



# BOARD POLICY ON TAXES AND PILOTS

September 27, 2023

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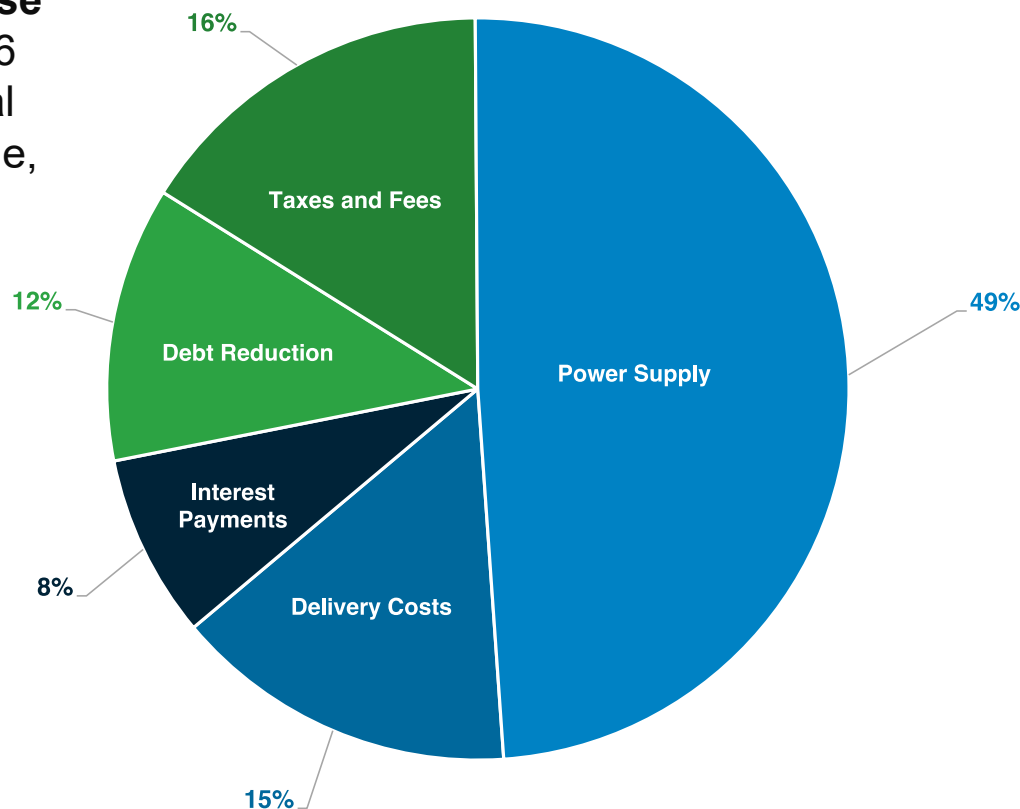
- Pay only such taxes, payments in-lieu-of taxes (PILOTs), assessments, and fees as are required by law or by agreement to reduce excessive cost for customers;
- LIPA to avail itself of the lawful right to challenge excessive tax assessments and payment obligations to minimize the cross-subsidization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

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

# YEARLY COST TO CUSTOMERS

Taxes were **LIPA's second-largest expense** at \$715 million in 2022, or approximately 16 percent of customer bills – 2.5x the national average and 2x the New York State average, including:

- **\$168 million** for four power plants
- **\$41 million** for all other power plants
- **\$300 million** for transmission and distribution PILOT payments
- **\$146 million** for sales taxes
- **\$44 million** for revenue-based taxes
- **\$16 million** for State assessments



**Taxes are 16% of Customer Bills –  
2.5x National Average**

# WORKING TOWARDS A FAIR COMPROMISE

- Four legacy steam power plants (Port Jefferson, Northport, E.F. Barrett, and Glenwood Landing) were once the workhorses of the Long Island electric grid but use dated technology and operate at low annual capacity factors.
- The Glenwood Landing steam turbines were retired in 2012. The other three plants are expected to retire within the next five to ten years as New York transitions to an entirely fossil-free electric grid.
- LIPA has worked for over a decade to obtain fair assessments on the plants.

