

LONG ISLAND POWER AUTHORITY
MINUTES OF THE GOVERNANCE COMMITTEE MEETING
HELD ON MARCH 21, 2016

The Governance Committee of the Long Island Power Authority (the “Authority”) was convened 11:01 a.m. at LIPA Headquarters, Uniondale, NY, pursuant to legal notice given on March 16, 2016; and electronic notice posted on the Authority’s website.

The following Trustees of the Authority were present:

Mark Fischl, Committee Chair
Thomas J. McAteer
Suzette Smookler
Elkan Abramowitz
Jeffrey Greenfield

Representing the Authority were; Thomas Falcone, Chief Financial Officer; Jon Mostel, General Counsel and Secretary to the Board of Trustees; Bobbi O’Connor, Deputy General Counsel and Assistant Secretary to the Board of Trustees; Rick Shansky, Managing Director of Contract Oversight; and Barbara Ann Dillon, Director of Human Resources and Administration.

Committee Chair Fischl welcomed everyone to the Governance Committee meeting of the Long Island Power Authority Board of Trustees.

Chair Fischl stated the first item on the agenda is the adoption of the minutes from the January 20, 2016 Committee meeting.

The Chair requested a motion to accept the minutes of the January 20, 2016 meeting, which was duly made and seconded. The minutes were approved unanimously.

Chair Fischl stated that the next item on the agenda is recommendation to approve Strategic Policy Related to the Purpose and Role of the Board, Officers, Service Provider and DPS, which would be presented by Thomas Falcone.

Mr. Falcone presented the following item and then took questions from the Trustees:

Requested Action

The Governance Committee of the Board of Trustees (the “Governance Committee”) is requested to approve a resolution recommending that the full Board adopt the proposed Statement of Policy Regarding the Purpose and Roles of the Board, Officers, Service Provider, and Department of Public Service (the “Policy on Purpose and Roles”) for the Long Island Power Authority and its subsidiary, LIPA (collectively the “Authority”), which appears below.

Background on Strategic Planning Process

The Finance and Audit Committee of the Board of Trustees (the “F&A Committee”), in its Charter, was delegated the responsibility for overseeing the strategic planning process of the Authority. The strategic planning process anticipates that the direction of the Authority will be developed and periodically reviewed through a series of policy statements approved by the Board. Such policy statements are also a key element of the Authority’s Enterprise Risk Management program, which was adopted by the Board at its August 7, 2015 meeting.

A proposed schedule for the development of policy statements during 2016 and respective committee assignments for each policy statement were reviewed by the F&A Committee on December 16, 2015. The Policy on Purpose and Roles is one such policy statement. The intent of this policy statement is to synthesize and distill the various laws, by-laws, charters, and contracts setting forth the duties and powers of the Authority’s Board, its Officers, the Service Provider, and the Department of Public Service into a single comprehensive and coherent statement. This policy statement was assigned to the Governance Committee for development and is hereby presented for review and consideration by the Governance Committee.

History of the Policy on Purpose and Roles

In 1986, the New York State Legislature passed the Long Island Power Authority Act, which created the Long Island Power Authority and established control of the Authority’s property and actions in the Board of Trustees. The purpose and role of the Board is shaped by, among other things, the Public Authorities Law, as amended by the LIPA Reform Act, the Public Officers Law, the Executive Law, the By-Laws of the Authority, the Trustee Code of Conduct, and the Board committee charters.

In particular, the Public Authorities Law provides that board members of New York State

public authorities shall, among other things:

1. execute direct oversight of the authority's chief executive and other management in the effective and ethical management of the authority;
2. understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the authority; and
3. perform each of their duties as board members, including but not limited to those imposed by this section, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public.¹

Similarly, the purpose and roles of the Authority's Officers, the Service Provider, and the Department of Public Service are shaped by, among other things, the Public Authorities Law, as amended by the LIPA Reform Act, the Public Officers Law, the Executive Law, the Public Service Law and the Amended and Restated Operations Services Agreement between the Authority and the Service Provider (the "OSA").

