Legislative Commission on the Future of the Long Island Power Authority

April 17, 2023

The Honorable Andrea Stewart-Cousins
President Pro Tempore and Majority Leader of the Senate
The Capitol
Albany, New York 12207

The Honorable Carl E. Heastie
Speaker of the Assembly
The Capitol
Albany, New York 12207

The Honorable Robert G. Ortt
Minority Leader of the Senate
The Capitol
Albany, New York 12207

The Honorable Will Barclay
Minority Leader of the Assembly
The Capitol
Albany, New York 12207

Dear Legislative Leaders,

In accordance with section 83-n of the legislative law, we respectfully submit to the legislature the draft report of the Legislative Commission on the Future of the Long Island Power Authority.

The Long Island Power Authority was established with the intention of serving as both the owner and operator of Long Island and the Rockaways' electric grid. Instead, LIPA outsources management of its operations to a for-profit, investor-owned utility – PSEGLI – for a significant annual management fee borne by ratepayers. This unique "third-party" model lacks accountability and efficiency, as so many studies and analyses of LIPA's shortcomings over the years have documented.

The Commission was established to provide a roadmap to transforming LIPA into its intended role as the grid's owner and operator: to "report to the legislature on the specific actions, legislation, and timeline necessary to restructure LIPA into a true publicly owned power authority."

This draft report does just that, while leaving open some key decisions that must be resolved in our final report, after we have received additional input from our fifteen-member advisory committee and the public in a series of upcoming hearings.

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In order to offer a meaningful and actionable plan forward for a less expensive, more reliable, and more accountable LIPA, the draft report cast an independent eye on LIPA's origins, its evolution, its successes and failures, and the advantages and disadvantages of its current third-party model compared to the public power model envisioned by the legislature. We drew not merely from the above mentioned many studies and analyses of LIPA over the years, but conducted interviews with officials from LIPA, PSEGLI, the Department of Public Service, and IBEW Local 1049, whose approximately 1,500 members actually operate the electric grid. The Commission conducted five public hearings – four in person, from Long Island's East End to the Rockaways, and one virtually – receiving testimony from dozens of witnesses, including ratepayers, stakeholders, experts, academics, advocates, and elected officials at all levels of government.

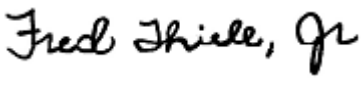
This draft report lays out the legal, legislative, and operational steps necessary to effectuate the LIPA public power model by the end of 2025, when PSEGLI's contract expires, and addresses key considerations embedded in the Commission's enabling statute.

A properly reorganized and restructured LIPA directly managing the operation of our electric grid will save ratepayers nearly $50 million (and as much as nearly $80 million) a year, as opposed to paying a for-profit, investor-owned utility's annual management and services fees to do so. This is tens of millions of dollars which a more accountable and transparent LIPA can use to mitigate rates, upgrade infrastructure, invest in climate-friendly green initiatives, or support struggling residents and businesses. Likewise, this more accountable, transparent, and streamlined LIPA will improve system reliability, storm response operations, long term energy planning, and consideration for the interests of marginalized communities, while the transition to public power will not in any way change LIPA's tax and PILOT payments to local governments, or its obligations to its bond holders. With public power, resources are freed up for investment, governance is made more direct and accountable, and operational authority and accountability is streamlined.

This draft report leaves open for consideration, and lays out options, for two key items: (1) reforms to LIPA's governance structure, i.e., whether its board members are appointed, elected, or some combination thereof, and by whom; and (2) the most effective mechanism for ensuring that LIPA's workforce – its real workforce, the 1,500 men and women of IBEW Local 1049 who operate the grid on a day-to-day basis – enjoy the same wages, benefits, protections, and status in every respect under a LIPA-managed grid as they do under the existing third-party management model.

We are committed to fulfilling our mandate so that the legislature and governor can act this legislative session to fulfil LIPA's original promise – to directly provide affordable, reliable, and accountable electricity service to the ratepayers of Long Island and the Rockaways. We look forward to sending the legislature our final report and recommendations after our advisory committee has been consulted and our next round of public hearings have been completed and considered.

Respectfully,



Senator Kevin Thomas, Co-Chair

Assembly Member Fred W. Thiele, Jr., Co-Chair

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New York State Legislative Commission on the Future of the Long Island Power Authority

DRAFT REPORT ON ESTABLISHMENT OF A PUBLIC POWER MODEL FOR THE OPERATION OF THE LONG ISLAND POWER AUTHORITY (LIPA)

April 17, 2023

Commissioners

Senator Kevin Thomas, Co-Chair
Assembly Member Fred W. Thiele, Jr., Co-Chair
Senator James Sanders, Jr.
Senator Monica R. Martinez
Senator Anthony H. Palumbo
Assembly Member Stacey Pheffer Amato
Assembly Member Michaelle C. Solages
Assembly Member Doug Smith

Executive Director

Hon. Rory Lancman

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SELECT ACRONYMS AND ABBREVIATIONS

Abbreviation	Term
A&R OSA	Amended and Restated OSA
AMI	Advanced Meter Infrastructure
APPA	American Public Power Association
Board or LIPA Board	LIPA Board of Trustees
By-laws	LIPA By-laws
CAB	Community Advisory Board
CAC	Citizen Advisory Committee
CBA	Collective Bargaining Agreement
CEO	Chief Executive Officer
CES Order	2016 Clean Energy Standard Order
CFO	Chief Financial Officer
CIO	Chief Information Officer
CLCPA	Climate Leadership and Community Protection Act
COO	Chief Operating Officer
The Commission	The New York State Legislative Commission on the Future of the Long Island Power Authority
CUP	Customer Utility Panel
DEC	NYS Department of Environmental Conservation
DPS	NYS Department of Public Service
DPS LI	Long Island Office of the Department of Public Service
EDI Testing	Electronic Data Interchange Testing
EEBEDR Plan	Energy Efficiency Beneficial Electrification and Demand Response Plan
EM&CP	Environmental Management and Construction Plan
EPMO	Enterprise Program Management Office
EPRI	Electric Power Research Institute
ERISA	Employee Retirement Income Security Act
ERP	Emergency Response Plan
ESCO	Energy Service Companies
FEMA	Federal Emergency Management Agency
FERC	Federal Energy Regulatory Commission
First A&R OSA	First Operations Services Agreement
FMA	Fuel Management Agreement
FY	Fiscal Year
GENCO	National Grid GENCO
GHG	Greenhouse Gas
G&T	Generation and Transmission
HUD	U.S. Department of Housing and Urban Development
IBEW	International Brotherhood of Electrical Workers
IA	Internal Audit
IG	NYS Inspector General
IOU	Investor-Owned Utility
IPO	Initial Public Offering

Abbreviation	Term
IRP	Integrated Resource Plan
ISO	International Organization for Standardization
IT	Information Technology
JOC	Joint Operating Committee
KEDLI	National Grid KeySpan Energy Delivery Long Island
KeySpan	KeySpan Energy Corporation
LILCO	Long Island Lighting Company
LIPA or the Authority	Long Island Power Authority
LIPA Act	1986 Long Island Power Authority Act
LRA	LIPA Reform Act
MaBSTOA	Manhattan and Bronx Surface Transit Operating Authority
MEUA	Municipal Electric Utilities Association of New York
Moreland Commission	The Moreland Commission on Utility Storm Preparation and Response
MRB	Management Review Board
MSA	Management Service Agreement
MTA	Metropolitan Transit Authority
MUD Act	State of California Municipal Utility District Act
Navigant	Navigant Consulting, Inc.
NERC	North American Electric Reliability Corporation
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NorthStar	NorthStar Consulting Group, Inc.
NPCC	Northeast Power Coordinating Council
NRC	Nuclear Regulatory Commission
NYISO	New York Independent System Operator
NYMPA	New York Municipal Power Authority
NYPA	New York Power Authority
NYPA Board	NYPA Board of Trustees
NYPA Sustainability Plan	NYPA 2021-2025 Sustainability Plan
NYS DPS or DPS	NYS Department of Public Service
NYSERDA	NYS Energy and Research Development Authority
OAG	NYS Office of the Attorney General
OMS	Outage Management System
OSA	Operations Services Agreement
OSC	NYS Office of State Comptroller
PACB	Public Authorities Control Board
PERB	Public Employment Relation Board
PILOT	Payment in Lieu of Taxes
PSEG	Public Service Enterprise Group Incorporated
PSEG ER&T	PSEG Energy Resources and Trade
PSEG LI	PSE&G Long Island
PAL	Public Authorities Law
PSC	Public Service Commission
PSL	Public Service Law

Abbreviation	Term
PTP	Priority Transmission Projects
REC	Renewable Energy Credits
RFP	Request for Proposal
SAC	Sustainability Advisory Council
SAIDI	System Average Interruption Index
SAIFI	System Average Frequency Index
Second A&R OSA	Second Amended and Restated Operations Service Agreement
SEP	State Energy Plan
Service Area	Long Island and the Rockaway Peninsula in Queens
Shoreham Plant	Shoreham Nuclear Plant
SMUD	Sacramento Municipal Utility District
SRP	Arizona's Salt River Project
SRVWUA District Board	Salt River Valley Water Users' Association District Board
SRVWUA District Council	Salt River Valley Water Users' Association District Council
T&D	Transmission and Distribution
T&D System	Transmission and Distribution System
TSA	Transition Services Agreement
UDSA	Utility Debt Securitization Authority

EXECUTIVE SUMMARY

In April 2022, the New York State Legislature created the Commission (the "Commission") on the Future of the Long Island Power Authority ("LIPA" or the "Authority") to provide specific actions, legislation, and a timeline necessary to transform LIPA into a true publicly owned power authority. A transformation is necessary because for decades, LIPA has been the only utility in the United States using a third-party service provider model to deliver its services, and this model has too often failed to provide cost effective and reliable service to LIPA ratepayers.

In discharging its responsibilities, the Commission was required to appoint an advisory committee of local thought leaders, and also to consider the following factors:

- the method of governance of the public authority;
- improved transparency, accountability, and public involvement;
- improved reliability of the system;
- the impact on electric rates;
- improved storm response;
- the powers LIPA requires to more effectively operate the utility;
- the oversight role of the Department of Public Service ("DPS") and the Public Service Commission ("PSC") over LIPA's operation;
- the impact on existing bonded indebtedness;
- improved long term energy planning;
- compliance with the goals of the New York State Climate Leadership and Community Protection Act ("CLCPA");
- increased reliance on renewable energy sources to produce electricity;
- taxation and payments in lieu of taxes ("PILOTs");
- the special needs of communities that are or have been impacted by the siting of power generating facilities; and
- other matters relevant to the establishment of a public power model for the operation of LIPA.

The Commission was tasked with preparing this Interim Report regarding the establishment of a public power model for LIPA, whereby LIPA would directly operate the utility as a true public power authority.

In furtherance of its objective, the Commission sought public input at one virtual hearing and four in-person hearings across the Rockaways and Nassau and Suffolk Counties. These hearings offered stakeholders the opportunity to share ideas and concerns, and to present their views about the future of LIPA. Among others, the Commission heard from:

- LIPA customers who expressed the importance of lower electric rates, better storm response, resiliency, transparency, and accountability, the impact of subpar service on disadvantaged communities, and compliance with the goals of the CLCPA;
- Local elected officials who stressed the need for LIPA leadership to be locally based and accountable to the public;
- Representatives from LIPA and Public Service Enterprise Group Incorporated ("PSEG") who expressed differing viewpoints of the perceived efficacy of the third-party service provider approach;
- Representatives from the International Brotherhood of Electrical Workers ("IBEW"), which represents many of the workers who have tirelessly operated LIPA's electric transmission and distribution system ("T&D System") for years, and who desire to maintain the employment benefits they have worked so hard for; and
- Representatives from established public power utilities in Arizona and California who discussed the benefits of public power for ratepayers of those utilities.

The Commission hired legal counsel and public power utility experts ("Commission consultants") to assist with its assessment of the charge set forth in the legislation forming the Commission. This assessment included meetings by Commission consultants with senior representatives of LIPA, PSEG and PSEG Long Island LLC ("PSEG LI"), DPS, and the IBEW Local 1049 (which represents many in the workforce), as well as representatives of the Long Island Association ("LIA") and its consultant, Lazard, which recently published a report analyzing the potential privatization of LIPA. The assessment focused on the elements identified by the Legislature, as set forth above. The Commission thereafter identified the key decisions to be made (e.g., governance structure) and analyzed the areas that will be impacted by a transition of LIPA to a full public power model.

This Interim Report covers:

Part 1 - A history of LIPA and the bifurcated management system (i.e., the service provider model) that continues to fail the customers of its service area (see pp. 1 - 13);

Part 2 – An overview of LIPA today, including its workforce, finances and the degree of oversight of LIPA by other agencies, including DPS (see pp. 13 - 33);

Part 3 - A summary of the frequently discussed options for restructuring LIPA (see pp. 33 - 46);

Part 4 – An overview of what distinguishes public power from investor-owned utilities ("IOUs") (see pp. 46 - 53);

Part 5 - An analysis of what it means for LIPA to be a fully public power utility (see pp. 53 - 124); and

Part 6 - A summary of the legislative changes that would be required for LIPA to become a true public utility (see pp. 124 - 132).

LIPA Background and Need for Reform

LIPA currently provides electric service to customers in its service area, which includes Nassau County and Suffolk County on Long Island and the portion of Queens County known as the Rockaways. Since 1998, LIPA has entered into third-party service contracts with neighboring utilities to operate and service the electrical grid. From 1998 until 2013 KeySpan Energy Corporation ("KeySpan"), and subsequently, its successor National Grid USA, were the designated service providers. Since 2013, pursuant to the First Amended and Restated Operations Services Agreement ("First A&R OSA"), and in 2021, a Second Amended and Restated Operations Services Agreement ("Second A&R OSA"), PSEG Long Island LLC ("PSEG LI") has been the designated service provider, whereby most employees working on LIPA operations are contained in a separate subsidiary entity (Long Island Electric Utility ServCo LLC ("ServCo")) owned by PSEG. LIPA is the only electric utility in the United States using this type of third-party service provider management model.

LIPA was created by the Long Island Power Authority Act in 1986 ("LIPA Act") in response to growing dissatisfaction with the Long Island Lighting Company ("LILCO"), an investor-owned gas and electric utility that provided service to Long Island and the Rockaways. Deteriorating confidence in LILCO's ability to provide affordable and reliable rates and the controversial decision to build the Shoreham Nuclear Power Plant created a situation that threatened the economy, health, and safety in LILCO's service area. As a result, LIPA was granted broad powers to operate as a publicly owned power authority to provide safe and adequate electrical service at rates that would benefit ratepayers in the service area. As described briefly in this Executive

Summary, and more comprehensively elsewhere (Part 1.C and D) in this Interim Report, LIPA has not successfully operated as a public power utility to date.

Since LIPA acquired the electric T&D System of LILCO in 1998, LIPA operations have frequently been subject to extensive criticism. The rates paid by LIPA's customers are among the highest in the nation, and overall, ratepayers have a low level of satisfaction. LIPA and its service providers have not been prepared to implement effective response measures following significant storm events, including Hurricanes Irene and Sandy and Tropical Storm Isaias, each of which impacted LIPA's service area. The recurring inadequate response to storm events has served as a catalyst for additional criticism and calls for reform.

The demands for change have been widespread. Most importantly, LIPA customers demand change. Although due to the service provider model, LIPA does not operate as a true public power utility, it is categorized among the largest public power utilities (at least 250,000 customers) in the nation. Of the largest 14 public power utilities in the nation, LIPA ranked 13th in the 2022 J.D. Power Electric Utility Residential Customer Satisfaction Study. Following Hurricane Sandy in October 2012, the Moreland Commission on Utility Storm Preparation and Response ("Moreland Commission") was established to study the responses of New York's power utility companies to major storms impacting the State and, more broadly, to make recommendations to reform and modernize the oversight, regulation and management of the state's power utilities. The Moreland Commission identified numerous inefficiencies in how LIPA and its then service provider, National Grid, addressed emergency planning, preparedness and storm response in LIPA's service area. The Moreland Commission was critical of the bifurcation of responsibilities between LIPA and the service provider, finding that the structure resulted in "mismanagement, a lack of appropriate investment in infrastructure, a lack of accountability to customers and excessive rates." The Office of the New York State Comptroller ("OSC") has also issued several critiques of LIPA operations in past years, sometimes in response to a particular event and other times as a more comprehensive investigation into LIPA's practices and procedures. Following Tropical Storm Isaias in August 2020, when approximately 646,000 LIPA customers lost service, the DPS (as well as LIPA itself) conducted an investigation into the service provider's response (then PSEG LI). The DPS investigation found fault with the service provider, and one of DPS's recommendations to LIPA was that it evaluate termination of the service provider and consider alternatives to third-party management of the T&D System.

It is clear to the Legislature, and it is clear to the Commission, that LIPA customers deserve significantly better service, accountability, reliability and rates from their power utility than they currently receive.

