

FOR CONSIDERATION

June 26, 2024

TO: The Board of Trustees

FROM: John Rhodes

SUBJECT: Consideration of the Approval of the Plan of Merger into the Authority of its wholly-owned subsidiary, the Long Island Lighting Company

Requested Action

The Board of Trustees (the “Board”) of the Long Island Power Authority (“Authority”) is requested to adopt a Resolution, as set forth in **Exhibit “A”**, approving the Plan of Merger into the Authority of its wholly-owned subsidiary, Long Island Lighting Company (“LILCO”) (the “Plan” or “Plan of Merger”), which plan is more particularly detailed in **Exhibit “B”**.

Background

Proposed Changes to the Authority-LIPA Relationship and Resolution

Prior to its acquisition by the Authority in 1998, LILCO was an investor-owned utility. To effectuate the 1998 acquisition of LILCO, the Authority adopted the Electric System General Revenue Bond Resolution (“Resolution”) and purchased all the outstanding common stock of LILCO with the proceeds of the initial issuance of bonds under the Resolution. That acquisition was the subject of an Internal Revenue Service letter ruling which confirmed that the acquisition would not result in a federal tax liability to the Authority. The Authority’s staff has proposed to simplify the Authority’s operations by consolidating the Authority and LILCO, and has successfully sought a letter ruling from the Internal Revenue Service to confirm that there would be no federal tax liability to the Authority or LILCO as a result of the merger of LILCO into the Authority. In addition, in light of the proposed consolidation, the staff proposed amending and restating the Resolution (as so amended and restated, the “Amended and Restated Bond Resolution”), which Amended and Restated Bond Resolution was approved and adopted by the Authority’s Board on July 22, 2020. There are conditions to the effectiveness of such amendments as described below.

The Consolidation Amendments

In connection with effectuating the potential consolidation, the Amended and Restated Bond Resolution contains amendments that: (i) reflect the consolidation of LILCO with the Authority and the termination of agreements between the Authority and LILCO in connection with such consolidation; (ii) delete references to agreements between the Authority and LILCO; (iii) delete references to debt of LILCO which is no longer outstanding; (iv) provide for adjustments in flow of funds provisions related to the foregoing; and (v) modify other provisions which would no longer be necessary upon the consolidation of LILCO into the Authority and the assumption of all liabilities of LILCO by the Authority (collectively, the “Consolidation Amendments”).

The Additional Amendments

In addition to the Consolidation Amendments, the Authority's staff proposed other amendments unrelated to the proposed consolidation that are generally intended to update the Resolution by (i) amending the definition of Operating Expenses and related flow of funds provisions to permit Payments in Lieu of Taxes to be paid as Operating Expenses on the same basis as taxes, (ii) including an enhanced debt service coverage ratio in the Authority's rate covenant (from 100% to 110% of Debt Service, and amounts under all Parity Contract Obligations, payable by the Authority in the applicable fiscal year), (iii) including a debt service coverage ratio as a condition to issuance of Bonds, and (iv) amending various other provisions of the existing Resolution, without regard to whether the proposed merger of LILCO occurs (collectively, the "Additional Amendments" and together with the Consolidation Amendments, the "Proposed Amendments").

Effectiveness

The Proposed Amendments are subject to the consent or deemed consent of the holders of a majority in principal amount of all of Authority's outstanding bonds. As of the date hereof, the holders of approximately 47.3% of the outstanding bonds have consented to the Proposed Amendments set forth in the Amended and Restated Resolution.

The Amended and Restated Resolution will be effective upon the filing with the bond trustee of the necessary. The Amended and Restated Resolution provides that following its effectiveness, the Authority will mail notice of such amendment to the holders of the bonds as provided in the Resolution. The Resolution provides that, upon the filing of certain proofs with the trustee as to such consent and the giving of required notice to the holders of bonds, the Amended and Restated Resolution and the Amendments set forth therein shall be deemed conclusively binding upon the Authority, the bond trustee and the holders of all bonds.

Discussion

Plan of Merger

While the Amended and Restated Bond Resolution contemplated the merger of LILCO into the Authority, New York Business Corporation Law requires the Authority to have adopted a plan pursuant to which the merger will be accomplished. The Plan of Merger sets out the required details to implement the intent of the Board in adopting the Amended and Restated Bond Resolution.

Recommendation

Based upon the foregoing, I recommend approval of the above-requested action by adoption of the resolution in the form attached as **Exhibit "A"**.

