

## **FOR CONSIDERATION**

June 28, 2023

**TO:** The Board of Trustees

**FROM:** Thomas Falcone

**SUBJECT:** Consideration of Approval of Resolution Confirming the Security for Existing Interest Rate Swaps

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### **Requested Actions**

The Board of Trustees (the “Board”) of the Long Island Power Authority (“LIPA” or the “Authority”) is requested to confirm the security for the interest rate swap(s) (i) entered into by LIPA and Wells Fargo Bank, N.A. dated as of November 1, 2012, as amended to the date hereof and (ii) entered into by LIPA and Citibank, N.A., dated as of June 25, 2004, as amended to the date hereof.

### **Proposed Ratification of the Pledge**

LIPA has certain existing interest rate exchange agreements entered into pursuant to the ISDA Master Agreement (including the Schedule and Credit Support Annex thereto) between LIPA and Wells Fargo Bank, N.A. dated as of November 1, 2012, as amended to the date hereof (the “Wells Fargo Master Agreement”) and the ISDA Master Agreement (including the Schedule thereto) between LIPA and Citibank, N.A., dated as of June 25, 2004, as amended to the date hereof (the “Citibank Master Agreement”).

Capitalized terms used herein and not defined shall have the meanings given to such terms in the Senior Bond Resolution (defined below).

Pursuant to LIPA’s Electric System General Revenue Bond Resolution, adopted by LIPA on May 13, 1998, as amended and supplemented from time to time, including as may be amended and restated pursuant to the terms of the resolution of the Board of Trustees on July 22, 2020 (the “Senior Bond Resolution”) and Electric System General Subordinated Revenue Bond Resolution, adopted by LIPA on May 20, 1998, as amended and supplemented from time to time (the “Subordinated Resolution”), interest rate swaps are Financial Contracts and payments to counterparties thereunder constitute Subordinated Indebtedness and *may* be secured on parity with Subordinated Bonds. At the time of execution of both the Wells Fargo Master Agreement and Citibank Master Agreement, LIPA and the counterparties agreed that such Financial Contracts were intended to be secured on parity with Subordinated Bonds.

It is proposed that LIPA hereby confirm that LIPA’s payment obligations to Wells Fargo, N.A. and Citibank, N.A. under existing and future interest rate swaps executed pursuant to their respective Master Agreements are secured on parity with Subordinated Bonds, in accordance with and subject to the terms of LIPA’s Senior Bond Resolution and Subordinated Resolution, and as intended to be part of each Master Agreement at the time of execution.

**Recommendation**

Based upon the foregoing, I recommend the adoption of the resolution attached hereto to confirm that interest rate swaps executed with Wells Fargo, N.A. and Citibank, N.A. pursuant to the above-described Master Agreements are secured on parity with Subordinated Bonds.

**Attachments**

**Exhibit "A"** Authorizing Resolution Relating to the Security for Certain Interest Rate Swaps

**AUTHORIZATION RELATING TO THE SECURITY FOR CERTAIN INTEREST RATE SWAPS**

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**WHEREAS**, the Long Island Power Authority (the “Authority”) has certain existing interest rate exchange agreements entered into pursuant to the ISDA Master Agreement (including the Schedule and Credit Support Annex thereto) between the Authority and Wells Fargo Bank, N.A. dated as of November 1, 2012, as amended to the date hereof (the “Wells Fargo Master Agreement”) and the ISDA Master Agreement (including the Schedule thereto) each entered into by the Authority and Citibank, N.A., dated as of June 25, 2004, as amended to the date hereof (the “Citibank Master Agreement”), and the Authority may execute additional interest rate exchange agreements pursuant to these Master Agreements; and

**WHEREAS**, in accordance with the mutual understanding at the time of execution of the Wells Fargo Master Agreement and the Citibank Master Agreement, the Authority wishes to confirm that the Authority’s payment obligations to Wells Fargo, N.A. and Citibank, N.A. under existing and future interest rate swaps executed pursuant to their respective Master Agreements are secured on parity with Subordinated Bonds, in accordance with and subject to the terms of the Authority’s Senior Bond Resolution and Subordinated Resolution; and

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

1. Each of the Wells Fargo, N.A. Master Agreement and Citibank N.A. Master Agreement are hereby deemed to contain the following provisions.

2. The Trust Estate (except the Operating Expense Fund, Debt Service Fund, Parity Contract Obligations Fund and Construction Fund) is hereby irrevocably pledged by the Authority to Citibank Bank, N.A. and Wells Fargo Bank, N.A. as security for the obligation of the Authority to make scheduled payments and any termination payments under the Wells Fargo Master Agreement and Citibank Master Agreement, respectively, subject only to the provisions of the Electric System General Revenue Bond Resolution, adopted by the Authority on May 13, 1998, as amended and supplemented from time to time, including as may be amended and restated pursuant to the terms of the resolution of the Board of Trustees on July 22, 2020 (the “Senior Bond Resolution”), the Electric System General Subordinated Revenue Bond Resolution, adopted by the Authority on May 20, 1998, as amended and supplemented from time to time (the “Subordinated Resolution”), the Act and the Financing Agreement (the Senior Bond Resolution, the Subordinated Resolution, the Act and the Financing Agreement collectively referred to herein as the “Related Documents”) permitting the application thereof for or to the purposes and on the terms and conditions in the Wells Fargo Master Agreement and the Citibank Master Agreement and in the Related Documents; provided, however, that the pledge of the Trust Estate to Citibank, N.A. and Wells Fargo Bank, N.A. shall be on parity with the pledge thereof made under the Subordinated Resolution in favor of the Subordinated Bonds (as defined in the Subordinated Resolution) and subject and subordinate in all respects to the pledge thereof made by the Senior Bond Resolution in favor of the Bonds and Parity Obligations.

The pledge in the immediately preceding paragraph shall be valid and binding from effective date of the applicable Master Agreement, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The Revenues, moneys and proceeds received by the Authority as part of the

Trust Estate shall immediately be subject to the lien of such pledge without any physical delivery or further act.

3. All terms used and not otherwise defined herein shall have the meaning set forth in the Senior Bond Resolution.

4. This resolution shall take effect immediately.

Dated: June 28, 2023