LIPA Today

LIPA's existing statutory authority stems from the LIPA Act and the LIPA Reform Act ("LRA"). Its general powers are outlined in sections 1020-f and 1020-g of the Public Authorities Law, and most of its original powers, as discussed in Part 2.A of this Interim Report, remain effective today. LIPA also has oversight authority over its service provider, PSEG LI, through the Second A&R OSA, which also imposes certain responsibilities on LIPA. LIPA currently pays PSEG LI approximately $121 million annually ($78 million management fee, $24 million IT/affiliate services, $19 million energy management fee). The Second A&R OSA also implements incentive compensation components for PSEG LI, which are determined through analysis of its conformance to certain performance metrics. The annual incentive compensation award is determined by LIPA, with input from DPS.

LIPA is governed by a nine-member Board, all of whom must live within LIPA's service area. Board members are appointed by the Governor (five seats), the Senate Majority Leader (two seats), and the Speaker of the Assembly (two seats), with input from local lawmakers. Board members serve four-year terms and must have relevant utility, corporate board, or financial experience. Board members are not compensated for their service. LIPA also formed a Community Advisory Board ("CAB") in 2017 to advise LIPA's CEO on "issues of importance to the Authority and [the] Long Island and Rockaways community." The CAB has 19 members, including experts in various fields such as energy, education, business, economic development, government, and finance. CAB members are appointed by LIPA's CEO.

LIPA's executive management team consists of 13 individual job titles, however, several members of the current management team have more than one title. The LRA required LIPA to downsize its staff such that staffing is "kept at levels only necessary to ensure that the authority is able to meet its core obligations." LIPA currently has approximately 50 employees in addition to the executive management team.

The operational staff supporting LIPA, including T&D, customer service and business services personnel, are employed by ServCo under the third-party service provider model. ServCo is a

wholly owned subsidiary of PSEG LI. Approximately 1,500 ServCo employees are represented by IBEW Local 1049 under two collective bargaining agreements in effect through November 13, 2023. At their core, the collective bargaining agreements covering these employees are legacy contracts derived initially from the recognition of the union in 1947 by the predecessor utilities, as modified through successive rounds of labor negotiations. In particular, many of the terms and conditions have been carried forward from LILCO, through National Grid/KeySpan, to the initial PSEG service provider model and the current ServCo relationship. Many of the union employees have extensive institutional knowledge regarding LIPA's T&D equipment, systems and operations that has been developed from decades of personal experience.

There are also approximately 1,000 administrative and supervisory employees of ServCo working in various departments, and ServCo employees in managerial positions at the director level and above within the ServCo operational structure. The managerial employees within ServCo are LIPA-funded as a pass-through expenditure under the Second Amended OSA. In addition, there are 19 other director level and more senior level managerial positions that support ServCo operations, but are positions within PSEG LI. The expense for the 19 PSEG LI managerial staff is a component of the management fee paid by LIPA to PSEG LI under the Second A&R OSA. However, currently five ServCo managers are staffing the functions of PSEG LI management roles (*i.e.*, there are currently only 14 PSEG LI employees directing the operations of ServCo).

Section 1020-s of the LIPA Act, as originally enacted, exempted LIPA from regulation by the PSC and from most requirements under the Public Service Law ("PSL"). The exemption was not absolute, but in practice, the LIPA Act allowed LIPA to operate with virtually no oversight from DPS or the PSC. This stands in stark contrast to DPS's extensive oversight authority of IOUs, which includes the authority to set rates and terms of service.

The LRA gave DPS statutorily mandated oversight of LIPA and its service provider. Specifically, the LRA established an office within DPS to review and make recommendations regarding operations and terms and conditions of service of, and rates and budgets established by LIPA and its service provider. This "review and recommendation" authority was provided to ensure LIPA and PSEG LI provide safe and adequate transmission and distribution service at rates set at the lowest level consistent with sound fiscal operating practices. DPS operates a Long Island field office to provide oversight for LIPA and PSEG LI which is funded by LIPA. However, because LIPA is a not-for-profit state authority with an independent board, recommendations made by DPS

are advisory. Nevertheless, according to LIPA's CEO, to date the LIPA Board has accepted every recommendation made by DPS. The Public Authorities Law also requires the Board to implement, or cause PSEG LI to implement, certain DPS recommendations absent a finding of inconsistency. Additionally, LIPA and PSEG LI must cooperate in the undertaking of DPS management and operations audits. LIPA's Board must implement or cause PSEG LI to implement audit findings and recommendations unless it makes a preliminary determination that an audit finding or recommendation is inconsistent with LIPA's "sound fiscal operating practices, any existing contractual or operating obligation, or the provision for safe and adequate service."

Other agencies also have some degree of oversight over LIPA. The Public Authorities Control Board reviews and approves LIPA's applications for financing and construction projects. In addition, the LIPA Act requires LIPA's contracts to be subject to "state agency" procurement rules in the same manner as State agencies that rely upon budget appropriations, which results in oversight by the New York Office of the Attorney General ("OAG") and "pre-audit" of contracts by the Office of State Comptroller ("OSC").

Previously Considered Options to Transform LIPA

The failure of LIPA and its service providers to provide customers with satisfactory electric service has led to multiple prior evaluations, including some by LIPA itself, of alternative organizational structures for LIPA operations and management. These alternative structures, or variations of them, have been considered by the Brattle Group (2011), Lazard Freres & Co. (2012), the New York Power Authority ("NYPA") (2013), LIPA (2020 and 2021) and Lazard (2023). In the course of its work, the Commission examined these prior evaluations and recognized that each presented certain advantages and disadvantages.

Alternative 1 – Full Municipalization: This option involves transition of LIPA to a full public power utility, and elimination of the third-party service provider model.

Alternative 2 – Privatization: This option would result in the sale of LIPA's assets and business to a private enterprise that would become the electric utility for LIPA's service area. The new electric utility would be subject to full regulation by the DPS and PSC.

Alternative 3 – Outsource to a New Service Provider: This would involve a process whereby interested utilities could submit proposals to operate LIPA's T&D System, essentially continuing the same kind of arrangement as currently performed by PSEG LI.

Alternative 4 – Revise and Renegotiate Existing 2nd A&R OSA: This would result in an extension of the current Second A&R OSA, which currently expires on December 31, 2025.

The Brattle Group believed full municipalization presented too many logistical challenges at that time, and privatization was inappropriate because of significant cost concerns, including an increase in rates. The Brattle Group preferred a modified municipalization approach whereby a dedicated "ServCo" subsidiary of LIPA would be created to provide a balance between logistical challenges and LIPA's ability to retain management of key functions. Lazard was the only entity that favored the privatization option, despite the increased cost of private capital and the fact that privatization would make LIPA ineligible for federal disaster recovery and storm hardening grants. Outsourcing to a new service provider and renegotiation with the current service provider are potentially viable options, but each results in payment of ratepayer dollars to an entity that is seeking to make a profit, and would also require significant negotiation to ensure LIPA objectives were met. Moreover, the service provider option has often failed due to the third-party's lack of transparency and accountability.

As described in detail in Part 5 of this report, having considered these prior evaluations, the Commission confirms that the Legislature's decision to transition LIPA to a true public power utility, i.e., full municipalization, represents the best alternative.

What does LIPA as a Fully Public Power Utility Mean?

In considering what is necessary to transform LIPA into a true public power utility, the Legislature required the Commission to consider specific factors. Although open questions regarding several of the factors remain, such as the specific method of governance of LIPA (e.g., the method of appointment of a board), the Commission finds that a transition to public power will result in an overall positive benefit to LIPA's customers as compared to other alternatives. Most of the required factors present a net benefit to LIPA's customers, while others are neutral in that transition to a public utility structure would involve no difference than any other alternative. Most

significantly, a public power transition will lead to important financial benefits, including lower rates, for LIPA customers. The impact of a transition to public power on each of the required factors is set forth below.

The method of governance of the public authority. The most significant element for LIPA's transition to a true public power model is the determination of the appropriate method of governance. Governance is focused on utility leadership, with an initial determination of whether LIPA's board should be elected, appointed or involve a hybrid model (both appointed and elected), along with the role a citizens' advisory committee (or potentially an energy observatory) would play. Selection of the appropriate governance structure ensures the best utility decisions and outcomes, and the exercise of good leadership creates and drives effective execution of a well-developed strategic plan.

Fundamentally, throughout the public power industry, boards are independent and have ultimate authority for decisions affecting the utility. The ratepayers and communities served by the public power utility must know and understand that the board has ultimate authority, or there will be confusion and frustration as to where public input can be most impactful. When there are multiple layers of authority, the decision-making process can be drawn out to the detriment of the utility and the ratepayers it serves. The requirement of independence also means that the vast majority of public power utilities are not subject to regulation by a public utility commission.

The number of board members varies at other public power utilities, but throughout the industry, board sizes are intended to be large enough to represent the geographical footprint of the service area, but small enough to allow for interaction and effective decision making. For the reasons more fully set forth in Part 5.E and F of this Interim Report, the Commission believes an appointed board will provide LIPA with the best opportunity to ensure the continued jurisdiction of the National Labor Relations Board ("NLRB"), to retain the current ServCo workforce and to maintain their existing terms and conditions of employment. The details of how an appointed LIPA Board would be structured remains an open issue still to be determined (e.g., who has appointment authority, the term of the appointment, etc.).

Improved transparency, accountability, and public involvement. Transition to a full public power model requires consideration of a more responsive, accountable, and

transparent model. Local governance, accountability and direction help ensure that a public power utility can satisfy ratepayer objectives. The best governance models reflect the local characteristics, political climate, and customer base. To achieve the best results for the utility and its customers, board members must understand their responsibilities, stay current on industry challenges, and serve as ambassadors, who both inform and listen to the people in their service areas.

Improved reliability of the system and improved storm response. Reliability and resiliency of electric power systems are key considerations, and while related, they have important distinctions. Reliability is the ability of the system and its components to withstand instability and failures during routine or reasonably expected events. Resiliency is the ability of the system and its components to recover following non-routine, high-impact disruptions such as hurricanes, tropical storms, and ice storms. The likelihood of storms and major weather-related events create challenges for LIPA because of the significant coastal exposure of its service area. In a public power model, a local community has the opportunity to communicate how it prefers to invest in programs and tools such as state-of-art technology, system hardening, and undergrounding practices to achieve local objectives.

Currently, LIPA's T&D System has very good reliability, but Long Island has experienced many storm-related outages over the past two decades. As a result, customers and stakeholders need an improved level of system resiliency. When not considering major events such as storms, public power utilities experience less outage time than IOUs and that outage time is relatively consistent in coastal and non-coastal areas. When including major events and storms, the reliability distinction between public power and IOUs is less clear. A public LIPA, supported by ServCo employees with years of experience in responding to major storm events, is well positioned to determine how best to improve reliability and resiliency of its T&D System.

Another important consideration with respect to reliability and storm response relates to the availability of financial assistance to utilities. LIPA, as a public authority, has received more than $1 billion in grants for storm repairs and additional hazard mitigation in the last 10 years. This financial assistance is not available to an IOU, and is therefore a significant

benefit of a public power structure. In addition, public power offers a lower cost option for financing large capital investments compared to IOU models.

The impact on electric rates. A transition to a fully integrated public power model will have cost impacts and should result in lower rates for LIPA customers. Based on current proforma costs, LIPA pays PSEG LI on an annual basis approximately $121 million ($78 million management fee; $24 million IT/affiliate services; $19 million energy management fee). LIPA has determined that these costs could potentially be reduced to $43 million annually. A more conservative estimate considered in this Interim Report (see Part 5.A) results in a less significant savings impact than projected by LIPA, but in either case, the fully integrated public power model is sufficiently financially attractive so that even if LIPA's savings estimates are optimistic, it will still result in a positive net present value proposition or lower long-term costs for LIPA ratepayers.

As described in Part 5.A of this Interim Report, the financial implications associated with transition to a fully integrated public power model are as follows:

- Short term annual savings estimates = $48 to $78 million.
- One-time transition cost estimates = $16 to $59 million.
- The range of payback (i.e., the length of time to overcome the one-time transition costs) from best to worst case scenario is 3-16 months.

These are near term assessments of how transition of LIPA to a true public power utility will impact LIPA's current costs and revenue requirements. Over the long term, favorable rates should also result from operational excellence, adherence to industry proven models and the consistent implementation of reliability and public power industry best practices. As these are achieved, cost efficiency and enhanced performance will occur.

While DPS reviews all rate changes instituted by LIPA, LIPA's board has the final authority for all changes up to a 2.5% increase. DPS must review and make a recommendation regarding any proposed change over 2.5%, which must be implemented by the LIPA Board unless it makes a determination of inconsistency. Operationally, the transition to a fully integrated public power model should not materially impact the methodologies and best practices that are currently utilized in the LIPA ratemaking process.

The oversight role of the DPS and the PSC over LIPA's operation. DPS and PSC have extensive regulatory authority over IOUs in New York State, but the LIPA Act broadly exempted LIPA from PSC jurisdiction, with only certain limited exceptions. The LRA created a new DPS Long Island office ("DPS LI") and granted DPS "review and recommendation" authority over LIPA, rather than the more traditional regulatory authority DPS exercises over IOUs. In large measure, LIPA's exemption from PSC jurisdiction is attributable to the LIPA Act requirement that the State will not limit or alter the rights vested in LIPA by the LIPA Act until LIPA's bond obligations are fully met and discharged and/or such contracts are fully performed on the part of LIPA (the "State Pledge"). The State Pledge is set forth in LIPA's bond resolution and constitutes part of LIPA's contract with its bond and noteholders. The rating agencies and other credit market participants have, in the past, cited potential increased PSC oversight of LIPA as a significant credit concern. Public power authorities are rarely subject to regulatory oversight by a public utility commission. The potential that increased regulation could impact LIPA's cost of borrowing, and correspondingly, adversely impact the ratepayers, means there should be no increase in DPS's level of regulation of LIPA as it transitions to a public power model.

The impact on existing bonded indebtedness. LIPA financed the cost of acquiring the T&D System from LILCO with general revenue bonds. LIPA funds ongoing capital improvements by issuing debt, except where grants or excess cash flow provide the ability to cash fund such expenditures. All of LIPA's bonds are secured by a trust, as pledged under LIPA's bond resolutions, which consists principally of the revenues generated by the operation of the T&D System. Part B of the LRA (the "Securitization Law") authorized the issuance of restructuring bonds by the Utility Debt Securitization Agency ("UDSA") pursuant to financing orders issued by LIPA, to allow LIPA to retire a portion of its outstanding indebtedness and provide a savings to LIPA customers on a net present value basis. All of UDSA's bonds are secured by irrevocable, non-by-passable consumption-based restructuring charges billed to all LIPA customers. Legislation passed in 2021 increased UDSA's statutory borrowing ceiling to $8 billion, inclusive of bonds already issued.

As described above, as long as the State Pledge is satisfied, meaning that the State does not limit or alter the rights vested in LIPA by the LIPA Act until LIPA's bond obligations are fully met and discharged and/or such contracts are fully performed on the part of LIPA,

there would be no impact on existing indebtedness by virtue of LIPA's transition to a true public power authority.

Improved long term energy planning. Every three to five years LIPA prepares an Integrated Resource Plan ("IRP") to study the need for future supply and demand-side resources for electric power in its service area. LIPA is presently conducting the 2022 IRP to inform decisions on power generation and transmission infrastructure improvements and to help ensure compliance with New York's CLCPA requirements. The IRP will focus on the period of 2022 through 2040, with special focus on actions between 2022 and 2030 related to LIPA's ability to meet the reliability and cost-effectiveness needs of its customers by eliminating dependence on fossil-fueled generation, integrating substantial amounts of renewable energy resources, identifying the impacts of beneficial electrification, and identifying benefits for disadvantaged communities. The IRP, which is being prepared by PSEG LI as agent for LIPA, is expected to be complete during the first quarter of 2023.

Transition to a fully public power model will eliminate LIPA's reliance on PSEG LI for completion of the IRP and any other long-term energy planning studies. LIPA itself, rather than PSEG LI, will be responsible for preparation of the IRP, including how future energy planning will integrate clean energy sources reliably and cost-effectively. LIPA's performance of its own energy planning functions will improve transparency and accountability and will likely result in a more cost-effective planning process for LIPA's ratepayers. For the 2022 IRP, both LIPA and PSEG LI hired third-party consultants and LIPA's staff also oversees the IRP progress. Multiple layers of oversight may unnecessarily add to IRP development costs. Under the public power model, LIPA will be solely responsible for implementation of the goals identified in the 2022 IRP, which will further increase transparency and accountability. Lastly, under a fully public power model, LIPA will be better able to engage the community in the IRP and long-term energy planning processes.

Increased reliance on renewable energy sources to produce electricity and compliance with the goals of the CLCPA. The CLCPA is among the most aggressive climate laws in the nation, and it contains important requirements to ensure equity, electrical system reliability, and a just transition from a fossil fuel economy to a clean energy economy. Importantly, regardless of whether LIPA transitions to public power, it

will be required to comply with CLCPA objectives. Accordingly, the advantage that LIPA has over an IOU in terms of CLCPA compliance -- a lower cost of capital -- remains if LIPA transitions to public power.