This policy statement is intended to synthesize and encapsulate the duties and powers set forth in the various source documents described above.²

Policy on Purpose and Roles

The proposed Policy on Purpose and Roles states as follows.

The role of the Board of Trustees is to:

- a) *Identify and define the mission, values, and strategic direction of the Authority, including the quantitative and qualitative results that the Authority is to achieve, and communicate them in the form of policy.*
- b) *Monitor the Authority's performance against the policies established by the Board and monitor the risks and mitigation activities undertaken by the Officers and Service Provider to identify, assess, and manage risks to the Authority's performance.*
- c) *Set rates, charges, and rules so as to ensure the provision of safe and reliable electric service to the Authority's customers at the lowest cost consistent with the Authority's contractual obligations and sound fiscal operating practices.*
- d) *Adopt annual budgets for the Authority and the Service Provider sufficient to achieve*

¹ See N.Y. Pub. Auth. Law § 2824 (McKinney).

² This policy statement is not intended to supersede or supplant the various underlying legal or contractual source documents. To the extent that any inconsistency exists between this policy statement and a statutory obligation or source document, it is intended that such statutory obligation or source document shall govern.

the Board's policy goals.

- e) *Hire, evaluate and, when necessary, discharge the Board-elected Officers.³ Officer job performance shall be evaluated by comparing the Authority's performance to the policy goals established by the Board and the Officer's personal performance to the performance goals established for that Officer in each year.*
- f) *Monitor the staffing policies of the Authority to make certain that staffing at the authority does not exceed the levels necessary to ensure that the Authority is able to meet obligations with respect to its bonds and notes and all applicable statutes and contracts, and oversee the activities of the service provider.⁴*
- g) *Approve certain contractual agreements as required by applicable law or as otherwise required by the Authority's established policies and procedures.*
- h) *Fulfill and abide by its fiduciary duties, including:*
- *A duty of loyalty, which requires that each Trustee (i) act at all times in the best interests of the Authority, its ratepayers, and its bondholders, whose interests must take precedence over any self-interest of the Trustee, and (ii) avoid conflicts of interest and self-dealing; and*
 - *A duty of care, which requires each Trustee to act in good faith and with the degree of diligence, care, and skill of an ordinarily prudent person in similar circumstances.⁵*
- i) *Regularly discuss and evaluate the Board's own performance and that of its committees.⁶*
- j) *Engage an independent auditor and, through the Finance and Audit Committee, oversee and review the results of audits and internal control reviews performed by such auditor and by the Authority's internal audit department.⁷*
- k) *Take such other actions as may be required by law, including actions contemplated under the LIPA Act, the LIPA Reform Act, the Public Authorities Law, the Public Officers Law, the Executive Law, and the By-Laws of the Authority.*

The Board of Trustees acts as a body with a quorum of five as set forth in Section 2826 of the Public Authorities Law, except in those instances where the Board has specifically authorized

³ Pursuant to the Authority's By-Laws, the Board-elected Officers include the Chief Executive Officer, General Manager, Chief Financial Officer, and General Counsel of the Authority. The Chief Executive Officer may appoint such other Officers as he or she may from time to time deem necessary or desirable.

⁴ N.Y. Pub. Auth. Law § 1020-f(c) (McKinney).

⁵ See N.Y. Pub. Auth. Law § 2824(1) (McKinney); see also The Trustee Code of Conduct and the Authority's bond covenants.

⁶ See N.Y. Pub. Auth. Law § 2824(7) (McKinney); Authority By-Laws, at Article 5 § 2; Governance Committee Charter, at 3.