Attachment

Exhibit "A" Resolution

Exhibit "B" Agreement and Plan of Merger

AUTHORIZATION RELATING TO THE APPROVAL OF THE AGREEMENT AND PLAN OF MERGER BY AND BETWEEN LONG ISLAND POWER AUTHORITY AND LONG ISLAND LIGHTING COMPANY

WHEREAS, in 1998, the Long Island Power Authority (the “Authority”) acquired all of the issued and outstanding capital stock of Long Island Light Company, a New York corporation (the “Subsidiary”), and, as a result of such acquisition, the Authority is the sole shareholder and parent of the Subsidiary;

WHEREAS, the Board of Trustees of the Authority has previously considered the possibility of simplifying the Authority’s operations by consolidating the Authority and the Subsidiary, including by merging the Subsidiary into the Authority, with the Authority continuing as the surviving entity (the “Merger”);

WHEREAS, the Board of Trustees of the Authority has now determined that it is in the best interests of the Authority to approve the Merger; and

WHEREAS, the Authority will effect the Merger pursuant to and in accordance with (a) the Agreement and Plan of Merger in substantially the form as attached hereto as Exhibit A (the “Merger Agreement”), (b) the Certificate of Merger in substantially the form as attached hereto as Exhibit B (the “Certificate of Merger”), and (c) the Joint Written Consent of the Board of Directors and the Sole Stockholder of the Subsidiary in substantially the form attached hereto as Exhibit C (the “Subsidiary Joint Written Consent”).

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Approval of Merger

1. On behalf of the Authority in its own capacity, and in its capacity as the sole shareholder of the Subsidiary, the Merger is hereby approved, on the terms and subject to the conditions set forth in the Merger Agreement and Certificate of Merger, each of which are also hereby approved and adopted in all respects, on behalf of the Authority in its own capacity, and in its capacity as the sole shareholder of the Subsidiary.

2. The Authority, as the sole shareholder of the Subsidiary, will evidence its consent to the Merger in such capacity by the execution of the Subsidiary Joint Written Consent, which is approved and adopted in all respects.

3. The officers of the Authority be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Authority, to take or cause to be taken any and all actions, to execute, deliver and perform on behalf of the Authority, any and all agreements, amendments to existing agreements, instruments, certificates, instructions, filings, requests and other documents as may be necessary, advisable or desirable to implement the foregoing resolutions, including without limitation, the Merger Agreement, the Certificate of

Merger, and the Subsidiary Joint Written Consent, in each case, in such form or forms and with such changes as the officer executing and delivering the same shall approve, such execution in each case to be conclusive evidence that the same has been authorized and approved by the Board of Trustees and the Authority, and to pay any such expenses and fees, and to do any and all things which in the judgment of such officer may be necessary, advisable, or desirable to implement the foregoing resolutions.

Further Authorization

1. The officers of the Authority be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Authority and the Subsidiary, to take or cause to be taken any and all actions, to execute and deliver any and all agreements, instruments, certificates, instructions, requests and other documents, to pay any such expenses and fees, and to do any and all things which in the judgment of such officer may be necessary, advisable, or desirable to implement the foregoing resolutions.

2. Without limiting the foregoing, the officers and the other appropriate representatives of the Authority be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Authority and the Subsidiary, to prepare all documentation, to take such action, to effect all filings and to obtain all permits, consents, approvals and authorizations of all third parties, regulatory authorities and other governmental authorities necessary to consummate the foregoing resolutions and to enter into, execute personally or by attorney-in-fact and perform any such required filings or amendments, modifications, amendment and restatements, or supplements to any of the documents authorized and approved hereby or otherwise related thereto, and to cause any such required filings, amendments, modifications, amendment and restatements, or supplements thereto to become effective or otherwise approved, the taking of any such action to be deemed conclusive evidence that the Board of Trustees and the Authority have authorized such action.

3. The authority granted to the officers of the Authority under the foregoing resolutions shall be deemed to include, in the case of each such resolution, the authority to perform such further acts and deeds as may be necessary, advisable, desirable, convenient or appropriate, in the good faith judgment of such officers, to carry out the transactions contemplated hereby and the purposes and intents of the foregoing resolutions, and all acts and deeds previously performed by the officers, or counsel for the Authority prior to the date of these resolutions that are within the authority conferred hereby, are ratified, confirmed and approved in all respects as the authorized acts and deeds of the Authority prior to the date of these resolutions as of the date of such acts and deeds.

Dated: June 26, 2024

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is dated as of this ____ day of _____, 2024, and is by and between Long Island Power Authority, a corporate municipal instrumentality and a political subdivision of the state of New York (the “**Authority**”), and Long Island Lighting Company, a corporation formed under the laws of the State of New York (the “**Merged Entity**”).