As recognized in the Climate Action Council's Scoping Plan, energy system providers must continually reassess infrastructure vulnerabilities in their service areas and determine how best to implement resilience initiatives to mitigate potential disruptions due to climate change. LIPA will need to construct and/or acquire 3,000-4,000 megawatts ("MW") of renewable energy by 2030. While renewable energy credits may be available for CLCPA compliance in the near term, LIPA will ultimately need firm renewable energy resources. Additionally, LIPA must meet its share of the New York State battery storage goal for 2025 and 2030. The capital expenditures to acquire this amount of renewable energy will be significant, but this investment will be required regardless of whether LIPA transitions to a fully integrated public power utility. Transition to a fully public power model will allow LIPA to evaluate renewable energy sources, including battery storage, internally while increasing transparency and community involvement. A locally appointed or elected board can effectively represent the needs of the Long Island community in relation to LIPA's increased reliance on renewable energy sources.

Taxation and payments in lieu of taxes ("PILOTs"). Because LIPA's tax-related expenses are imposed either by statute or by existing contractual obligations, transition of LIPA to a full public power model would have a minimal impact on local taxation and PILOTs.

The special needs of communities that are or have been impacted by the siting of power generating facilities. LIPA's transition to a public power model will increase local participation and public involvement in LIPA's policies and objectives. Given that the Climate Action Council devoted significant attention to the impact of energy and other facilities on disadvantaged communities, transition to a public power model will likely improve upon the connection LIPA must reestablish with communities in its service area. Local accountability and direction is important to ensure that a public power utility can more consistently satisfy ratepayer objectives, including in disadvantaged communities. Whether LIPA's Board is elected or appointed, LIPA's future governance model should ensure that board members represent all areas within LIPA's service territory, including

disadvantaged communities. Board members with local ties can more effectively advocate for their communities and ensure that historically disadvantaged or marginalized communities are not disproportionately affected by power generation facilities or other aspects of LIPA's T&D System.

Other matters relevant to the establishment of a public power model for the operation of LIPA. Among the most significant matters relating to the transition of LIPA to a public power utility is the impact on the existing ServCo workforce. ServCo, as an entity dedicated to serve LIPA customers, functions as in-house long-term dedicated employees. The current operating agreement with PSEG LI provides that at expiration PSEG LI will transfer 100% of the membership interests in ServCo to LIPA or its designee, at no cost, free of all liens and encumbrances, and shall also deliver to LIPA or its designee all books and records of ServCo. Many of these employees have transitioned between different operating service agreements prior to PSEG. A local long-term workforce serving the community is most common and ideal for a public power model.

There are three possible models to transition ServCo employees away from PSEG LI and place them under LIPA control while maintaining their employment status, wages, benefits, pensions and other terms of employment and preserving the relationship with IBEW Local 1049. Selection of the most appropriate model remains an open issue. Once the future ServCo structure is identified and secured through legislation, the transition requires collaboration with IBEW Local 1049 and PSEG LI. The prior ServCo transitions can provide a basic roadmap with continued emphasis on retaining the workforce and maintaining consistent terms of employment.

The powers LIPA requires to more effectively operate the utility. Additional powers, as expressed through legislation, that LIPA will require to transition as a true public power authority are described in the following section of this Executive Summary.

Legislative Authority Necessary

While the LIPA Act envisioned LIPA would operate as a public utility, and LIPA has broad statutory authority to implement its obligations, certain limitations to its existing authority must be addressed by new legislation to enable LIPA to effectively transition to a true public power utility.

- LIPA's staffing authority is not sufficient because the LRA requires LIPA to function with staffing kept at levels only necessary to ensure it can meet its core obligations, including oversight of PSEG LI. This requirement is the reason LIPA has fewer than 100 employees, but the ability to hire and retain staff in roles currently filled by PSEG LI is vital to its future success as a true public power utility.

- Currently, LIPA must comply with the New York State Finance Law and obtain approval from the OSC for contracts in excess of $50,000. Such contracts are audited and approved by both the OSC and the OAG before becoming effective. PSEG LI, while an agent of LIPA, is not subject to the requirement that contracts in excess of $50,000 be approved by the OSC and OAG. By functioning as a true public power utility, with responsibility for service obligations currently performed by PSEG LI, LIPA will need flexibility to enter contracts, such as power purchase agreements, which will require time-sensitive action and will have values exceeding $50,000. Accordingly, amendment of the existing approval requirement is necessary.

- Under a public power model, the day-to-day responsibilities of the LIPA Board of Trustees ("LIPA Board" or "Board") are expected to increase. The roles and function of the Board must be revised to account for compliance with the roles and responsibilities of a board of a public authority in accordance with Article 9, Title 2 of the Public Authorities Law.

- To protect the interests of the ServCo workforce, legislation will be necessary depending on how ServCo employees are transitioned to LIPA. Legislation is necessary to clarify the terms and conditions of LIPA subsidiary employees' employment, however, the LIPA Act would need to be amended to ideally provide that ServCo employees are not subject to the Taylor Law, do not acquire civil service status, are not members of the New York State and Local Employees Retirement System, and that they remain subject to the jurisdiction of the National Labor Relations Board. Similarly, legislative approval may be needed to ensure the ServCo retirement plans could be transitioned.

- Amendments to the Public Authorities Law to change revisions made in the LIPA Act and the LRA would be necessary to address provisions that currently contemplate a third-party service provider model.

This Interim Report is intended to fulfill the Commission's directive under Section 83-N of the New York State Legislative Law and provide the Legislature with a draft report outlining specific actions, legislation and a timeline necessary to restructure the LIPA into a true publicly owned power authority.

PART 1 – HISTORY OF LIPA AND THE BIFURCATED MANAGEMENT SYSTEM THAT CONTINUES TO FAIL THE CUSTOMERS OF ITS SERVICE AREA

A. LILCO & Shoreham

In 1911, several smaller local utility companies merged to form the Long Island Lighting Company with the objective of supplying better and less-expensive service to its customers.[1] Originally, LILCO served portions of Suffolk County, but through acquisitions expanded its service area into Nassau County and portions of Queens County and Brooklyn.[2]

In the mid-1960s, LILCO proposed the construction of the Shoreham Nuclear Plant ("Shoreham").[3] Original plans envisioned a 540-megawatt facility to be constructed for approximately $124 million[4] in the Town of Brookhaven in Suffolk County.[5] However, after modifications, Shoreham was constructed from 1973 to 1983 as an 809-megawatt nuclear power plant[6] at a total cost of approximately $4 billion.[7]

Opposition to Shoreham increased as the plant was being constructed.[8] LILCO's significant investment in Shoreham impacted rates and its customers.[9] The excessive cost adversely affected economic growth in LILCO's service area, and also directly impacted LILCO and its shareholders, causing the company to suspend dividends on its common and preferred stock. Shoreham threatened LILCO's continued economic viability.[10]

The 1979 partial meltdown of a reactor at the Three Mile Island nuclear power plant near Harrisburg, Pennsylvania[11] heightened public concern.[12] During this time, LILCO was engaged in lengthy discussions with New York State and Suffolk County officials regarding emergency evacuation plans in the event of a nuclear accident.[13] Officials were concerned that safe evacuation from Long Island might be impossible and lead to a catastrophe in the event of an accident similar to Three Mile Island.[14] These discussions gave rise to further concerns about Shoreham's ability to meet the needs of LILCO customers. Ultimately, after ten years of construction and huge cost overruns, Shoreham was never placed into commercial operation.[15]

Post-construction, monthly interest charges for Shoreham debt totaled approximately $40 million per month.[16] LILCO considered several alternatives to alleviate these costs, including operating, mothballing, abandoning or selling Shoreham.[17] However, LILCO estimated that operation would require approximately $25 million in annual costs to maintain Shoreham's compliance with

regulations.[18] Mothballing would require storage, security and parts maintenance expenses, and while these would be smaller, LILCO would still be liable for interest payments related to its construction bonds.[19] Ultimately, Shoreham was decommissioned in the 1990s at a cost of several million dollars.[20] In sum, LILCO's investment in generation, transmission and distribution assets totaled approximately $7 billion in debt.[21] As a result of increasing costs associated with Shoreham, LILCO was forced to raise rates which caused low customer satisfaction and concerns about LILCO's ability to deliver reliable, affordable power. [22]

B. Long Island Power Act: The Creation of LIPA

On July 24, 1986, while LILCO was still working to obtain approvals for Shoreham, Governor Mario M. Cuomo signed the LIPA Act, which added Title 1-A to Public Authorities Law Article 5.[23] The LIPA Act, which created the Long Island Power Authority, was passed in response to the escalating and excessive electricity costs in the LILCO service area, which by this time included Suffolk and Nassau Counties and the Rockaways.[24] The Legislature believed substantial rate increases would continue if Shoreham was placed in service.[25] The Legislature declared that "[f]or all the above reasons, a situation threatening the economy, health and safety, exists in the service area."[26] The Legislature concluded that dealing with Shoreham and rate increases was a matter of state concern[27] and that matters of state would be best dealt with by a publicly-owned power authority rather than an investor-owned utility.[28]

As a result, LIPA was created as a corporate municipal instrumentality of the State, exercising essential governmental and public powers.[29] The Legislature declared that replacement of LILCO with LIPA would result in an improved, more reliable system for electric energy [30] because LIPA was conceived "primarily for the benefit of the people of the state of New York, for the improvement of their health, welfare and prosperity, and [was] a public purpose[.]"[31] It was not created for the purpose of making a profit.[32] The Legislature believed LIPA would provide:

> safe and adequate service at rates which will be lower than the rates which would otherwise result and will facilitate the shifting of investment into more beneficial energy demand/energy supply management alternatives, realizing savings for the ratepayers and taxpayers in the service area and otherwise restoring the confidence and protecting the interests of ratepayers and the economy in the service area.[33]

LIPA was granted all powers necessary or convenient to carry out the purposes of the LIPA Act, including rulemaking authority subject to the state administrative procedures act. Among others,

the scope of LIPA's powers included the ability to (a) appoint officers, agents and employees, (b) fix employees' compensation, (c) enter agreements necessary to exercise its powers and to operate its facilities (including agreements for the purchase of power), (d) create subsidiaries to carry out the purposes of the Public Authorities Law, and I make inquiries, investigations, surveys or studies necessary to effectively carry out its obligations. [34]

LIPA also was granted authority to acquire real or personal property through purchase, grant, bequest, or by the exercise of eminent domain,[35] and the authority to transfer property for an amount deemed to be in the best interest of the ratepayers.[36] LIPA was authorized to create a security interest in any of its assets, to issue bonds, notes or other obligations, and to lend money, invest funds, and hold real and personal property as security for payment.[37] LIPA was authorized to transfer assets to private utilities or municipal gas or electric agencies established pursuant to article 14-A of the General Municipal Law.[38]

The LIPA Act empowered LIPA to acquire the securities or assets of LILCO through a purchase or by eminent domain, whichever was the least expensive for ratepayers in the service area.[39] The Legislature expressly found that purchase or exercise of eminent domain by LIPA was the most appropriate means of dealing with the "emergency" involving the economy, health, and safety of the public[40] and that the superior use of the LILCO property was use by LIPA.[41]

Before it could exercise eminent domain, LIPA was required to negotiate to acquire LILCO's assets upon terms that LIPA determined were equal to or less than rates which would result if LILCO were to continue in operation.[42] LIPA was required to pay compensation that would be just to the ratepayers in the service area.[43] In February 1989, LIPA, LILCO, and New York State entered into a Settlement Agreement[44] that established the framework for transferring Shoreham to LIPA, and LIPA's subsequent decommissioning of the plant.[45] LILCO agreed to never operate Shoreham and to transfer its assets to LIPA.[46] Both agreements were approved by LILCO, LIPA and the PSC.[47] By October 1994, all radioactive material had been removed from the plant.[48]

With respect to electricity, the LIPA Act authorized LIPA to provide and maintain generating, transmission, and resource recovery waste to energy facilities.[49] LIPA could "acquire, construct, improve, rehabilitate, maintain and operate" generating, transmission, hydroelectric, energy storage and other facilities that it deemed necessary to maintain an adequate and dependable

power supply.[50] Notably, however, LIPA was prohibited from constructing or operating a nuclear power plant within its service area.[51]

LIPA was authorized to "utilize to the fullest extent practicable, all economical means of conservation, and technologies that rely on renewable energy resources, cogeneration and improvements in energy efficiency which will benefit the interests of the ratepayers of the service area."[52] LIPA would be exempt from taxation, but was required to enter into PILOT agreements with municipalities and school districts.[53]

The LIPA Act also governed LIPA's relationship with the Public Service Commission and the Department of Public Service. According to the LIPA Act, rates, services and practices relating to electricity generated by facilities owned or operated by LIPA were not subject to the Public Service Law ("PSL") or to regulation by the PSC. Limited exceptions to the requirement of PSL non-applicability applied in the event LIPA proposed to site facilities subject to Article VII or VIII of the PSL (e.g., construction of a major utility transmission facility or siting of a major steam generating facility).[54]

C. The LIPA – KeySpan Era: 1998 – 2013

In May 1998, LIPA acquired LILCO's T&D system and became the retail supplier of electricity in its service area. The acquisition was structured such that the cost would be borne by Long Island ratepayers over time.[55] KeySpan Corporation ("KeySpan") acquired LILCO's natural gas distribution and electrical generation assets. Although LIPA owned the transmission and distribution system ("T&D System"), it entered into a Management Service Agreement ("MSA") with KeySpan in 1998. The MSA represented the initial third-party service provider for the operation of LIPA's assets. Under the 1998 MSA, KeySpan provided operation, maintenance and construction, and administrative services related to LIPA's T&D system. The 1998 MSA required LIPA to reimburse KeySpan for budgeted costs as well as pay KeySpan an earned management fee based on certain performance and cost-based incentives. In 2006, LIPA and KeySpan entered into an amended and restated MSA which extended the MSA term through 2013 and changed KeySpan's compensation structure. In 2007, KeySpan was acquired by National Grid, which continued to operate and provide services as outlined in the 2006 MSA, as amended, to facilitate National Grid's transition.

1. Challenges Under the MSA with KeySpan and National Grid

The initial reaction to LIPA's takeover of LILCO's T&D system was largely positive, as LIPA immediately cut electric rates by 20%. However, despite early optimism, issues with LIPA and its service provider, KeySpan, quickly emerged. In 1999, and for most summers thereafter, heat waves tested the capacity of LIPA's system with many customers suffering outages. An accounting error by KeySpan triggered a LIPA audit, which revealed KeySpan overcharged LIPA by more than $44 million in 2002. There were also conflicts between LIPA and KeySpan over which entity was responsible for certain T&D System management costs.

In 2004, LIPA initiated a study examining options for its future, including selling its assets to a private company, expanding to become a true public power provider, or remaining with the existing third-party service provider arrangement.56 At the time, the privatization option was startling, because Long Island residents vividly remembered the challenges faced by LILCO.[57] While LIPA debated its future, electric rates continued to rise, along with customer dissatisfaction.

2. LIPA's Response to Hurricane Earl

Hurricane Earl was predicted to hit Long Island in September 2010, but ultimately never made landfall and caused only negligible damage. Despite minimal storm impacts, LIPA documented over $33 million of storm response costs. The Office of the New York State Comptroller ("OSC") issued a critique of LIPA and National Grid's response to Hurricane Earl[58] and criticized LIPA's overall storm preparation expenditures. The report also questioned certain expenses billed to LIPA by National Grid.

In response to the OSC's findings and public opposition to rates and the service provider agreement with National Grid, LIPA began exploring alternative organizational structures for its operations and management. LIPA engaged the Brattle Group in 2010 to examine three potential options to replace its expiring MSA with National Grid, including (1) full municipalization under LIPA management; (2) partial municipalization with continued outsourcing of functions to a dedicated "ServCo" subsidiary; and (3) privatization whereby LIPA's assets would be sold to an IOU.[59] The Brattle Group concluded that full municipalization would pose significant implementation risks.[60]

3. LIPA's Response to Hurricane Irene

In August 2011, Hurricane Irene impacted Long Island with severe winds and flooding and left 523,000 LIPA customers without power. Due to the severity of the storm, and LIPA and National Grid's operational failures, power was not restored until over a week after the storm.[61] Pursuant to a Memorandum of Understanding ("MOU") between LIPA and DPS, DPS investigated LIPA's response to Hurricane Irene and found several deficiencies.[62] First, DPS found that LIPA and National Grid failed to effectively communicate with public officials and customers, in part because the call center could not handle the volume of incoming calls.[63] LIPA and National Grid also failed to provide timely estimated restoration times to customers due to shortcomings in National Grid's outage management system.[64] DPS noted that a previous study performed by Navigant Consulting in 2006 recommended replacement of the outage management system, but that National Grid had not implemented the recommendation.[65] National Grid's right of way management and tree trimming practices also contributed to the outages experienced during Hurricane Irene.[66] DPS concluded that LIPA and National Grid failed to implement all lessons learned from past storm experiences.[67] DPS acknowledged that LIPA's third-party management structure was unique and noted that the overall effectiveness of the management structure was beyond the scope of the investigation contemplated under the MOU, but recommended LIPA thoroughly examine the management structure so as not to impede the goals identified in the report. Similarly, then-Governor Andrew M. Cuomo suggested LIPA consider replacing its service provider.[68]

4. LIPA's Continued Failures and New Service Provider

The OSC issued a report on LIPA's finances for fiscal year 2011[69] which focused, in part, on LIPA's active procurement contracts, employee compensation and electric service rates.[70] The report noted that as of 2011, LIPA ratepayers paid approximately $463 more per year on average than in 2001,[71] and the average retail price for residential customers had risen 6.2 cents per kWh since 2001.[72] The report concluded that while more than a quarter-century had passed since LIPA's creation, Long Island's electric rates continued to rise, and customer satisfaction was the lowest in the nation among LIPA's peers.[73] Accordingly, the report found ratepayers were justified in questioning not only LIPA's rate setting practices, but also its operations, billing practices, contractual commitments, debt obligations, and other management practices and processes, including LIPA's service provider arrangement with National Grid."[74]

LIPA chose not to renew its MSA with National Grid. In 2011, prior to the expiration of the MSA, LIPA signed both an Operations Services Agreement ("OSA") and Transition Services Agreement ("TSA") with PSEG LI. PSEG LI was chosen as LIPA's service provider through a State-administered competitive bidding process and the OSA and TSA were approved by the OSC.