⁷ See N.Y. Pub. Auth. Law § 2824(4) (McKinney).

the exercise of authority by individual Board members, officers, or committees. The Board establishes committees that have and exercise a greater amount of expertise and experience within the scope of the committee's responsibility, and the Board relies upon each committee's expertise and judgment regarding conclusions and recommendations that emanate from the committee.

The role of the Authority's Officers is to:

- a) *Undertake the administrative and operational means necessary, in conjunction with the Service Provider, as appropriate, to realize the quantitative and qualitative results that the Authority is to achieve pursuant to Board policy and identify, assess, and manage risks to the Authority's performance.*
- b) *Serve, alongside other Authority staff, as the Staff to the Board of Trustees.*
- c) *Recommend rates, charges, and rules to the Board of Trustees designed to ensure the provision of safe and reliable electric service to the Authority's customers at the lowest cost consistent with the Authority's contractual obligations and sound fiscal operating practices.*
- d) *Develop and recommend annual budgets for the Authority and the Service Provider sufficient to achieve the Board's policy goals, with assistance from the Service Provider, as appropriate.*
- e) *Oversee and make recommendations to the Board of Trustees regarding the operations of and contractual relationship with the Service Provider.*
- f) *Represent the interests of the Authority in coordination with the Service Provider in connection with proceedings of the Federal Energy Regulatory Commission, the North American Electric Reliability Corporation, the Northeast Power Coordinating Council, the New York Independent System Operator, the New York State Public Service Commission, the Independent System Operator New England, Pennsylvania Jersey Maryland Interconnection, and other industry or regulatory institutions or organizations.*
- g) *Finance the business and operations of the Authority and management of financial resources, including communications, reporting to, and filings with lenders, rating agencies, and governmental bodies.*
- h) *Manage and take overall responsibility for the Authority's legal matters.*
- i) *Develop and recommend certain contractual agreements as required by applicable law or as otherwise required by the Authority's established policies and procedures.*
- j) *Hire, evaluate, establish compensation and salary policies for and, when necessary, discharge the Authority Staff.*

k) Fulfill and abide by his or her fiduciary duties, including:

- *A duty of loyalty, which requires that each Officer (i) act at all times in the best interests of the Authority, its ratepayers, and its bondholders, whose interests must take precedence over any self-interest of the Officer, and (ii) avoid conflicts of interest and self-dealing; and*
- *A duty of care, which requires each that Officer act in good faith and with the degree of diligence, care, and skill of an ordinarily prudent person in similar circumstances.*⁸

l) Perform other responsibilities as may be delegated by the Board.

m) Take such other actions as may be required by law, including actions contemplated under the LIPA Act, the LIPA Reform Act, the Public Authorities Law, the Public Officers Law, the Executive Law, and the By-Laws of the Authority.

The role of the Service Provider and its management is to:

- a) Operate the Authority's transmission and distribution system, as set forth in the OSA, including performance of such responsibilities as are reasonably related to management, operation, and maintenance of the transmission and distribution system.**⁹
- b) Become the name and face of electric utility service in the Service Territory, including responsibility for communications with public officials, customers, community or industry programs, and the media.**¹⁰
- c) Report to the Board of Trustees regarding the Service Provider's operations periodically or upon request of the Board.**
- d) Cooperate with the Department of Public Service review of the Service Provider's operations.**
- e) Take such other actions as may be required by law or contract, including actions contemplated under the LIPA Act, the LIPA Reform Act, the Public Authorities Law, and the OSA.**

The role of the Department of Public Service is to:¹¹

- a) Review and make independent recommendations with respect to the operations and terms and conditions of service of, and rates and budgets established by, the Authority and the Service Provider.**

⁸ See The Employee Code of Conduct and the Authority's bond covenants; see also Public Officers Law §§ 73, 74.

⁹ See OSA § 4.2 *et seq.*

¹⁰ See OSA § 4.2 (v)

¹¹ See N.Y. Pub. Serv. Law § 3-b.