 Northport Generating Station



# TAX CERTIORARI TIMELINE

2010

LIPA Commences  
Tax Certiorari  
Litigation



September 2020

SETTLEMENT  
Town of Huntington  
Settlement for Northport  
Power Plant



December 2018

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



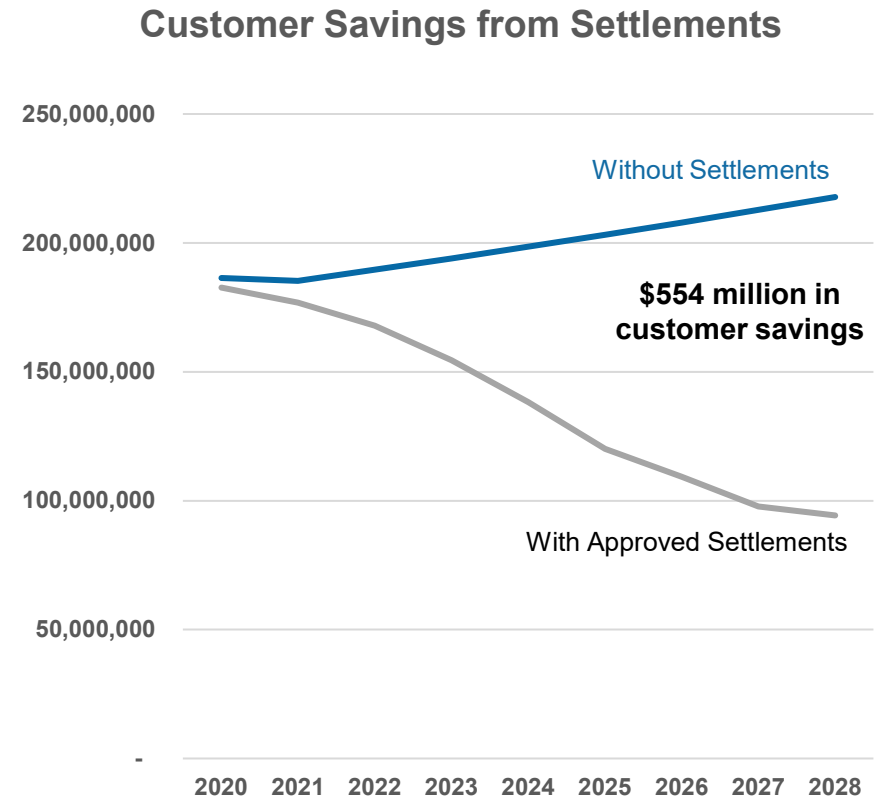
April 2022

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



# REACHING A FAIR COMPROMISE: SETTLEMENTS

- ✓ Three settlements have been approved for the Northport and Port Jefferson power plants.
- ✓ The Nassau County settlement approved by the county legislature and the court for the E.F. Barrett and Glenwood Landing power plants went into effect in 2022.
- ✓ As part of the settlements, LIPA waived over \$1 billion in tax refund liabilities potentially owed by the Towns of Huntington & Brookhaven, the Village of Port Jefferson, and Nassau County.
- ✓ LIPA customers will save approximately \$554 million in property tax payments for these four facilities through 2028.
- ✓ While tax payments remain in excess of that required by law, the settlements will continue to support host communities as they adjust to lower taxes.



# ADDITIONAL ACTIVITIES

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In 2023, LIPA will:

- Continue to defend against certain Suffolk County municipalities' refusal to comply with the 2% cap on LIPA's PILOT payments, while it awaits oral argument on LIPA's appeal of the court decision ordering LIPA to make additional payments.
  - The City of New York and Nassau County comply with the 2% tax cap.
- Continue to monitor tax bills for overassessments of LIPA substations and file challenges as appropriate to seek fair tax bills.

## **FOR CONSIDERATION**

September 27, 2023

**TO:** The Finance and Audit Committee

**FROM:** Thomas Falcone

**SUBJECT:** Recommendation to Approve the Annual Report and Amendments on the Board Policy on Taxes and PILOTs

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### **Requested Action**

The Finance and Audit Committee (the “Committee”) of the Board of Trustees (the “Board”) of the Long Island Power Authority (“LIPA”) is requested to adopt a resolution recommending that the Board: (i) find that LIPA has complied with the Board Policy on Taxes and PILOTs<sup>1</sup> (the “Policy”); (ii) approve the annual report for the Policy; and (iii) approve amendments to the Policy, which resolution is attached hereto as **Exhibit “A”**.