5. LIPA's Response to Superstorm Sandy and the Moreland Commission Reports

In October 2012, "Superstorm" Sandy caused severe and extensive damage across Long Island and the greater tri-state area.[75] At the peak of the storm, 90% of LIPA's 1.1 million customers were without power.[76] In response, then-Governor Andrew M. Cuomo established the Moreland Commission on Utility Storm Preparation and Response ("Moreland Commission"). The Moreland Commission was tasked with studying the responses of New York's power utility companies to major storms impacting New York State and, more broadly, with examining regulatory oversight of the State's energy utilities and providing recommendations for reforming and modernizing the oversight, regulation and management of New York's power delivery services.[77] The Moreland Commission prepared an Interim Report, released on January 7, 2013, and a Final Report, released on June 22, 2013.[78] These reports each analyzed different issues concerning LIPA – the Interim Report extensively detailed the Moreland Commission's findings concerning the LIPA – National Grid structure and its ability to respond to storm events, whereas the Final Report's LIPA findings related almost exclusively to non-storm-related management concerns.[79]

The Moreland Commission observed numerous inefficiencies in how LIPA and National Grid addressed emergency planning, preparedness, and storm response in LIPA's service area.[80] The Moreland Commission identified structural shortcomings, in part due to the bifurcated responsibilities between LIPA and National Grid.[81] It found the bifurcated structure resulted in "mismanagement, a lack of appropriate investment in infrastructure, a lack of accountability to customers and excessive rates."[82] The Moreland Commission recommended "immediate consideration" of alternative organizational structures, including (1) privatization through the sale of LIPA assets to a qualified IOU; (2) full public ownership and operation of the T&D System by LIPA; and (3) full public ownership and operation of the T&D System by NYPA.[83] Ultimately, the Moreland Commission recommended the privatization option, noting potential savings in synergy benefits and increased oversight by the PSC.[84] At the same time, it acknowledged that debt service costs, rate affordability, need for investor equity, and increased tax liability posed challenges for the privatization option.[85]

The public ownership options examined were similar in concept, involving termination of the service provider and operation of the system and public employment of all staff currently providing electrical service.[86] Under the LIPA and NYPA options, the respective public entity would assume direct responsibility and accountability over the quality of service.[87] Although the NYPA option offered the potential benefit of bringing oversight under NYPA's successful professional energy industry and financial management team, NYPA's lack of expertise in retail utility operations or retail customer service was identified as a significant challenge.[88] The Moreland Commission also noted that NYPA's management of a full public power effort could divert attention away from NYPA's historical mission.[89]

With respect to the LIPA option, the Moreland Commission was concerned about the loss of confidence in LIPA following its storm response failures.[90] The Moreland Commission further questioned LIPA's ability to recruit qualified executives, and the possible ramifications of the potential addition of over 2,000 employees to the State employee benefit system.[91]

Due to the extent of LIPA's failings under "grey sky" conditions, the Moreland Commission determined that it was necessary to investigate the managerial activity occurring at LIPA on typical "blue sky" days.[92] The Moreland Commission uncovered issues not previously reviewed pertaining to potential improprieties in LIPA's relationships with outside consultants and irregularities in LIPA's financial accounting practices, including its relationship with Navigant Consulting, Inc..[93] The Moreland Commission also identified concerns regarding the accuracy and reliability of LIPA's financial reporting,[94] including delivery charge increases, and LIPA's debt repayment practices.[95]

D. The LIPA Reform Act and LIPA – PSEG LI Era: 2013 – Present

1. LIPA Reform Act

The LRA was enacted in 2013, prior to the service provider transition from National Grid to PSEG LI. The LRA was drafted in response to LIPA and National Grid's previous failures related to storm response and customer service, as detailed in the Moreland Commission reports. The goal of the LRA was to "revamp LIPA's role with respect to the delivery of electricity and its relationship to customers in the service area, and bring much-needed accountability and transparency to all matters related to electrical service in the service area."[96] The Assembly memorandum in support stated this could be accomplished by:

- authorizing reformulation of the relationship between LIPA and its service provider so the service provider took control of utility operation and LIPA's focus was limited to meeting its statutory, fiduciary, financial and related obligations;
- creating a new Long Island-based office of the DPS to oversee the core utility operations of the service provider; and
- authorizing refinancing of a significant portion of LIPA's outstanding debt at lower interest rates and capping or eliminating certain categories of PILOTS, with the savings passed on to ratepayers.[97]

The LRA also facilitated creation of the Utility Debt Securitization Authority ("UDSA"), a special purpose entity authorized to issue restricting bonds to refinance a significant portion of LIPA's existing debt.[98] Other cost-saving measures in the LRA included the elimination of the state franchise tax on LIPA's gross receipts, which had required LIPA to make annual tax payments of approximately $26 million[99] and which had not been imposed on IOUs since 2000.[100] Additionally, the LRA placed a statutory limit on increases to LIPA's PILOTs, capping such increases to 2% per year.[101] However, the LRA also did away with OSC review of the service provider agreement.

2. PSEG LI

On January 1, 2014, following expiration of the 2006 MSA between LIPA and National Grid, PSEG LI assumed its role as LIPA's service provider. Immediately prior to the transition, on December 31, 2013, LIPA and PSEG LI signed an Amended and Restated Operations Services Agreement ("First A&R OSA"). The First A&R OSA modified the service provider arrangement in response to the LRA. It also gave PSEG LI "autonomy and responsibility to operate and maintain [LIPA's] T&D System and establish the related plans, policies, procedures and programs."

LIPA's relationship with PSEG LI faced immediate scrutiny. A 2015 Comptroller's report[102] identified errors in LIPA's reporting of procurement contracts for fiscal 2014, and also indicated that 2014 was "a major year of transition" for LIPA regarding staffing and employment.[103] Pursuant to the LRA, LIPA reduced its full-time and part-time general and administrative employees from 100 to 40, and after doing so, LIPA's staffing information indicated that at least 50% received an annualized salary of $100,000 or more, with 38% receiving a salary exceeding $150,000.[104] The 2015 report also analyzed the First A&R OSA,[105] pointing out that because Comptroller review of the renegotiated OSA was eliminated by the LRA, many protections contained in the original OSA approved by the Comptroller's Office were modified or eliminated.[106] It was also critical of budgeting, oversight and cost controls as compared to the prior agreement, in part because the

First A&R OSA provided increased autonomy to PSEG LI. Storm costs were again identified as an area of concern, as was the increased compensation arrangement for PSEG beginning in 2016, combined with a reduced number of performance metrics used to evaluate PSEG and determine its eligibility for incentive payments from 27 to 21.[107] The 2015 report also was critical of aspects of LIPA's debt restructuring and the impact on LIPA ratepayers, and what the Comptroller viewed as significant limitations imposed on DPS LI's authority.[108] While the report noted that DPS LI appeared to make an effort to provide information to LIPA customers that had not been previously available,[109] it questioned whether DPS LI could adequately protect ratepayers and control rates given its advisory role and lack of enforcement powers.[110] Finally, the report expressed concern that the LIPA Board was not sufficiently prioritizing goals relating to cost reductions for ratepayers or improvements in reliability and responsiveness.[111]

3. Tropical Storm Isaias Reports

The arrival of Tropical Storm Isaias on August 4, 2020 caused approximately 1.5 million customers in New York, and 646,000 LIPA customers, to experience power outages.[112] Both DPS and LIPA conducted investigations concerning PSEG LI's storm response, and LIPA issued a 30-Day Report, 90-Day Report, and December 2020 Phase I and April 2021 Phase II Options Analysis Reports for the Management of LIPA Assets.[113]

The DPS investigation found that PSEG LI:

- failed to conduct adequate damage assessment responsibilities, which led to ineffective assignment of resources and restoration crews;
- failed to maintain a functional Outage Management System ("OMS");
- did not provide accurate estimated restoration times; and
- failed to meet its responsibility for timely and effective communication and coordination with its customers, local municipal governments, and state agencies.[114]

LIPA's investigation yielded similar, and additional, findings concerning PSEG's storm response failures.[115] LIPA's task force issued 39 recommendations in its September 23, 2020 30-Day Report, and an additional 46 recommendations in its November 18, 2020 90-Day Report, all intended to improve PSEG LI's operations and storm response management.[116] The LIPA Board later adopted an additional 79 recommendations concerning non storm-related areas of PSEG LI management.[117] In November 2020, DPS also issued numerous recommendations including, among other things, that "LIPA evaluate terminating PSEG LI as LIPA's Service Provider and

consider alternatives to the management of the LIPA T&D System, including municipalization or, as appropriate, privatization" and "convene a substantial audit to identify, evaluate, and seek costs incurred by PSEG LI for systems that did not function properly, did not benefit customers, or impeded restoration efforts."[118]

Like DPS, LIPA documented extensive failures in PSEG LI's IT and communications systems and the consequential effect those failures had on restoration times and PSEG LI's communications with the public.[119] Going further, LIPA concluded that mismanagement on the part of PSEG LI was the root cause of its storm response failures, especially in light of PSEG LI management's knowledge that its systems were not working before the storm.[120] LIPA also noted that many defects in PSEG LI's OMS and telecommunication systems remained uncorrected 90 days after Isaias.[121] DPS and LIPA both also expressed concern regarding PSEG LI's attempts to deflect responsibility for its failures to vendors in public messaging immediately following the storm, as well as in its storm response self-assessment.[122]

With respect to its own shortcomings related to Tropical Storm Isaias, LIPA noted that it failed to learn of the inadequacies in PSEG LI's design and testing of its IT and communication systems until after the systems failed.[123] LIPA identified three contributing factors to the failure.[124] First, LIPA stated that it over-relied on PSEG LI's representations concerning stress testing of its OMS without independently verifying the test design or validating testing.[125] Second, LIPA considered PSEG LI to have actively concealed the significant performance issues it experienced with the OMS from LIPA.[126] Third, LIPA indicated that it failed to identify warning signs about the declining quality of PSEG LI's services, which included high levels of turnover, frequently changing priorities, and delayed IT projects.[127] While acknowledging its own mistakes in regard to Tropical Storm Isaias, LIPA maintained that oversight was not a substitute for engaged and accountable management by PSEG LI.[128]

4. LIPA's Options Analysis Studies

Following the DPS and LIPA investigations of PSEG LI's response to Tropical Storm Isaias, LIPA internally evaluated potential alternatives for the management of LIPA assets, including terminating LIPA's contract with PSEG LI and renegotiating the contract to realign PSEG LI's management orientation and incentives for greater accountability.[129] LIPA examined potential alternatives for the management of LIPA assets in two phases—the December 2020 Phase I Options Analysis Report presented an initial framing of the range of possible restructuring options,

and the April 2021 Phase II Options Analysis Report (collectively, the "Reports") further refined and developed these options.[130]

In its Phase I Report, LIPA examined the following options: (1) transfer of LIPA's assets to a private utility; (2) a reform or reset of the single-partner municipal model; and (3) transforming operations under a municipal management model.[131] In Phase II, these options were further refined into four possible scenarios, including (1) selling LIPA's assets to private investors; (2) resetting the PSEG relationship and reforming the contract; (3) seeking a new service provider to improve operations; and (4) bringing utility operations under LIPA management.[132]

The Phase II Report identified risks associated with LIPA management. Potential limitations on LIPA's ability to offer competitive, market-based salaries for talented managers was a potential risk to filling 12 anticipated senior management positions.[133] The public power model was also noted as susceptible to potential criticism because it does not leverage the specialized expertise and efficiencies available in the private sector.[134] The Report cautioned against pursuing a model where all functions and services were provided in house, and instead recommended that LIPA "selectively and flexibly assemble best-in-class expertise from the private sector" if it moved forward with the municipalization option.[135]

The Report noted that customer dissatisfaction with services provided under the public-private structure – using the LIPA brand – between 1998 and 2013 was the primary motivation for the LRA and the shift to providing utility service under the PSEG LI brand.[136] The Report found that customers could "perceive a move to LIPA management as a return to a previously failed management model that they would not support."[137] The Phase II Report also stated that under a LIPA management model, the LIPA Board would have a critical role in ensuring that management was held accountable,[138] and that the Board's role would require a significant investment of time and skill to establish LIPA's long-term vision and the standards for management performance.[139] LIPA's Options Analysis Reports are discussed in greater detail in Part 3 of this Interim Report.

On April 8, 2022, DPS issued an RFP for an updated Comprehensive Management and Operations Audit of LIPA and PSEG LI. Once again, NorthStar was selected to prepare the audit. Public statement hearings regarding the scope of the audit were held in October 2022, with public

comments due October 14, 2022. NorthStar's workplan was due to DPS staff on October 26, 2022. The final audit report is scheduled to be delivered to LIPA on January 19, 2024.[140]

In December 2021, in response to the failures identified with the response to Tropical Storm Isaias, LIPA and PSEG LI negotiated and entered into a Second A&R OSA, which remains effective until December 31, 2025. The Second A&R OSA also allows for one extension through December 31, 2030. The Second A&R OSA and LIPA's current contractual relationship with PSEG LI is discussed in other sections of this Interim Report.

5. Creation of the Commission

The Legislature enacted Section 83-N and created the Commission largely in response to LIPA's failures related to Superstorm Sandy and Tropical Storm Isaias. The Legislature pointed to "more than 25 years of unsatisfactory management" under third-party management agreements with KeySpan, National Grid, and PSEG LI. LIPA's Options Analysis Reports following Tropical Storm Isaias provided the Legislature with a basis to conclude that both ratepayer savings and increased management efficiencies could be achieved through the public power model, and tasked the Commission with investigating and reporting on public power feasibility. The Legislature further mandated that the public be allowed to participate in the process to establish the new public power LIPA.

PART 2 – LIPA AS IT EXISTS TODAY

To best evaluate the manner in which to implement the goals of the Legislature on the future of LIPA, the Commission undertook a review of LIPA's current operations, including its legislative authority and limitations, its organizational structure, the extent of agency control or regulation of LIPA's operations, its workforce structure, and its finances. This section summarizes LIPA's baseline conditions, which the Commission used to identify necessary changes to allow LIPA to transition to a fully public power model.

A. Legislative and Regulatory Authority and Limitations

1. Sources of LIPA Authority

LIPA's statutory authority stems from the LIPA Act[141] and the LRA. LIPA's general statutory powers are outlined in sections 1020-f and 1020-g of the Public Authorities Law, and most of its original powers, as discussed in Part 1.A.2. of this Interim Report, remain effective today.

In addition to its statutory authority, LIPA has oversight authority over PSEG LI through the Second A&R OSA. Specifically, the Second A&R OSA outlines LIPA's responsibilities and confirms that LIPA has ultimate authority and control over its T&D System.[142] In addition to reaffirming statutory responsibilities, the Second A&R OSA requires LIPA to timely respond to PSEG LI's requests for action or decision and to provide information, data, and assistance as reasonably necessary for PSEG LI to perform its obligations.[143] LIPA is responsible for governmental relations, external affairs, and communications related to its interests.[144] LIPA is also responsible for establishing the "vision and strategic directions" pursuant to which PSEG LI will develop strategic plans.[145] LIPA has the right to review and make recommendations with respect to all planning studies and load forecasts, and to require PSEG LI to remediate any studies that do not conform to contract standards or an agreed upon scope of work, to approve all power supply procurements and wholesale contracts, and to approve changes to LIPA's Small Generator Interconnection process.[146] The Second A&R OSA also implements incentive compensation components for PSEG LI, which are determined through analysis of its conformance to certain performance metrics.[147] The annual incentive compensation award is determined by LIPA, with input from DPS.[148] The Second A&R OSA also gives LIPA greater authority to terminate PSEG LI's contract, including for "failure or refusal … to perform any material obligation" under the Agreement.[149]

2. Governance Structure

By-Laws

LIPA's By-Laws authorize the number, term, and appointment process for the Board of Trustees (the "Board"), as governed by the LIPA Act and the LRA. The By-Laws also prescribe the powers and duties of certain officers and Board positions. The By-Laws may be amended, altered, or repealed by the Board.[150] LIPA's By-Laws were most recently amended on May 20, 2020.

