a payment will be made on a specific date or at a predetermined interval without the Contractor being required to submit a written invoice, the thirtieth calendar day, excluding public holidays, before the date so specified or predetermined.
- 2) For purposes of this subdivision, if the Contract requires a multifaceted, completed, or working system, or delivery of no less than a specific quantity of goods, property, or services and only a portion of such systems or less than the required goods, property, or services are working, completed or delivered, even though the Contractor has invoiced the Authority for the portion working, completed, or delivered, the Authority will not be considered in receipt of an invoice until the specified minimum amount of the system, goods, property, or services are working, completed or delivered.
- (k) "Set-off" means the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

Section 1.3 Prompt Payment Schedule: Except as otherwise provided by law or regulation or in Sections 1.4 and 1.5 of this policy, the payment due date of an amount properly due by the Authority under a Contract shall be thirty calendar days, excluding public holidays, after receipt of an invoice for such amount due; except that if such thirtieth calendar day falls on a Saturday or Sunday, the payment due date shall be the following business day.

Section 1.4 Payment Procedures

- (a) Unless otherwise specified by a Contract provision, proper invoice submitted by the Contractor to the designated payment office shall be required to initiate payment for goods, property, or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the Authority.
- (b) The Authority shall notify the Contractor within fifteen calendar days after receipt of an invoice of:
 - 1) any defects in the delivered goods, property, or services;
 - 2) any defects in the invoice; and
 - 3) suspected improprieties of any kind.

- (c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 1.3 until any such defects or improprieties are corrected or otherwise resolved.
- (d) If the Authority fails to notify a Contractor of a defect or impropriety within the fifteen calendar day period specified in subdivision (b), the sole effect shall be that the number of days allowed for payment after the defects or improprieties have been corrected or otherwise resolved shall be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the Contractor. If the Authority fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.
- (e) In the absence of any defect or suspected impropriety, or upon satisfactory corrections or resolution of a defect or suspected impropriety, the Authority shall make payment consistent with any such correction or resolution and the provisions of this policy.

Section 1.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Section 1.3 and 1.4, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date;

- (a) If any documentation, supporting data, performance verification, or notice specifically required by the Contract or other State or Federal mandate has not been submitted to the Authority on a timely basis, then the payment due date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to the Authority to the date when the Authority has actually received such matter.
- (b) If an inspection or testing period, performance verification, audit, or other review or documentation independent of the Contractor is specifically required by the Contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the Contract or by other State or Federal provision and the Authority or other entity with the right to do so elects to have such activity or documentation undertaken, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when any such activity or documentation has been completed, the Authority has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.
- (c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to payment, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised the Authority of the results of the inspection, and any

deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

- (d) If appropriate funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the Authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the Authority.

Section 1.6 Interest eligibility and computation: If the Authority fails to make prompt payment, the Authority shall become liable for interest payments to a Contractor on the payment. Interest shall be computed and accrue to the overpayment rate set by the Commissioner of Taxation pursuant to Subsection (e) of Section 1096 of the Tax Law of the State of New York. Interest on such a payment shall accrue for the period beginning on the day after the payment due date and ending on the earliest to occur of (i) the date of payment, (ii) the date of a notice of intention to file a claim, (iii) the date of a notice of a claim, and (iv) the date commencing a legal action for the payment of such interest.

Section 1.7 Sources of funds to pay interest: Any interest payable by the Authority pursuant to this policy shall be paid only from the same accounts, funds, or appropriates that are lawfully available to make the related Contract payment.

Section 1.8 Incorporation of Prompt Payment Policy into Contracts: The provisions of this policy in effect at the time of creation of a Contract shall be incorporated into and made part of such Contract and shall apply to all payments as they become due pursuant to the terms and conditions of such Contract, notwithstanding that the Authority may subsequently amend this policy.

Section 1.9 Notice of objection: Unless a different procedure is specifically prescribed in a Contract, a Contractor may object to any action taken by the Authority pursuant to this policy which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be sent to the Chief Financial Officer of the Authority. The Chief Financial Officer or his designee shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Chief Financial Officer or his designee shall notify the Contractor either that the Authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 calendar days.

Section 1.10 Judicial Review: Any determination made by the Authority pursuant to this policy which prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure that may be specified in the Contract or by law, rule or regulation.

Section 1.11 Court Action or other Legal Processes

- (a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a Contractor pursuant to this policy shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.
- (b) With respect to the court action or other legal process referred to in Subdivision (a) of this Section, any interest obligation incurred by the Authority after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

Board Policy: **Interest Rate Exchange Agreements**
Policy Type: **Compliance Policies**
Monitored by: **Finance and Audit Committee**
Board Resolution: **#1353, approved March 29, 2017**
#1539, amended June 24, 2020



Board Policy on Interest Rate Exchange Agreements

It is the policy of the Long Island Power Authority ("LIPA") to properly manage the interest rate risks associated with its assets and debt portfolio.

This Policy authorizes LIPA to enter into interest rate exchange agreements if LIPA's Power Supply Risk Management Committee ("PRMC") has made a determination that such agreements meet one or more of the following objectives. Such agreements must:

- manage LIPA's exposure to interest rates on a particular financial transaction, or in the context of LIPA's overall debt and asset portfolios;
- reduce borrowing costs or increase earnings relative to traditional financing or investment alternatives.

In no event shall an agreement be for speculative purposes. The PRMC will consider and document the associated risks of the agreement, including LIPA's exposure to counterparty risk, termination risk, basis risk, tax-event or tax-basis risk, mismatched amortization, and rollover risk. Additionally, the PRMC will confirm that:

- the agreement meets LIPA's administrative, procurement, and documentation requirements;
- accounting for the agreement considers Generally Accepted Accounting Standards;
- counterparties comply with LIPA's counterparty selection criteria and are eligible counterparties;
- the agreement will be executed consistent with LIPA's internal policies relating to contract execution authorization;
- the agreement will comply with the Dodd-Frank Act and other regulatory requirements; and
- the agreement is based on the ISDA Master Agreement, with a related Confirmation and Credit Support Annex.

The PRMC shall monitor and provide appropriate reporting to the Finance and Audit Committee of the Board of Trustees on the following on no less than a quarterly basis:

- status of individual agreements in effect, including notional amount, rates, terms, bases employed, and the rating of counterparties or insurers;
- payments received or paid, and interest accrued or receivable;

Board Policy: **Interest Rate Exchange Agreements**
Policy Type: **Compliance Policies**
Monitored by: **Finance and Audit Committee**
Board Resolution: **#1353, approved March 29, 2017**
[#xxxx], amended June 24, 2020



- credit terms within ISDA documentation, such as ratings-based termination events or collateral posting requirement;
- credit ratings and outlooks for counterparties;
- relevant measures of interest rate and valuation sensitivity for transactions;
- mark-to-market evaluations by individual agreement and collateralization, is posted by either party.