ARTICLE I THE MERGER

1.1 Agreement to Merge. Subject to the terms and conditions of this Agreement, the Merged Entity shall be merged with and into the Authority (the “**Merger**”), with the Authority continuing as the surviving entity of the Merger (the “**Surviving Entity**”).

1.2 Certificate of Merger. The appropriate officers of the Merged Entity and of the Surviving Entity shall execute this Agreement to effect the Merger pursuant to applicable law, and the Surviving Entity shall deliver for filing the Certificate of Merger to the Office of the Secretary of State of the State of New York.

1.3 Approvals. This Agreement has been approved by the board of directors and the sole shareholder of the Merged Entity and by the board of trustees of the Authority.

1.4 Outstanding Stock. The Merged Entity currently has 1,000 shares of common stock outstanding, all of which are owned by the Authority. The Authority is a creature of statute, created by and existing under the Long Island Power Authority Act, § 1020 of the New York State Public Authorities Law (the “**Public Authorities Law**”), and has no authorized or issued capital stock.

ARTICLE II EFFECTS OF THE MERGER

2.1 Surviving Entity. The Authority shall be the surviving entity of the Merger, as the Surviving Entity.

2.2 Transfer of Assets and Assumption of Liabilities. All of the equity interests, bonds, cash, investments, real and personal (tangible or intangible) property rights, privileges, immunities, powers and all other assets whatsoever of the Merged Entity shall vest in the Surviving Entity without any further acts or deeds of any person. Thereafter, the Surviving Entity shall be liable for all debts, obligations, liabilities and penalties of the Merged Entity as though each such debt, obligation, liability or penalty had been originally incurred by the Surviving Entity.

2.3 Cancellation of Stock of the Merged Entity. The outstanding stock of the Merged Entity shall automatically, by operation of law and without any action by the holder thereof, be cancelled and shall cease to exist.

2.4 Further Acts. If, at any time, the Surviving Entity shall consider or be advised that any further assignments or assurances of law or any other things are necessary or desirable to vest in the Surviving Entity, according to the terms hereof, the title to any property or rights of the Merged Entity, the proper representatives of the Merged Entity shall execute and make all such proper assignments and assurances and do all things necessary or proper to vest title in such property or rights in the Surviving Entity and otherwise to carry out the purposes of this Agreement.

2.5 Board of Trustees and Officers. The board of trustees and the officers of the Authority as of immediately prior to the effective time of the Merger shall continue as the board of trustees and the officers, respectively, of the Surviving Entity, until their successors are duly elected and qualified pursuant to §§ 1020-(D) – (E) of the Public Authorities Law.

2.6 Certificate of Incorporation and Bylaws. The Authority is a creature of statute, created by and existing under the Long Island Power Authority Act, § 1020 of the Public Authorities Law, and the Surviving Entity shall continue to be governed by such, in lieu of, and as the Surviving Entity's equivalent of, a certificate of incorporation. The Authority's bylaws, as in effect as of immediately prior to the effective time of the Merger, shall remain in full force and effect as the bylaws of the Surviving Entity.

2.7 Effective Date. The effective date of the Merger shall be _____, 2024.

2.8 Abandonment. Notwithstanding anything herein to the contrary, this Agreement may be terminated or abandoned by action authorized by the board of trustees of the Authority as any time prior to the effective date of the Merger.

ARTICLE III MISCELLANEOUS

3.1 Amendment. This Agreement may be amended prior to the effective time of the Merger only by a writing executed by the Authority and the Merged Entity.

3.2 Waiver of Compliance. Except as otherwise provided in this Agreement, any failure of any party to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

3.3 Assignment. Neither this Agreement nor any rights or obligations of the parties hereto may be assigned by either party hereto.

3.4 Governing Law. This Agreement shall be governed by the laws of the State of New York without reference to its principles of conflicts of law.

3.5 Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties hereto, and shall not in any way affect the meaning or interpretation of this Agreement. Unless otherwise specified, references herein to articles and sections are references to articles and sections of this Agreement.

3.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes and all of which, when taken together, shall constitute the entire agreement.

3.7 Entire Agreement. This Agreement, including any documents, schedules, certificates and instruments referred to herein, embodies the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such transactions.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first above written.

AUTHORITY:

LONG ISLAND POWER AUTHORITY,
a corporate municipal instrumentality and a political subdivision of the State of New York

By: _____

Name:

Title:

MERGED ENTITY:

LONG ISLAND LIGHTING COMPANY,
a New York corporation

By: _____

Name:

Title:

[Signature Page to Agreement and Plan of Merger]