Board of Trustees

LIPA has a nine-member[151] Board, all of whom must live within LIPA's service area.[152] Board members are appointed by the Governor (five seats), the Senate Majority Leader (two seats), and the Speaker of the Assembly (two seats), with input from local lawmakers. Board members serve four-year terms.[153] The Board Chair is chosen by the Governor from among the Trustees. The LRA requires Board members to have relevant utility, corporate board, or financial experience. Board members are not compensated for their service.

The Board has adopted several policies intended to clarify its role and responsibilities as fiduciaries, set governance priorities, and enhance its performance as the governing body. Board Resolution #1322, approved on September 21, 2016, outlines the Board's responsibilities as follows:

- identify and define the mission, values, and strategic direction of LIPA, including the quantitative and qualitative results LIPA is to achieve, and communicate them in the form of policy;
- monitor LIPA's performance against the policies established by the Board and monitor the risks and mitigation activities undertaken by the officers and PSEG LI to identify, assess, and manage risks to LIPA's performance;
- set rates, charges, and rules to ensure the provision of safe and reliable electric service to LIPA's customers at the lowest cost consistent with LIPA's contractual obligations and sound fiscal operating practices;
- adopt annual budgets for LIPA and PSEG LI sufficient to achieve the Board's policy goals;
- hire, evaluate and, when necessary, discharge the Board-elected officers[154];
- monitor the staffing policies to ensure staffing at LIPA does not exceed the levels necessary to ensure that LIPA is able to meet obligations with respect to its bonds and notes and all applicable statutes and contracts, and oversee the activities of PSEG LI;
- approve certain contractual agreements as required by applicable law or as otherwise required by LIPA's established policies and procedures;
- fulfill and abide by its fiduciary duties;
- regularly discuss and evaluate the Board's own performance and that of its committees;
- engage an independent auditor and, through the Finance and Audit Committee, oversee and review the results of audits and internal control reviews performed by the auditor and by LIPA's internal audit department; and
- take such other actions as may be required by law, including actions contemplated under the LIPA Act, the LRA, the Public Authorities Law, the Public Officers Law, the Executive Law, and the By-Laws.[155]

The Board is responsible for appointing, and if necessary, discharging the Chief Executive Officer ("CEO"). The Board also evaluates the CEO's performance and determines the CEO's compensation.[156] With the advice of the CEO, the Board appoints the remainder of the Board-appointed officers specified in the By-Laws.[157]

Under the By-Laws, the Board members serve on the "Finance and Audit Committee," the "Oversight and Clean Energy Committee," and the "Governance, Planning and Personnel Committee."[158] The Board Chair can appoint other committees, although none have been appointed at this time. Generally, each committee consists of three or more Trustees, with a Committee Chair, and is required to meet not less than four times per year.

The Board Policies, which were updated in September 2022,[159] further define LIPA's mission and outline operating policies, governance policies, and compliance policies.

LIPA Leadership – Executive Management Committee

LIPA is divided into six departments: (1) Legal, which includes procurement, human resources and administration, and enterprise risk management; (2) Finance; (3) Office of the Chief Executive Officer, which includes communications and external affairs; (4) DoITT & Customer Experience, which includes the Enterprise Program Management Office ("EPMO"); (5) Transmission and Distribution, which includes internal audit; and (6) Power Supply. [160]

LIPA's executive management team consists of 13 individual job titles; however, several members of the current management team have more than one title.[161] Specifically, the executive management team includes the following positions:

- Chief Executive Officer;
- Chief Financial Officer;
- General Counsel;
- Senior Vice President, Transmission and Distribution;
- Senior Vice President, Power Supply and Wholesale Markets;
- Vice President of Strategy and Performance Management;
- Vice President, Controller;
- Director of Human Resources and Administration;
- Director of Communications;
- Senior Advisor for Oversight;
- Director of External Affairs;
- Director of Customer Experience; and
- Secretary to the Board of Trustees.

The executive management team reports to the LIPA Board. Board Resolution #1322 outlines the numerous responsibilities of LIPA's officers:

- undertake the administrative and operational means necessary, in conjunction with PSEG LI, as appropriate, to realize the quantitative and qualitative results that LIPA is to achieve pursuant to Board policy and identify, assess, and manage risks to LIPA's performance;
- serve, alongside other LIPA staff, as the Staff to the Board of Trustees;
- recommend rates, charges and rules to the Board of Trustees designed to ensure the provision of safe and reliable electric service to LIPA's customers and the lowest cost consistent with LIPA's contractual obligations and sound fiscal operating practices;
- develop and recommend annual budgets for LIPA and PSEG LI sufficient to achieve the Board's policy goals, with assistance from PSEG LI, as appropriate;
- oversee and make recommendations to the Board of Trustees regarding the operations of and contractual relationship with PSEG LI;
- represent the interests of LIPA in coordination with PSEG LI in connection with proceedings of FERC, the North American Electric Reliability Corporation, the Northeast Power Coordinating Council, the NYISO, the PSC, the Independent System Operator New England, Pennsylvania Jersey Maryland Interconnection, and other industry or regulatory institutions or organizations;
- finance the business and operations of LIPA and management of financial resources, including communications, reporting to, and filings with lenders, rating agencies, and governmental bodies;
- manage and take overall responsibility for LIPA's legal matters;
- develop and recommend certain contractual agreements as required by applicable law or as otherwise required by LIPA's established policies and procedures;
- hire, evaluate, establish compensation and salary policies for and, when necessary, discharge LIPA staff;
- fulfill and abide by his or her fiduciary duties;
- perform other responsibilities as may be delegated by the Board; and
- take other actions as may be required by law.[162]

LIPA management is responsible for providing Quarterly Reports to the Board.[163] LIPA's CEO also prepares an annual "Letter from Our CEO," which is intended to provide an overview, in plain English, of significant management, operational, and financial items that occurred in the previous year or are planned for the coming year. LIPA staff also prepares the annual Work Plan, which

discusses LIPA's direct responsibilities, including financing, wholesale markets policy, or rates and tariffs, as well as LIPA's oversight responsibilities with PSEG LI and other providers. The Work Plan includes an appendix which lists individual goals, divided by department, with descriptions, end of year status, and task completed.[164] The Work Plan similarly outlines progress made toward implementation of individual Board policies and PSEG LI metrics.[165] These reports are published on LIPA's website for public review.

Management Review Board

Pursuant to the Second A&R OSA, LIPA and PSEG LI established a Management Review Board ("MRB"), comprised of senior executives of LIPA and PSEG LI.[166] The MRB provides a forum to review and consider each party's recommendations with respect to PSEG LI's performance and overall administration of the Second A&R OSA.[167] Per the Second A&R OSA, the MRB must meet monthly during the first contract year and quarterly thereafter and must review policy, operations, financial matters, customer satisfaction, and regulatory matters.[168]

LIPA Community Advisory Board

The Community Advisory Board ("CAB") was formed in 2017 to advise LIPA's CEO on "issues of importance to the Authority and [the] Long Island and Rockaways community." The CAB has 19 members, including experts in various fields such as energy, education, business, economic development, government, and finance. CAB members are appointed by LIPA's CEO and attend quarterly meetings. Maintaining the CAB is part of the Board's Transparency Policy.

LIPA Staff

The LRA required LIPA to downsize its staff such that staffing is "kept at levels only necessary to ensure that the authority is able to meet its core obligations."[169] LIPA has approximately 50 employees in addition to the executive management team.[170]

B. Utility Debt Securitization Authority

UDSA is a special purpose corporate municipal instrumentality, a body corporate and politic, and a political subdivision and public benefit corporation of the State of New York, created by Part B of the LRA (the "Securitization Law").[171] The Securitization Law authorized the issuance of restructuring bonds by UDSA pursuant to financing orders issued by LIPA, to allow LIPA to retire a portion of its outstanding indebtedness and provide a savings to LIPA's customers on a net present value basis.[172] On August 2, 2021, Governor Cuomo signed legislation raising LIPA's

borrowing ceiling to $8 billion, inclusive of bonds already issued, and expanded the purpose for which UDSA may issue bonds to include funding LIPA T&D System resiliency investments. The Securitization Law prohibits UDSA from engaging in any activity except as specifically authorized in a financing order. The legislation also requires UDSA to consult with DPS to ensure any new LIPA debt results in savings to ratepayers.

UDSA is a component unit of LIPA run by a separate Board of Trustees and has its own By-Laws, organizational chart, and operating and governance policies. The UDSA has no commercial operations, and its sole mission is to authorize, issue and sell restructuring bonds and to pay the financing costs, interest and principal on the bonds.[173] The UDSA Board members are appointed by the Governor. Per LIPA's website, there are only two current UDSA Board members. The positions of CEO and General Counsel/Secretary are currently held by corresponding members of the LIPA executive management team. The LIPA website contains UDSA's operating and governance policies, which include a lobbying policy, procurement guidelines, a prompt payment policy, property acquisition guidelines, property disposition guidelines, and a Trustee code.[174] The investor relations portion of UDSA's website section includes budgets, financial statements, disclosures, and bond information. UDSA also posts its Board meeting calendar, agendas, presentations, minutes, and resolutions on LIPA's website and streams the Board meetings for public viewing.[175]

C. Oversight and Regulation of LIPA by PSC/DPS

Section 1020-s of the LIPA Act, as originally enacted, exempted LIPA from regulation by the PSC and from most requirements under the PSL. The exemption was not absolute; LIPA was not exempted from engaging in the Article VII process for siting and operation of major utility transmission facilities. Similarly, LIPA was not exempted from the Article VIII process for siting of steam generation facilities (the Power NY Act of 2011 updated section 1020-s to reference the Article X generation facility siting process rather than the defunct Article VIII process). In practice, the LIPA Act allowed LIPA to operate with virtually no oversight from DPS or the PSC.

The LRA gave DPS statutorily mandated oversight of LIPA and PSEG LI. Specifically, the LRA established an office within DPS to "review and make recommendations with respect to the operations and terms and conditions of service of, and rates and budgets established by the Long Island Power Authority and/or its service provider." [176] The LRA requires LIPA to pay all costs and expenses for DPS LI, which currently total approximately $13 million annually. This "review and

recommendation" authority was provided to ensure LIPA and PSEG LI provide safe and adequate transmission and distribution service at rates set at the lowest level consistent with sound fiscal operating practices.[177] The LRA explicitly granted DPS authority to:

- review and make recommendations to the LIPA Board regarding rates and charges, including charges related to energy efficiency and renewable energy programs;
- review annual capital expenditures proposed by PSEG LI and recommend improvement in the manufacture, conveying, transportation, distribution or supply of electricity, or in the methods employed by PSEG LI as DPS determines will allow for safe and adequate service;
- annually review the Emergency Response Plan of LIPA and PSEG LI in accordance with certain requirements;
- upon notice to LIPA, undertake a comprehensive and regular management and operations audit of LIPA and PSEG LI;
- accept, investigate, mediate to resolve and make recommendations to LIPA and/or PSEG LI regarding the resolution of consumer complaints relating to, among other things, electric service provided by the LIPA and/or PSEG LI;
- review the net metering program implemented and make recommendations designed to ensure consistency with the requirements of sections 66-j and 66-l of the PSL, and any corresponding regulations and orders;
- review and make recommendations regarding any proposed plan submitted by LIPA and/or PSEG LI related to implementation of energy efficiency measures, distributed generation or advanced grid technology programs; and
- review the data, information and reports submitted pursuant to section 1020-f(hh) of the Public Authorities Law and other pertinent information related to the metrics in the operations services agreement, LIPA's evaluation of such data, information and reports, and make recommendations to LIPA with respect to the PSEG LI's annual incentive-based compensation within thirty days of receipt of such evaluation and information.[178]

DPS operates a Long Island field office to provide oversight for LIPA and PSEG LI. However, because LIPA is a not-for-profit state authority with an independent board, recommendations made by DPS are advisory. Nevertheless, according to LIPA's CEO, to date the LIPA Board has accepted every recommendation made by DPS.[179] The Public Authorities Law also requires the

Board to implement, or cause PSEG LI to implement, certain DPS recommendations absent a finding of inconsistency.[180]

While DPS has no decision-making authority over LIPA, it does have statutory oversight authority of PSEG LI. DPS' oversight includes periodic management audits, annual review of PSEG LI's Emergency Response Plan, and review of all aspects of preparation and performance during storms and other emergency events.[181] LIPA's oversight of PSEG LI, as authorized by the Second A&R OSA,[182] is in addition to DPS' statutory oversight of PSEG LI. Additionally, PSEG LI's incentive compensation scheme outlined in the Second A&R OSA provides a mechanism for DPS to recommend lower incentive compensation for PSEG LI.[183] DPS oversight of LIPA is indirect, meaning it has oversight authority over PSEG LI, which requires LIPA Board participation and approval to implement.

Since adoption of the LRA, Public Authorities Law section 1020-s has been further amended to ensure certain new provisions of the PSL are applicable to LIPA despite its overall exemption from PSC regulation. Specifically, in 2017, section 1020-s was amended to address LIPA's obligations under section 74 of the PSL, which requires LIPA to support New York State's 2030 energy storage goal. Similarly, in 2021, section 1020-s(f) was added requiring LIPA to work with New York State Energy and Research Development Authority ("NYSERDA") to establish rules and regulations for municipal community choice aggregation programs within the LIPA service area.

1. DPS Oversight of Rates

The LRA required LIPA and PSEG LI to submit to DPS a three-year rate plan for rates and changes effective as of January 1, 2016.[184] On January 30, 2015, PSEG LI submitted to DPS and LIPA its three-year rate plan for 2016 through 2018.[185] The LRA required DPS to provide LIPA with recommendations regarding the rate plan. The Board was required to implement DPS' recommendations unless LIPA's Board found that any particular recommendation was inconsistent with (1) LIPA's sound fiscal operating practices, (2) any existing contractual or operating obligations, or (3) the provision of safe and adequate service.

In its 2015 Rate Recommendation, DPS instructed LIPA and PSEG LI to update the revenue requirements at the end of each calendar year (2015, 2016 and 2017) for "certain fixed obligations so that base delivery rates in each rate year reflect the latest and most accurate cost information

available." DPS approved updates to LIPA and PSEG LI's three-year revenue requirement on December 14, 2015, December 23, 2016, and December 15, 2017. Pursuant to the DPS' Rate Recommendation, DPS also oversees LIPA's (1) savings resulting from the UDSA bonds, (2) costs of debt and current interest rates, (3) PSEG LI labor costs resulting from a new collective bargaining agreement, (4) PILOTs on T & D property, and (5) unanticipated costs associated with changes in federal, state or local laws, or rules, regulations and orders.

Following expiration of the three-year rate plan in 2018, LIPA and PSEG LI must submit to DPS for review any rate proposal that would increase LIPA rates by more than 2.5%.[186] LIPA also has the option to submit any rate proposal to DPS for review, regardless of its effect on revenues.[187] As with the three-year rate plan, LIPA must implement DPS recommendations unless the Board makes a determination of inconsistency.[188] LIPA may implement rates and charges that exceed the 2.5% threshold on an interim basis, subject to prospective rate adjustment.[189] Additionally, LIPA must hold public hearings prior to fixing rates and charges that are not subject to DPS review.[190]

2. DPS Audits

The Public Authorities Law requires LIPA and PSEG LI to cooperate in the undertaking of DPS management and operations audits.[191] The scope of these audits must include, but is not limited to, analysis of: (i) PSEG LI's construction and capital program planning in relation to the needs of its customers for reliable service; (ii) the overall efficiency of LIPA and PSEG LI's operations; (iii) the manner in which LIPA is meeting its debt service obligations;[192] (iv) LIPA's Fuel and Purchased Power Cost Adjustment clause and recovery of associated costs; (v) LIPA and PSEG LI's annual budgeting procedures and process; (vi) the application, if any, of the performance metrics designated in the First A&R OSA and the accuracy of the data relied upon with respect to such applications; and (vii) LIPA's compliance with debt covenants.[193]

LIPA's Board must implement or cause PSEG LI to implement audit findings and recommendations unless it makes a preliminary determination that an audit finding or recommendation is inconsistent with LIPA's "sound fiscal operating practices, any existing contractual or operating obligation, or the provision for safe and adequate service."[194] The Board has 30 days to make a preliminary determination, and must report the reason for its determination to DPS and post a notice and its basis on LIPA and PSEG LI's websites.[195] Within 30 days of posting, and with sufficient notice, the Board must then hold a public hearing regarding the

preliminary determination.[196] DPS and/or DPS' independent auditor must present the basis for its findings and recommendations at the public hearing and the Board must present the basis for its determination of inconsistency.[197] PSEG LI may also present its position during the public hearing.[198] The Board must announce its final determination within 30 days after the public hearing.[199] The final determination is subject to applicable judicial review.[200]

Additionally, the Public Authorities Law states that if an audit indicates a finding of "fraud, abuse or mismanagement by a service provider of [LIPA]" and that there is reasonable cause for the finding, the Commission can order that any recommendations contained in the audit be implemented.[201] Failure to comply with the PSC's order would result in civil penalties against PSEG LI. Notably, the PSC has no authority to issue civil penalties against LIPA.