### **Background**

The Board originally adopted the Policy in September 2016, and the last annual review of the Policy was adopted by the Board in May 2022.

### **Compliance with the Policy**

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

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

- Long Island power plants are nationally recognized as among the highest-taxed commercial properties in the United States. The excessive tax burden on power plants results in higher operational costs that disadvantage Long Island plants compared to the competitive prices of power in the regional electric markets. As such, since 2010, LIPA has availed itself of the lawful right to challenge excessive payment obligations on four legacy power plants.
- In November 2018, LIPA entered into settlement agreements with the Town of Brookhaven and the Village of Port Jefferson to gradually reduce the taxes on the Port Jefferson power plant by 50 percent through 2027. If the taxing jurisdictions continue to fulfill the terms of the settlements, LIPA will waive a refund for back tax years estimated at over \$225 million, plus interest. LIPA subsequently revised its agreements with the Village of Port Jefferson and the Town of Brookhaven, consistent with the agreement

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



reached for the Northport Power Station, discussed below.

- In November 2020, LIPA entered into a settlement with the Town of Huntington and the Northport-East Northport School District for the Northport Power Station. The settlement will reduce LIPA's annual property tax payments by 47% of 2020 levels by 2027. If the taxing jurisdictions continue to fulfill the terms of the settlement, LIPA will waive a refund for back tax years estimated at over \$650 million, plus interest. In addition, LIPA will make a total of \$3 million and \$14.5 million in payments to the Town and school district, respectively, in exchange for their discontinuing appeals of the court's ruling in a related case that LIPA is entitled to challenge the plant's assessments.
- In February 2022, LIPA entered into a settlement agreement with Nassau County for the E.F. Barrett and Glenwood Landing generating stations to gradually reduce taxes on those plants by 47% through 2027. That settlement was approved by the Nassau County Legislature in April 2022, and it was approved by the court in May 2022. If the taxing jurisdictions fulfill the terms of the settlement, LIPA will waive a refund for back tax years estimated at over \$700 million, plus interest. In addition, LIPA will make a total of \$9 million and \$3.25 million in payments to the Island Park and North Shore Central school districts in exchange for their discontinuing appeals of the court's ruling that LIPA is entitled to challenge its tax assessments.
- LIPA and PSEG Long Island have implemented procedures to ensure that PILOTs on each annual bill related to transmission and distribution equipment do not exceed 102% of the prior calendar year's payment, consistent with the provisions of the LIPA Reform Act.
- LIPA continues to defend itself in litigation challenging the 2% PILOT cap on transmission and distribution property in certain Suffolk County jurisdictions. On April 1, 2021, a court in Suffolk County ruled that (1) LIPA's properties acquired from LILCO are not exempt from real property taxation for tax years 2014/15 through 2019/20 by reason of LIPA's failure to timely challenge the unlawful assessment as non-exempt, taxable properties by the Town Assessors during those tax years; and (2) compelling LIPA to pay over to Suffolk County the alleged unpaid real property taxes levied against the transmission and distribution properties for tax years 2014/15 through 2019/20, with interest and penalties in the amount of approximately \$66.7 million (with the potential addition of up to \$30 million per year in the event of an adverse result on appeal). In October 2021, a judgment was entered for the 2014/15 through 2020/21 tax years. LIPA has appealed that judgment. The appeal has been fully briefed, and we are awaiting the scheduling of oral argument. Enforcement of the judgment is stayed pending the appeal.

In July 2023, Suffolk County filed an additional lawsuit against LIPA and certain Suffolk County towns seeking to have LIPA pay to the County alleged shortfalls in property tax payments for the 2021/22 tax year. This action is a continuation of the issues in the above-described litigation for the 2021/22 tax year with regard to five of the 10 Suffolk towns.

In addition, in 2022, LIPA filed petitions to the towns in Suffolk County to mark LIPA's properties as exempt. Certain towns have marked the properties exempt but have not issued bills that conform to the 2% cap on LIPA PILOT increases. Other towns have not

acted on LIPA’s petitions. In July 2023, LIPA filed motions for summary judgment against the five Suffolk towns that have not acted on LIPA’s petitions. Those motions are pending before the court.