- b) *Make such recommendations designed to ensure that the Authority and the Service Provider provide safe and adequate transmission and distribution service at rates set at the lowest level consistent with the Authority's contractual obligations and sound fiscal operating practices.*
- c) *Review and make recommendations regarding the annual capital expenditures proposed by the Service Provider.*
- d) *Periodically undertake a comprehensive management audit of the Authority and Service Provider.*
- e) *Review the emergency response plans of the Service Provider and the Authority.*
- f) *Accept, investigate, mediate to resolve and make recommendations to the Authority and/or the Service Provider regarding the resolution of complaints from consumers in the Authority's service territory.*
- g) *Review and make recommendations to the Authority regarding plans to implement net metering, energy efficiency, distributed generation, or advanced grid technology programs.*
- h) *Review and make recommendations to the Authority regarding the Service Provider's performance metrics and incentive compensation.*
- i) *Take such other actions as may be required by law, including actions contemplated under the LIPA Act, the LIPA Reform Act, the Public Authorities Law, the Public Officers Law, the Public Service Law, and the Executive Law.*

Annual Review of the Policy on Purpose and Roles

Annually, the Authority staff shall present a review of the Authority's Policy on Purpose and Roles to the Governance Committee, which review should demonstrate adherence to this policy statement, as applicable, and consider whether any updates or revisions should be made to the policy to better achieve the Authority's mission and objectives.

Adherence to this policy will be measured through Board evaluation (including self-evaluation) of the specific roles listed above. As the intent of this policy statement is to synthesize and distill the various laws, by-laws, charters, and contracts setting forth the duties and powers of the Authority's Board, its Officers, the Service Provider, and the Department of Public Service, this policy statement does not contain specific quantitative and qualitative measures of performance, which are instead included in other policy statements of the Board, aside from the general principals espoused above.

Recommendation

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

A motion was made and seconded, and the Trustees unanimously adopted the following resolution:

RECOMMENDATION OF APPROVAL OF STATEMENT OF POLICY REGARDING PURPOSE AND ROLES OF THE BOARD, OFFICERS, SERVICE PROVIDER, AND DEPARTMENT OF PUBLIC SERVICE

WHEREAS, the Finance and Audit Committee (“F&A Committee”) of the Board of Trustees, in its Charter, was delegated the responsibility for overseeing the strategic planning process of the Authority; and

WHEREAS, as part of the strategic planning process, the F&A Committee has assigned to the Governance Committee the task of developing and approving a policy statement regarding the Purpose and roles of the Board, Officers, Service Provider, and Department of Public Service (“DPS”); and

WHEREAS, the Governance Committee recognizes that a comprehensive and coherent statement of the Purpose and roles of the Board, Officers, Service Provider, and DPS, which synthesizes and encapsulates the duties and powers set forth in various underlying laws, charters, contracts, and other source documents is in the long-term interest of the Authority’s customers; and

WHEREAS, the Governance Committee has considered and is in agreement with the Policy Regarding the Purpose and Roles of the Board, Officers, Service Provider, and DPS set forth in the accompanying memorandum:

NOW, THEREFORE, BE IT RESOLVED, that consistent with the accompanying memorandum, the proposed Policy Regarding the Purpose and Roles of the Board, Officers, Service Provider, and DPS, in the form contained in the accompanying memorandum, is hereby recommended for approval by the full Board; and

BE IT FURTHER RESOLVED, that the Governance Committee recommends that the Policy Regarding the Purpose and Roles of the Board, Officers, Service Provider, and DPS be subject to annual review and evaluation by the Governance Committee in accordance with the accompanying memorandum.

Chair Fischl stated that the next item on the agenda is discussion of Committee’s

Annual Report to the Board of Trustees, which would be presented by Jon Mostel.

Mr. Mostel discussed the Committee's Annual Report to the Board of Trustees.

Chair Fischl then entertained a motion to adjourn, which was duly made and seconded, after which the meeting concluded at approximately 11:05 a.m.