3. DPS Emergency Response Plan Oversight

Under the LRA, PSEG LI, in consultation with LIPA, is required to prepare an annual Emergency Response Plan ("ERP").[202] DPS staff reviews the ERP and provides recommendations to the LIPA Board for formal adoption. The ERP is then made available to the public on the websites of DPS, LIPA and PSEG LI. The Second A&R OSA requires LIPA to annually review and approve PSEG LI's Business Continuity Plans, workaround plans, Emergency Response Implementation Plan, and ERP. [203]

4. Utility 2.0 Long Range Plan & Energy Efficiency, Beneficial Electrification, and Demand Response Plan (EEBEDR)

As required under the Second A&R OSA and Public Authorities Law section 1020-f(ee), PSEG LI submitted its 2022 Utility 2.0 Long Range Plan and Energy Efficiency Beneficial Electrification and Demand Response Plan ("EEBEDR") updates to DPS on July 1, 2022. The Utility 2.0 plan relates to implementation of energy efficiency measures, distributed generation and/or advanced grid technology programs, and tools for customers to effectively manage energy usage and bills. The EEBEDR plan describes PSEG LI's energy efficiency programs for residential and commercial customers, the energy savings targets for each program, budgets, and cost-benefit analyses. DPS reviews the plans and issues recommendations to the LIPA Board for consideration and approval during LIPA's budget process.

D. Oversight and Regulation of LIPA by Other Agencies

1. Public Authorities Control Board

The Public Authorities Control Board reviews and approves LIPA's applications for financing and construction projects. A project is defined as any action undertaken by LIPA that (a) causes LIPA to issue bonds, notes or other obligations, or shares in any subsidiary corporation, or (b) significantly modifies the use of an asset valued at more than $1,000,000 owned by LIPA or involves the sale, lease or other disposition of such an asset; or (c) commits LIPA to a contract or agreement with a total consideration of greater than $1,000,000 and does not involve the day to day operations of LIPA. Prior to approving a project proposed by LIPA, the PACB must find that (a) the project is financially feasible; (b) the project does not materially adversely affect overall real property taxes in the service area; (c) the project is anticipated to result generally in lower utility rates in the service area; and (d) the project will not materially adversely affect overall real property taxes or utility rates in other areas of New York State. LIPA's applications to the PACB must contain a project description and an explanation of why the project meets the four required findings. The PACB has five members, all of whom are appointed by the Governor, including four on the recommendation of the majority and minority leaders of the Legislature.

2. Office of State Comptroller

As part of the LIPA Act, Section 1020-cc(1) of the Public Authorities Law requires LIPA's contracts to be subject to "state agency" procurement rules in the same manner as State agencies that rely upon budget appropriations. However, the LIPA Act explicitly states that the Authority's contracts are not obligations of the State. Since 1998, the LIPA Act has excluded procurement for utility operations conducted by LIPA's service providers (first National Grid and then PSEG LI) from the "state agency" procurement rules that apply to LIPA's contracts. Under existing law, if ServCo's utility operations were directly managed by LIPA, operational utility contracts would become subject to "state agency" procurement rules, including review as to form of contract by the New York Attorney General's Office and "pre-audit" of the contract by the OSC. These "pre-audit" requirements would capture practically all utility contracts (an estimated additional 1,200 contracts per year, up from approximately 40-50 contracts per year presently) as the threshold for review is contracts valued at $50,000 or more.

In addition to the above, under section 112 of the State Finance Law, the OSC must review and approve LIPA's service provider agreements including any subsequent amendments. These approval requirements are incorporated into the Second A&R OSA. The OSC is authorized to

examine the accounts and books of LIPA, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers related to its financial standing.[204] OSC is also authorized to supervise LIPA's accounts, including through the preparation of LIPA's annual third-party audit.[205] LIPA, and PSEG LI through the Second A&R OSA, are required to provide OSC with twice-annual reports documenting contracts in excess of $250,000.[206] Written OSC approval is required for any private sale of LIPA's bonds or notes.[207]

3. Office of Emergency Management

During a storm event, LIPA is required to prioritize restoration to emergency services facilities. If LIPA and PSEG LI are unable to restore electric power services to any police department, fire department, or ambulance service within 24 hours of the loss or interruption of such electric power services, PSEG LI must notify the applicable Nassau, Suffolk, or Queens County Office of Emergency Management.[208] Following notification, the applicable county Office of Emergency Management will provide emergency deployment of alternate generated power through a program administered by the Division of Homeland Security and Emergency Services.

E. Workforce Structure

The operational staff supporting LIPA, including T&D, customer service and business services personnel, are employed by Long Island Electric Utility ServCo LLC ("ServCo"), under the service provider model. ServCo is a wholly owned subsidiary of PSEG LI. ServCo was created pursuant to the Second A&R OSA[209] to preserve and transition the then-current workforce while addressing the deficiencies in the initial LIPA service provider structure.

Staffing within ServCo consists of four categories of employees: (1) hourly employees who operate and maintain the T&D assets, including power line workers, mechanics, technicians, equipment operators, etc., who are referred to as "physical" employees; (2) clerical employees; (3) administrative employees; and (4) supervisors, managers, and directors.

The physical and clerical employees are represented by IBEW Local 1049 under two collective bargaining agreements in effect through November 13, 2023. There are approximately 1,500 unionized ServCo employees. At their core, the collective bargaining agreements are legacy contracts derived initially from the recognition of the union in 1947 by the predecessor utilities, as modified through successive rounds of labor negotiations. In particular, many of the terms and conditions have been carried forward from LILCO, through National Grid/KeySpan, the initial

PSEG service provider model and the ServCo relationship. Many of the union employees have extensive institutional knowledge regarding LIPA's T&D equipment, systems and operations that has been developed from decades of personal experience.

There are approximately 1,000 administrative and supervisory employees of ServCo working in various departments including: human resources, engineering, planning, project management, information technology, power resources and contract management, transmission operations, electrical operations, business services and emergency management.[210]

There are ServCo employees in managerial positions at the director level and above within the ServCo operational structure. The managerial employees within ServCo are LIPA-funded as a pass-through expenditure under the Second Amended OSA.

In addition, there are 19 other director level and more senior level managerial positions that support ServCo operations, but are positions within PSEG LI.[211] The expense for the 19 PSEG LI managerial staff is a component of the managerial fee paid by LIPA to PSEG LI under the Second A&R OSA. However, currently five ServCo managers are staffing the functions of PSEG LI management roles (*i.e.*, there are currently only 14 PSEG LI employees directing the operations of ServCo).

F. LIPA's Public Transparency and Community Engagement Obligations

Perceived lack of transparency has been a longstanding issue for LIPA and its service provider, PSEG LI. The main criticism is that the current third-party service provider model creates unnecessary barriers to transparency as data from PSEG LI is not readily available to the public. Insufficient transparency between LIPA and its customers and stakeholders has also been noted.

1. Transparency Between LIPA and PSEG LI

A policy objective noted in NYPA's 2013 Study of LIPA's Strategic Alternatives was for "more effective governance and transparency in the rate process."[212] The Isaias Task Force 90-Day Report similarly found that the relationship between LIPA and PSEG LI "needs to be reset to ensure greater alignment, accountability, transparency, and oversight." LIPA's Phase II Options Analysis found there was "limited accountability and transparency to the LIPA Board of Trustees, LIPA staff, and DPS" which was deemed one of two fundamental causes of PSEG LI's poor

response to Tropical Storm Isaias.[213] Per the Phase II Options Analysis, greater transparency and oversight were necessary to improve LIPA operations.

2. Transparency Between LIPA and the Public

LIPA has taken steps to increase public transparency. In October 2021, at the direction of Governor Hochul, the Board adopted a Transparency Plan designed to implement the Board's October 24, 2018 Resolution #1437, Values of Responsiveness and Integrity.[214] The Transparency Plan addresses *public* transparency and has four main objectives: (1) ensure Board and staff accountability to customer-owners; (2) make Board decisions transparent; (3) invite stakeholder feedback; and (4) conduct LIPA's affairs in an ethical manner. LIPA is subject to the provisions of article seven of the Public Officers Law relating to the Open Meetings Law.[215]

The Transparency Plan includes a list of activities that LIPA asserts demonstrate "its commitment to transparency."[216] These include public outreach initiatives, such as a Constant Contact email list, timely social media updates, creation of fact sheets on public interest topics, and media access to LIPA senior staff.[217] The activities also include increased public access measures including an updated Freedom of Information Law process, searchable database of Board materials on LIPA's website, and public filing of State-required reports (PARIS filing), performance measurement reports, and operations and accomplishments letters.[218] Further, the Transparency Plan calls for increased Board accountability including regular review of Board policies for industry best practices.[219] In furtherance of the Transparency Plan, LIPA describes its budget approval process as "an open and transparent process that includes public hearings, opportunities for public comment, and review by the Department of Public Service."[220]

Creation of the CAB was also designed to increase stakeholder participation and public transparency.[221] CAB meeting minutes are posted on LIPA's website. However, while the CAB is comprised of local community leaders, the positions are appointed by LIPA's CEO, without input from LIPA's customers.

Beginning in 2021, the Board directed LIPA staff to prepare five-year roadmaps that establish multi-year projects to deliver specific business objectives to fulfill Board policies.[222] The Board also requested Project Implementation Plans for each adopted recommendation.[223]

LIPA publishes data for public review on its website. Currently, customers can view LIPA's Board Policies and By-Laws, LIPA's tariff for electric service, environmental assessments, procurement reports, as well as various reports and studies, including audits, performance reports, property

reports, and performance metrics. While not directly related to LIPA's own transparency, LIPA encourages members of the public to participate in DPS proceedings and working groups to gain knowledge about issues that may come before the LIPA Board. LIPA's website contains a list of proceedings and working groups that may be of interest to LIPA customers as well as information on how customers can participate. Customers can also file ethics complaints through a link from LIPA's website to EthicsPoint.[224] LIPA also publishes a host of financial information on its website, including its financial statements, rate plans and budgets, annual delivery charges, official statements and bond resolutions, investor disclosures, and investment reports.[225]

Despite recent efforts to increase transparency, this remains a major issue for the public, as evidenced by comments during the four New York State Legislative Commission on the Future of the Long Island Power Authority public hearings.[226] Comments included a call not just for transparency, but for a seat at the table. While LIPA Board members are required to live in the LIPA service territory, they are not elected or appointed by local officials, but rather, by the Governor and leaders of the Legislature. There seems to be some public sentiment that LIPA Board members are loyal first to Albany, and second to the customers within LIPA's service area.[227]

3. Legislation to Increase Transparency

Governor Hochul recently signed legislation[228] requiring LIPA to provide twice-annual reports about its lobbying and advertising activities, including the reasoning for the spending and the amount spent.[229] The reports are to be issued to the Governor and State Legislature.[230] In January 2022, Governor Hochul signed legislation requiring state utilities and service providers that gross more than $1 million annually to report executive pay.[231]

G. LIPA's Finances

1. Debt

LIPA financed the cost of acquiring the T&D System from LILCO with general revenue bonds. LIPA funds ongoing capital improvements by issuing debt, except where grants or excess cash flow provide the ability to cash fund such expenditures. All of LIPA's bonds are secured by a trust estate, as pledged under LIPA's bond resolutions, which consists principally of the revenues generated by the operation of the T&D System.

As described earlier, pursuant to the Securitization Law, LIPA's Board adopts restructuring cost financing orders authorizing the issuance of restructuring bonds by UDSA to retire a portion of

LIPA's outstanding indebtedness in order to provide savings to LIPA's customers as measured on a net present value basis. All of UDSA's bonds are secured by irrevocable, non-by-passable consumption-based restructuring charges billed to all LIPA customers. Legislation passed in 2021 increased UDSA's statutory borrowing ceiling to $8 billion, inclusive of bonds already issued. However, market conditions, and the ratings agencies, play a large role in determining how much debt UDSA may issue.

a. LIPA's Direct Debt and UDSA Debt: How Much, to Whom, for What

LIPA's long-term debt as of December 31, 2022 consisted of the following:

Long Island Power Authority
(A Component Unit of the State of New York)
Summary of Debt
December 31, 2022[232]
(Amounts in thousands)

	Beginning balance	Accretion/ additions	Maturities	Repaid/ Refundings	Ending balance
General revenue bonds/notes:					
Series 1998A	$ 74,388	3,770	12,970	12,199	52,989
Series 2000A	243,916	13,141	36,390	19,145	201,522
Series 2003C	36,645	—	—	—	36,645
Series 2010B	162,605	—	—	—	162,605
Series 2012A	40,995	—	—	40,995	—
Series 2012B	175,750	—	11,880	163,870	—
Series 2014A	413,070	—	—	—	413,070
Series 2014B	67,155	—	—	—	67,155
Series 2014C FRN	150,000	—	—	108,760	41,240
Series 2015B	107,855	—		2,635	105,220
Series 2015C FRN	149,000	—	—	—	149,000
Series 2016B	362,740	—	5,640	—	357,100
Series 2017	336,880	—		7,060	329,820
Series 2018	428,000	—	—	2,900	425,100
Series 2019A	210,675	—		2,500	208,175
Series 2019B	284,250	—	—	—	284,250
Series 2020A	235,475	—	—	2,500	232,975
Series 2020B	250,000	—	—	—	250,000
Series 2020C	91,615	—	—	—	91,615
Series 2021	250,000	—	—	—	250,000
Series 2021A	355,755	—	2,855	2,910	349,990
Series 2021B	175,000	—	—	—	175,000
Series 2021C	194,390	—	—	—	194,390
Series 2022A	—	130,360	—	—	130,360
Series 2022B	—	100,000	—	—	100,000
Series 2022C	—	150,000	—	—	150,000
Direct placement notes:					
Series 2015A1 FRN	51,000	—	—	—	51,000
Series 2015A2 FRN	149,000	—	—	—	149,000
Subtotal	4,996,159	397,271	69,735	365,474	4,958,221
UDSA restructuring bonds:					
Series 2013T	114,641	—	41,981	—	72,660

	Beginning balance	Accretion/ additions	Maturities	Repaid/ Refundings	Ending balance
General revenue bonds/notes:					
Series 2013TE	1,374,390	—	—	659,290	715,100
Series 2015	989,095	—	21,385	—	967,710
Series 2016A	636,770	—	—	—	636,770
Series 2016B	244,675	—	90,980	—	153,695
Series 2017	343,785	—	23,165	—	320,620
Series 2022T	—	53,585	—	—	53,585
Series 2022TE-1	—	787,290	—	—	787,290
Series 2022TE-2	—	94,780	—	—	94,780
Subtotal	3,703,356	935,655	177,511	659,290	3,802,210
	8,699,515	1,332,926	247,246	1,024,764	8,760,431
Plus: Net premium	688,546	122,356	75,518	36,890	698,494
Less: Current maturities	(247,246)				(580,780)
Total Long-term debt	$ 9,140,815				8,878,145

2. Bond Covenants' Impact on LIPA's Operations, Authority, and Submission to Regulatory Control

As described earlier, a broad exemption of LIPA from PSC jurisdiction exists, with only certain specific exceptions (the "Existing PSC Exemption"). The LIPA Act also requires LIPA to include in its bond resolutions a covenant (the "Statutory Rate Covenant") that LIPA will at all times maintain rates, fees or charges sufficient to pay, and that any contracts entered into by LIPA for the sale, transmission or distribution of electricity shall contain rates, fees or charges sufficient to pay, the costs of operation and maintenance of the facilities owned or operated by LIPA, PILOTs, renewals, replacements and capital additions, the principal of and interest on any obligations issued pursuant to such resolution as the same severally become due and payable, and to establish or maintain any reserves or other funds or accounts required or established by or pursuant to the terms of such resolution or resolutions.[233] LIPA also has general statutory power to fix rates and charges for the furnishing of electric power or any related service.[234] As authorized and directed by the LIPA Act, LIPA's bond resolution contains such a rate covenant, which was disclosed to and presumably relied on by purchasers of its bonds as well as by parties to other financial contracts with LIPA.[235] The provisions of the bond resolution constitute contracts with the holders of the bonds and notes of LIPA.

Pursuant to the LIPA Act, the State has agreed with the holders of LIPA's obligations and the parties to any contracts with LIPA that the State will not limit or alter the rights vested in LIPA by the LIPA Act until such obligations together with the interest thereon are fully met and discharged

and/or such contracts are fully performed on the part of LIPA (the "State Pledge").[236] As authorized by the LIPA Act, such State Pledge is set forth in LIPA's bond resolution.[237]

The rating agencies and other credit market participants have, in the past, cited potential increased PSC oversight of LIPA as a significant credit concern. It is the Commission's understanding that in connection with legislation adopted by the Legislature in 2008 giving PSC a limited role with respect to certain rate adjustments in excess of 2.5% in any 12-month period, LIPA's financial advisor advised LIPA that the enactment of such legislation could be expected to have significant financial repercussions to LIPA and cause the rating agencies to reassess and potentially lower the ratings assigned to LIPA's bonds. On August 9, 2008, Standard & Poor's issued a "negative outlook" with respect to LIPA's bonds with the following explanation:

> The negative outlook reflects concerns that recent legislation could limit LIPA's ability to raise rates as costs rise. A requirement that the Public Service Commission vet all requests for rate relief in evidentiary hearings if rate adjustments will exceed 2.5% in a 12-month period will deprive LIPA of the autonomous ratemaking authority that we consider to be a linchpin of public power utilities' strong credit profiles.

Fitch Ratings similarly revised its ratings outlook to negative. Subsequently, the Governor vetoed the 2008 legislation.