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

- As previously reported to the Board, LIPA has undertaken a review of substations across the service territory. The review found several substations that were assessed in excess of their value. Accordingly, LIPA began filing challenges on several over-assessed substations, and in 2022 it achieved a settlement with Nassau County with regard to four over-assessed substations. In 2023, LIPA filed assessment challenges on additional substations that it has determined to be over-assessed. LIPA will continue to monitor and challenge, where appropriate, assessed valuations of substations.

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

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

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

The Board hired Leading Resources, Inc. to review the Board policies and facilitate discussion amongst the Trustees on amending certain policies. A working group of Trustees participated in various meetings to develop and draft amendments to the Policy. The draft amendments to the Policy have been shared with the entire Board. The final version of the amended Policy, as drafted by the Trustees, is attached hereto as Exhibit “B”.

### **Recommendation**

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

### **Attachments**

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|---------------------------|--|
| <b><u>Exhibit “A”</u></b> | Resolution                                 |
| <b><u>Exhibit “B”</u></b> | Board Policy on Taxes and PILOTs (redline) |
| <b><u>Exhibit “C”</u></b> | Board Policy on Taxes and PILOTs (clean)   |

**RESOLUTION RECOMMENDING APPROVAL OF THE REPORT AND AMENDMENTS ON THE BOARD POLICY ON TAXES AND PILOTS**

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

**WHEREAS**, the Board adopted the last annual review of the Policy in May 2022; and

**WHEREAS**, the Finance and Audit Committee (the “Committee”) has conducted an annual review of the Policy and recommends that the Board find that the Policy has been complied with and that the proposed changes to the Policy and due and proper.

**NOW, THEREFORE, BE IT RESOLVED**, that consistent with the accompanying memorandum, the Committee hereby recommends that the Board find that LIPA has complied with Policy for the period since the last annual review and approve the annual report to the Board; and

**BE IT FURTHER RESOLVED**, that consistent with the accompanying memorandum, the Committee hereby recommends that the Board approve the changes to the Policy that are reflected in **Exhibit “B”**.

Dated: September 27, 2023

Board Policy: **Taxes and PILOTs**  
Policy Type: **Operating Policies**  
Monitored by: **Finance and Audit Committee**  
Board Resolution: **#1320, approved September 21, 2016**  
**#1464, amended January 23, 2019**  
**#xxxx, amended September xx, 2023**



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### **Board Policy on Taxes and PILOTs**

It is the policy of the The Long Island Power Authority's ("LIPA") vision for payment of its taxes and payments in-lieu-of taxes ("PILOT") obligation is to:

Pay pay only such taxes, payments in-lieu-of taxes ("PILOTs"), assessments, and fees as are required by law or by agreement in an effort to provide service at an affordable level while still taking into account the needs of LIPA's municipal partners. -In doing so, LIPA will:

- Avail itself of the lawful right to challenge excessive tax assessments and payment obligations to lower customer costs -and to minimize the cross-subsidization of taxpayers in some taxing jurisdictions by the Authority's LIPA's customer-owners in other jurisdictions.
- Inform customers of the burden of taxes, PILOTs, assessments, and fees in their electric bills.

The Chief Executive Officer (or his designee) is hereby authorized to enter into any agreements that advance the Board's Policy on Taxes and PILOTs, including but not limited to agreements to make payments to municipalities and taxing jurisdictions to offset reductions in tax revenues due to settlements of any LIPA tax or PILOT challenges.<sup>1</sup>

The Chief Executive Officer will promptly report any settlement or related agreements to the Board and will report annually to the Finance and Audit Committee on compliance with the provisions of the Policy.

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<sup>1</sup> The Authority LIPA's Bylaws authorize the Chief Executive Officer (or his designee) to sign contracts, agreements and other documents on the Authority's behalf. This includes the authority to enter into agreements with municipalities and taxing jurisdictions to obtain reductions in the Authority's taxes, PILOTs, assessments, and fees, either paid directly or through contracts with the owners of power plants.

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Policy Type: **Operating**  
Monitored by: **Finance and Audit Committee**  
Board Resolution: **#1320, approved September 21, 2016**  
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