Caselaw is also instructive as to the impact PSC regulation could have on bondholders. For example, in the 1970's the New York Court of Appeals determined that state legislation restricting the power of the Southern State Parkway Authority to impose tolls and charges was invalid as an impermissible impairment under the Contract Clause of the U.S. Constitution and as an invalid taking of the contract rights of bondholders without due process under the State Constitution.[238] The Court of Appeals concluded that "a statute which conditions the authority's power to increase tolls upon compliance with a review procedure involving the intervention of others from outside the authority is a blow to the independence of the authority's judgment. Intercession by others outside the authority is not what the bondholders contracted for."[239] The Court of Appeals explained:

> In this case, the State granted to the authority the power to increase the toll on the Southern State Parkway and pledged not to limit or alter the rights vested in the authority to the detriment of the bondholders.... Since the toll is the sole source of funds for bond repayment, any limitation on the authority's power to collect a toll sufficient to pay the bonds deprives the bondholders of an essential attribute of their contract with the authority and with the State and jeopardizes their investment. The statute under consideration suspends a toll increase imposed by the authority and conditions any future increases upon compliance with a complicated and time-consuming procedure. Bondholders were promised, as part of the arrangement

> which financed the reconstruction of the highway, that the authority could raise the toll if the authority, in its discretion, deemed an increase necessary to pay its operating expenses and meet its bond obligations. With the present statute, the Legislature has diminished the bondholders' rights by suspending one increase and limiting the authority's previously broad discretion to impose future increases. Thus, the statute has deprived the bondholders of a right granted by their contract with the authority and the State.[240]

Pursuant to the LRA, LIPA is subject to a ratemaking procedure that provides for DPS review of certain rate increases which would increase the aggregate revenues of LIPA by more than 2.5%, measured on an annual basis.[241] However, unlike the situation in the case cited above, LIPA's Board retains the ability to implement such charges while this review procedure is ongoing, and the DPS review of such rate increases is not binding on LIPA if its Board makes a finding that the DPS' recommendations are "inconsistent with the authority's sound fiscal operating practice".[242] Presumably as a result of these factors, the LRA measures have not resulted in litigation under the Contract Clause or for an invalid taking of the contract rights of bondholders without due process.

3. Taxes and Payment in Lieu of Tax (PILOT) Agreements

Tax-related expenses are LIPA's second largest expense each year, surpassed only by power supply costs.[243] In 2021, LIPA paid a total of $702 million in taxes, PILOTs and related fees.[244] These costs comprise a sizable portion of LIPA's customers' bills; in 2021, 19% of customers' bills were attributable to taxes.[245] The tax burden borne by LIPA's ratepayers is among the highest in the nation at roughly three times the national average.[246] Property taxes make up the majority of LIPA's tax obligations and primarily fall under two categories: PILOT payments attributable to LILCO T&D assets and property tax reimbursements under LIPA's PSA with National Grid.

a. PILOT Payments

From its creation, LIPA has been required by statute to make payments in lieu of taxes to municipalities and school districts for the T&D assets it acquired from LILCO, such as power lines, substations, and transformers.[247] Under Section 1020-q of the Public Authorities Law, LIPA's annual PILOT payments on these assets must be equal to the taxes and assessments which would have been received from year to year had LIPA not acquired LILCO's assets. Any property acquired by LIPA **after its purchase** of LILCO is exempt from taxation.[248]

Unlike most PILOTs, LIPA's payments are calculated and paid like tax bills rather than as set forth in an agreement.[249] Again, unlike most PILOTs, this means that LIPA's tax liability is directly related to the annual tax assessments of each taxing jurisdiction with no guarantee of predictable incremental increases. Prior to 2014, LIPA's annual PILOT payments grew at a rapid pace.[250] Between 2004 and 2014, LIPA's PILOT payments increased by an average of 6.6% per year.[251]

The LRA capped the amount by which municipalities and school districts could increase LIPA's annual PILOT payments at 2%.[252] The dollar amount of LIPA's PILOT payments to any taxing jurisdiction cannot be increased by more than 2% over the prior year, even if a change in the property's assessed value would otherwise require a higher payment. Nonetheless, PILOT payments remain the single largest contributor to LIPA's tax expenses each year. Of the $702 million in tax related expenses LIPA reported for 2021, $302 million was attributable to PILOT payments for LIPA's T&D assets.[253]

b. Property Tax Reimbursements

LIPA's power supply agreement with National Grid, which runs through April 30, 2028, requires LIPA to reimburse National Grid for all costs, including the property taxes assessed by each taxing jurisdiction.[254] Unlike LIPA's PILOT payments on LILCO-acquired property, its tax payments on non-LIPA-owned properties are not subject to a 2% cap on increases. In 2021, LIPA paid $230 million in real property taxes on non-LIPA-owned power plants, $179 million of which was attributable to four National Grid fossil-fueled legacy power plants: the Northport Steam Plant, Port Jefferson Steam Plants, E.F. Barrett Steam Plant, and Glenwood Landing Combustion Turbine.[255]

The four National Grid plants, built between 1956 and 1977, sell their output into the NYISO competitive wholesale market. In 2020 these plants supplied 21% of Long Island's electricity yet accounted for 80% of all power plant taxes in LIPA customers' bills.[256] LIPA challenged the tax assessments of each property pursuant to Article 7 of the Real Property Tax Law and, as of 2022, negotiated settlements for all four facilities that are projected to gradually reduce LIPA's taxes from the $179 million paid in 2021 to $94 million by 2027.[257]

PART 3 – A SUMMARY OF THE FREQUENTLY DISCUSSED OPTIONS FOR RESTRUCTURING LIPA

In fulfilling its Section 83-N mandate, the Commission reviewed previous studies and analyses outlining potential restructuring options for LIPA. The Commission determined it was important to review all options for LIPA's future to ensure that transitioning to a public power model is the superior option for LIPA. This section details reports prepared by third parties as well as LIPA's internal Options Analysis Reports. The most frequently discussed options for restructuring LIPA include: (1) selling LIPA's assets to private investors; (2) reforming the management contract with PSEG LI; (3) outsourcing LIPA's grid management to a new service provider; and (4) transition to a true public power model under LIPA management.[258]

A. Historic Studies and Analyses on Restructuring LIPA

1. The Brattle Group Report

LIPA engaged the Brattle Group in 2010 to examine three potential options to replace its expiring MSA with National Grid.[259] These included:

a. Full municipalization under LIPA management;
b. Partial municipalization with continued outsourcing of most of LIPA's T&D, customer service, planning, corporate and administrative functions and some services provided through a dedicated "ServCo" subsidiary overseen by senior management of a third-party service provider and a joint operating committee; and
c. A privatization option involving the sale of LIPA's assets and business to a private enterprise that would become the electric utility for LIPA's service area.[260]

The Brattle Group study focused primarily on T&D, customer service and corporate functions rather than generation, fuel, purchased power and capacity, though it considered the possible impacts of LIPA's organizational structure on power supply costs.[261]

Municipalization

The full municipalization option considered the elimination, and incorporation under LIPA, of the majority of services then outsourced to National Grid.[262] This transition was assumed to require:

- determining whether the existing Board structure and governance model was appropriate and sufficient to meet the requirements of a fully municipalized system;
- transferring critical assets, facilities and systems necessary to operate and maintain the T&D System from National Grid to LIPA;

- transferring the current workforce from National Grid to LIPA;
- determining whether the workforce would be public or private employees, and consulting with the Governor's Office and the International Brotherhood of Electrical Workers ("IBEW") concerning labor agreements and retirement benefits;
- recruiting senior management and supervisory personnel as necessary to plan for, direct and administer LIPA's expanded workforce;
- developing and implementing an information system transition plan; and
- determining whether or not changes in LIPA's operating structure would impact its cash flow and/or debt covenants or affect bond ratings.[263]

Because transitioning from LIPA's existing organizational structure to a fully municipalized model would involve a large scale organizational transformation, the Brattle Group believed LIPA would face significant implementation risk.[264] Specifically, enlarging LIPA's staff of 100 employees to approximately 2,000 presented a clear challenge, and would require successful development of senior management.[265] Other logistical human resource and information system coordination issues under this model included negotiation with collective bargaining units and competing with private sector pay scales under State compensation guidelines.[266] This model would also require successful integration of new systems for operational and corporate management.[267]

ServCo

Because of the similarity between the ServCo model and LIPA's MSA with National Grid, the Brattle Group examined LIPA's existing arrangement and the proposed alternative ServCo model.[268] The study found that LIPA's MSA arrangement suffered from two primary areas of deficiency: (1) limited control over the various National Grid resources,[269] and (2) opaque cost accounting for LIPA's fees.[270]

Although it also involved a contractual relationship with a service provider, the ServCo model differed from the MSA in two (2) critical ways.[271] First, ServCo was designed to be a dedicated and self-contained subsidiary dedicated to LIPA-related activities and transportable from its place as a subsidiary of the service provider.[272] Second, payments to the service provider under this model primarily consisted of pass-through costs and profits with performance-based incentive and penalty components.[273]

The study found the ServCo model offered several attractive features, most notably its option value.[274] Its design as a self-contained, transportable T&D electric utility allowed LIPA to leverage the resources and expertise of the service provider to facilitate a future transition into a standalone utility.[275] The study also noted that ServCo was not an "all or nothing" proposition – it allowed LIPA to retain management of key strategic support functions[276] and it provided LIPA with greater control to set policy, goals, and direct practices.[277]

Absent transition concerns, the Brattle Group study indicated that full municipalization may be preferable over the ServCo option.[278] However, because of the transition risks associated with full municipalization, the Brattle Group recommended that the ServCo option had the best likelihood of low transitional risks, effective performance incentives, and optionality to adjust in the future.[279] The cost difference between the ServCo and full municipalization options was deemed too narrow to make cost ranking the sole basis of selection.[280] The most compelling basis of support for the ServCo model was LIPA's relatively efficient level of operations in terms of cost and reliability under its MSA with National Grid.[281]

Privatization

Privatization would bring future rate-setting under the PSC's rate process at the expense of losing tax-advantaged financing.[282] This option would require all of LIPA's debt to be "defeased" to comply with applicable tax laws, at a total estimated cost of $961 million.[283] The study also noted that separate from the defeasance costs, the financing costs of privatization would increase annual revenue requirements by more than $438 million.[284] The Brattle Group concluded that privatization would likely entail a 10% to 20% increase in electric rates,[285] and this rate impact, combined with other identified risks, removed privatization from consideration.[286]

2. 2012 Lazard Frères & Co. Privatization Study (Draft)

In December 2012, Lazard Frères & Co. ("Lazard"), in consultation with NYPA, examined the core issues impacting the LIPA T&D System and various strategic alternatives for LIPA.[287] Lazard's potential alternatives included (1) full municipalization, (2) a merger of NYPA and LIPA, and (3) fully-outsourced management/operations in relation to public ownership, (4) an initial public offering ("IPO"), and (5) a trade sale in relation to private ownership.[288]

Lazard examined each model using a set of key objectives, including the potential to reduce rates, integration of management, planning, and operations, institutional stability, improvement of

accountability, reform of ratemaking authority, resolution of board/employee recruitment and retention challenges, and improvement of approval processes and organizational complexity.[289]

Lazard considered maintaining LIPA's status quo to be an untenale option. It noted that LIPA's operations and maintenance expense exceeded its initial forecast each year between 2004 and 2011, with 2010 and 2011 expense surpassing forecasts by approximately 35%.[290] Lazard concluded that despite certain benefits – cost advantages of tax-exempt debt structure, avoidance of defeasance and breakage costs, imminent transition to PSEG, and management of power supply with emphasis on renewables and energy efficiency initiatives – the status quo had no potential to meet key objectives and would remain a source of ongoing dysfunction.[291]

Lazard's view was that LIPA T&D System should be placed under PSC regulation and oversight through privatization.[292] Lazard believed privatization would address the key objectives.[293] With regard to the NYPA/LIPA merger option, Lazard concluded that NYPA, for all its strengths, was not equipped to run a T&D system.[294] It recommended privatization via trade sale as the primary reorganization plan, and full outsourcing of management and operations as a contingency plan.[295] Lazard recommended that LIPA address its pending PSEG transition by terminating its agreement with PSEG once private sector buyers provided bona fide bids and that National Grid continue to operate the T&D System until closing.[296]

Lazard concluded a trade sale would result in integration of management, planning, and operations, resolution of accountability issues, improved decision-making process and ability to identify and offer system enhancements, professional management and industry experience, sustainable capital structure with incentives for efficiencies, and strong private sector precedents.[297]

Potential downsides included that equity capital financing was more expensive than LIPA's existing debt-financed structure, though the cost of capital impact was unclear.[298] Lazard also noted that privatization entailed corporate income tax and debt defeasance/breakage costs.[299] Other considerations included potential complexities in execution and uncertainties related to state and local political support, among others.[300] Despite these risks, Lazard concluded the privatization model presented the best solution for structural reorganization.[301]

Lazard's study identified government ownership with fully outsourced management and operations as the contingency plan for LIPA's reorganization.[302] This contemplated full privatization of operational responsibilities, with retained public ownership solely to maintain tax-exempt debt financing.[303] Lazard noted this option would benefit from potentially improved accountability under PSC oversight. Although it would avoid debt defeasance and breakage costs, debt levels remained a constraint and, as such, this model offered fewer potential advantages compared to private ownership.[304] Lazard concluded that this model was also less favorable than full privatization because outsourcing provided for less of a "clean slate" for LIPA's T&D System and required the State to bear operating and political risks.[305]

3. 2013 NYPA Report on Strategic Alternatives

After Superstorm Sandy, NYPA was asked to review LIPA's operations and make recommendations concerning LIPA's ownership, operating structure and power supply arrangements.[306] In 2013, NYPA reported its findings and recommendations, and identified public ownership with outsourced private operation as its recommended approach.[307]

In evaluating LIPA's strategic options, NYPA applied five criteria established by Governor Cuomo: (1) short-term and long-term rate stability, (2) short-term and long-term property tax stability, (3) improved customer service, (4) storm preparation, and (5) storm response.[308] NYPA also applied other policy objectives, including the need for storm hardening investment, more effective governance and transparency in LIPA's rate process, the need for near-term stability of management and operations, and anticipating and responding to major changes in Long Island's energy marketplace.[309]

NYPA's report presented an overview of LIPA's difficulties and identified many contributing causes for LIPA's high rates, including the impact of the LILCO acquisition, decommissioning of Shoreham,[310] significant debt in relation to assets, lack of excess cash flow, and LIPA's responsibility for property tax and PILOT payments.[311] At the same time, NYPA noted that LIPA achieved competitive operations and maintenance costs for T&D operations relative to its size and high operational reliability in blue sky conditions despite its financial difficulties and low customer satisfaction.[312]

NYPA's analysis included a review of Moreland Commission findings, prior studies by LIPA consultants,[313] and analyses performed by NYPA consultants. In its findings, NYPA expressed

several concerns with the Lazard analysis of strategic alternatives and, in particular, Lazard's analysis of the privatization model.[314] NYPA criticized Lazard's decision not to incorporate the analysis of other consultants in its study.[315] According to NYPA, Lazard's report did not accurately reflect initial costs associated with privatization, and NYPA also disagreed with Lazard's conclusions concerning LIPA's power supply practices.[316] Unlike Lazard, NYPA found that LIPA's power supply practices were reasonable and prudent.[317]

Based on its analysis, NYPA recommended an enhanced version of the fully-outsourced public-private partnership identified in the Lazard analysis, with the incorporation of elements to privatize operations through a management contract, retain public ownership to enable continued access to tax-exempt financing and FEMA eligibility, and place authority for rate-setting and system investment determinations with LIPA's Board, subject to reporting to and review by DPS.[318] NYPA also recommended that LIPA's agreement with PSEG be modified to (a) better take advantage of potential operating efficiencies with PSEG, such as utilizing PSEG's outage management system, customer information system, and financial management systems; and (b) revise PSEG incentives to better align interests and reflect additional responsibilities while continuing to meet IRS Qualified Management Contract rules to preserve LIPA's tax-exempt bond financing.[319] NYPA's other recommendations included partial refinancing of LIPA's higher cost debt to "wall off" an amount equivalent to the excess Shoreham debt through securitization, and modification of the number and minimum qualifications for LIPA Board members.[320]

NYPA found that its recommended approach better aligned management and control of the operation of the T&D system, took advantage of PSEG's high-quality customer service and operating "best practices," largely eliminated the inefficient double-layer of management in the original PSEG arrangement, and preserved the option for LIPA to privatize at a later date.[321] NYPA also noted numerous financial advantages such as preservation of LIPA's tax-exempt debt and its eligibility for FEMA reimbursement and funding for mitigation and hardening.[322] It also identified the potential to increase coordination with other state policies if the DPS review and recommendation element were incorporated.[323]

Although NYPA's recommended approach would not eliminate separation of ownership and management, NYPA noted that LIPA's contract with PSEG could be modified to better align public and private interests and reduce overlap.[324] NYPA also stressed that DPS oversight must be advisory in nature to ensure that LIPA's reorganization does not create bond rating agency and bondholder objections.[325]

4. LIPA's Options Analysis Studies

Following the DPS and LIPA investigations of PSEG LI's storm response, LIPA's Board directed LIPA staff to evaluate potential alternatives for the management of LIPA assets, including terminating LIPA's contract with PSEG LI and renegotiating the contract to realign PSEG LI's management orientation and incentives for greater accountability.[326] LIPA staff examined potential alternatives for the management of LIPA assets in two phases—the December 2020 Phase I Options Analysis Report presented an initial framing of the range of possible restructuring options, and the April 2021 Phase II Options Analysis Report (collectively, the "Reports") further refined and developed these options.[327]

In its Phase I Report, LIPA examined the following options: (1) transfer of LIPA's assets to a private utility; (2) a reform or reset of the single-partner municipal model; and (3) transforming operations under a municipal management model.[328] In Phase II, these options were further refined into four possible scenarios, including (1) selling LIPA's assets to private investors; (2) resetting the PSEG relationship and reforming the contract; (3) seeking a new service provider to improve operations; and (4) bringing utility operations under LIPA management.[329]

a. Option 1: Sale of LIPA Assets to Private Investors

The Reports analyzed the option of privatizing LIPA's assets, either through selling LIPA assets to an IOU or through spin-off of an independent self-managed LIPA to private investors.[330] Both Reports noted that LIPA purchased LILCO, a privatized IOU, in 1998 for the purpose of gaining access to the lower financing costs available to a public power utility.[331] In its Reports, LIPA found that privatization would raise financing costs by roughly $447 million per year.[332] Privatization would also make LIPA ineligible for federal disaster recovery and storm hardening grants.[333] Because power supply costs, taxes (other than income taxes), and PILOTs would generally be similar regardless of public or private ownership, the Reports indicated that LIPA's operations and maintenance expenses did not provide sufficient potential savings to offset the higher cost of capital and loss of federal disaster recovery grants that would result from privatization.[334]

The Reports also discussed the significant transaction costs associated with privatization, while noting that the full extent of such costs was not captured in the analysis and would only worsen the unfavorable economics of the privatization option.[335] Privatization would require early

retirement of tax-exempt bonds issued through both LIPA and the UDSA, which would incur an estimated $1.45 billion premium.[336]

The LIPA Board found that LIPA could access the benefits of scale and the best practices of the private sector without a change to LIPA's capital structure.[337] Because of the substantial cost and limited identifiable benefits of privatization, the LIPA Board directed LIPA staff in December 2020 to focus on the other alternatives under consideration.[338]

b. Option 2: Reset the PSEG Relationship and Reform the Management Contract

In assessing the existing relationship between LIPA and PSEG, the Reports noted that the First A&R OSA was "a high-trust arrangement with inadequate provisions for verification and course-correction."[339] Marginal improvement to customer satisfaction between 2013 and 2020 was sharply undercut in the wake of PSEG LI's failures during Tropical Storm Isaias, and LIPA's existing performance metrics provided an inadequate measure of the quality of PSEG LI's management.[340] The Reports also highlighted an apparent lack of meaningful management resulting from shared services provided by PSEG's New Jersey-based management.[341]

The Phase II Report noted the LIPA-PSEG relationship would need "to be reset to ensure greater alignment, accountability, transparency, and oversight" and must begin with changes to the existing contract.[342] Specifically, the Report identified eight core contractual reforms to be incorporated into any new service provider agreement with PSEG or another provider:

1. Greater share of management compensation at risk based on performance;
2. Expanded performance metrics with greater rigor covering all categories of service;
3. Use of gating and default metrics to discourage singularly poor performance;
4. Strengthen Long Island based management and accountability for Long Island operations;
5. Require candor from service provider;
6. Require compliance with Board recommendations to address known deficiencies;
7. Strengthen oversight in long-term planning, project prioritization, and budget development;
8. Partition Long Island IT systems and facilitate independent verification and validation.[343]

Most recently, in December 2021, LIPA and PSEG LI signed a Second A&R OSA, which remains effective until December 31, 2025. The Second A&R OSA also allows for one extension through December 31, 2030.

c. Option 3: Outsource to a New Service Provider

The Phase II Report also examined an option whereby LIPA would seek a new service provider to improve operations.[344] This option would begin with the issuance of a Request for Information outlining LIPA's requirements.[345] After outreach by LIPA staff, the LIPA Board would then proceed with a Request for Proposal ("RFP").[346] Because this option would result in a new operating agreement, LIPA could use the new core contractual framework identified in Option 2.[347] This process was expected to require 9 to 12 months, with the transition to a new service provider requiring an additional 6 to 12 months beyond the final award of a new contract.[348]

The Phase II Report identified several advantages to this option. First, it allowed LIPA to focus on the right match of management styles and mutual compatibility as to the needs and expectations of LIPA customers.[349] Second, it would require a new operating agreement by which LIPA could strengthen its oversight authority and ability to reward or penalize performance to ensure that the motivations of the service provider and LIPA's customers were more closely aligned.[350] Third, this option offered an opportunity for LIPA to explore "unbundling the service packages and separately awarding the elements to the most qualified providers."[351] Unbundling could improve services, and give LIPA flexibility to retain appropriate contractors that met its expectations, while terminating or making targeted changes to agreements with underperforming contractors.[352] Disadvantages of this option included the effort and expense to ensure alignment with the contractors, as well as a potentially costly migration of key systems and data, some of which might be capable of mitigation by recovery of damages against PSEG LI.[353]

d. Option 4: Bring Utility Operations Under LIPA Management

Direct LIPA management presented a possible structural solution to the divergence between PSEG LI and customer interests inherent in the existing outsourcing contract model.[354] The Phase II Report noted that due to LIPA's mandate to protect the interests of customers rather than to maximize profits, direct management by LIPA would ensure that the utility reflected the values and priorities of the Long Island community.[355]

Financial savings were anticipated by LIPA undertaking direct management.[356] LIPA estimated that termination of the First A&R OSA would save $75 million to $80 million annually.[357] The projected savings resulted primarily from the elimination of PSEG LI's management fee, which averaged a projected $83 million per year between 2022 and 2025.[358] The report also noted that LIPA management would significantly reduce expenses then incurred for PSEG affiliate services, which included New Jersey-based staff and systems support within IT, human resources, procurement, and other functional areas.[359] These expenses contributed an additional $15 million to $20 million to PSEG LI's annual management costs, paid for by LIPA.[360]

Other potential benefits would include improved transparency of performance and contracts, greater flexibility and responsiveness without the layer of separation between LIPA and an independent service provider, and increased accountability to the Long Island community.[361]

The Phase II Report also identified risks associated with LIPA management. Potential limitations on LIPA's ability to offer competitive, market-based salaries for talented managers was a potential risk to filling 12 anticipated senior management positions.[362] The public power model was also noted as susceptible to potential criticism because it does not leverage the specialized expertise and efficiencies available in the private sector.[363] The Report cautioned against pursuing a model where all functions and services were provided in house, and instead recommended that LIPA "selectively and flexibly assemble best-in-class expertise from the private sector" if it moves forward with the municipalization option.[364]

Another risk was the uncertainty of obtaining the full support of elected officials, regulators, stakeholders, and customers for direct LIPA management.[365] The Report noted that customer dissatisfaction with services provided under the public-private structure – using the LIPA brand – between 1998 and 2013 was the primary motivation for the LRA and the shift to providing utility service under the PSEG LI brand.[366] The Report found that customers could "perceive a move to LIPA management as a return to a previously failed management model that they would not support."[367] The Phase II Report also stated that under a LIPA management model, the LIPA Board would have a critical role in ensuring that management was held accountable,[368] and that the Board's role would require a significant investment of time and skill to establish LIPA's long-term vision and the standards for management performance.[369]

Like Option 3, shifting to LIPA management would entail short-term business continuity risks and transition costs,[370] meaning that LIPA management would need to present a transition plan that "adequately mitigates the risks involved in hiring a new management team, shifting 2,500 employees to a new organization, and migrating certain IT systems."[371]

5. 2023 Lazard Report to the Long Island Association

In February 2023, Lazard prepared a report for the Long Island Association ("LIA") presenting an analysis of how privatization could help to achieve LIPA's "Guiding Principles for Reformed Management" (customer focus, financial viability, alignment of interests, transparency/ accountability and flexibility). Lazard's analysis considered information in certain publicly available documents, as well as discussions with the LIA.

Lazard begins by listing many of the challenges LIPA faces, such as high operating costs, high procurement costs, and low customer satisfaction. The privatization implementation steps Lazard identifies include:

- third-party acquisition of the T&D System;
- T&D System financing via a traditional IOU capital structure (for example, 52%/48% debt-to-equity ratio);
- use of sale proceeds to retire LIPA debt with excess proceeds funding a Long Island Public Benefit Trust;
- effective dissolution of LIPA's residual debt;
- PSC assumes regulatory and ratemaking authority; and
- new owner manages and plans operations of the T&D System.

The report concludes that LIPA's privatization "has the potential to deliver meaningful upfront ratepayer benefits" and estimates a $97 annual ratepayer impact.

The evaluation assumed privatization would occur in 2023 or 2024 via sale to a private third-party at a price of approximately $16 billion. Approximately $10 billion of the sale price could be used to repay LIPA's existing debt, and the remainder could be placed in a "Long Island Benefit Public Trust" that could mitigate rate impacts for many years, or potentially be used for utility-related purposes.

As a threshold matter, the Commission finds that the $16 billion sale figure is a significant, unsupported assumption. LIPA's book value is approximately $10 billion. While there are few recent utility sales that can serve as a basis of comparison, a premium over book value of 25-30% would be reasonable. The Lazard analysis assumes a premium over book value of 60%. Further, the Lazard analysis assumes a LIPA capitalization rate of 64% debt/36% equity, but its actual capitalization rate is about 95% debt/5% equity. This assumption unreasonably increases Lazard's forecast revenue requirement (budget) in the Report's proformas. Additionally, the portion of the Lazard analysis addressing LIPA's cost of capital is simply incorrect. Lazard's analysis presents LIPA's weighted cost of capital at 6.65%, but since LIPA is 95% debt financed and its average interest rate is 3.50%, LIPA's actual cost of capital is roughly 3.6%. Again, this inflated cost of capital results in the LIPA revenue requirement being erroneously high in the Lazard analysis proformas.

The Lazard analysis raises other concerns. LIPA has received approximately $1.8 billion from FEMA during the last decade and have additional FEMA requests pending. Lazard acknowledges that FEMA funding would not be available under privatization, but indicates insurance and other sources of funding would be available to a private utility for storm costs, such as storm reserves, rider recovery, special deferrals, and securitization. However, an IOU would simply pass these costs along to ratepayers, and this is not reflected in Lazard's analysis of the economics of privatization. The analysis also assumes that synergies, in the form of theoretical cost savings available from combining operations with another utility (but not a private equity firm), would result in savings of 10% on a pool of $3 billion of expenses. The theoretical savings are assumed to result, at least in part, from:

- costs such as natural gas, electric purchases, taxes, storm recovery costs, and existing power plant contracts;
- elimination of the Second A&R OSA and associated management fee, but curiously, there is no expense for executive, middle management or administrative staff.

These hypothetical synergy cost savings appear to be significantly overstated, in particular because in its Phase II Options Analysis Report, LIPA estimated the potential pool of expenses subject to synergies at about $640 million per year, not $3 billion. Finally, and of critical importance, is that nothing in the Lazard analysis appears to consider, much less provide support for, the existing ServCo workforce.

Analysis of potential LIPA privatization is important and instructive, but on balance, in advocating for privatization, the Lazard analysis seems no more persuasive than prior studies which have concluded that an IOU model is inappropriate for Long Island ratepayers.

The Commission has considered each of the options set forth above and the prior reports that have analyzed them. After doing so, the Commission confirms that the Legislature's decision to transition LIPA to a public power utility, i.e., full municipalization, represents the best alternative for LIPA's ratepayers.

PART 4 – AN OVERVIEW OF WHAT DISTINGUISHES PUBLIC POWER FROM INVESTOR-OWNED UTILITIES

To determine if LIPA should transition to a true public power model, the Commission first analyzed how public power utilities differ from IOUs and other utility governance structures and how those differences affect operational outcomes. The key attributes of public power in relation to other utility governance structures and the operational benefits of public power are discussed in this Part 4.

A. Public Power Performance & Differentiators

1. Alternative Utility Structures

a. General Utility Structure Attributes

In the power industry, certain key attributes define the standard utility structure (particularly if focused on the residential retail level). These attributes have been considered in choosing the right model for LIPA:

Purpose – The purpose of any electric utility is to provide access to safe, reliable, and affordable electricity.

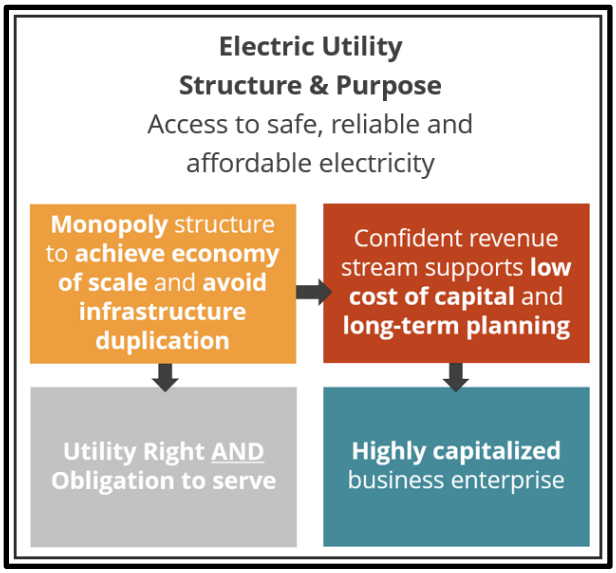
Territory – To provide service in an efficient manner, avoid duplication of expensive infrastructure, and to achieve economies of scale, utilities typically operate in a territorial monopoly. That territorial status does three things:

(1) Right & Obligation – Gives the utility both the *right* and the *obligation* to provide service.

(2) Lower Risk Revenue – Provides the utility with a lower risk revenue stream which supports a lower cost of capital.

(3) Long-Term View – Affords the utility the ability to plan infrastructure for the long-term.

Figure 1



These attributes are important for a highly capitalized enterprise. The territorial monopoly allows for stable revenues and a long-term view, which better equips utilities to meet their mission. That long-term view is a key to success.

b. Three Utility Formations

There are three primary electric utility formations: IOUs, cooperatives, and municipally-owned utilities. The latter two, because they are owned (cooperatives) and or governed by the public, are commonly referred to as public power. LIPA is considered a municipal utility or, as described below, a publicly owned utility. Figure 2 shows electric utilities by ownership type as of 2017 and provides the number of customers served by ownership type.

Figure 2

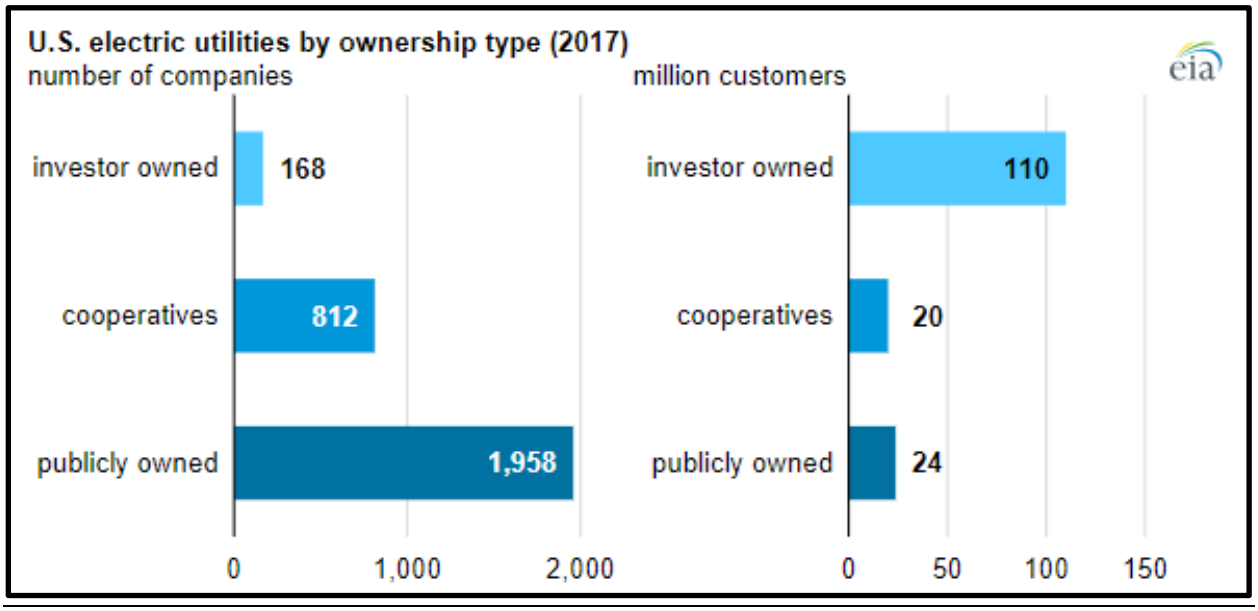


Figure 3 provides key differentiators between the three utility formations or structures.

Figure 3

Key Differentiators	Publicly Owned	Cooperatives	IOUs
Purpose	Not-For-Profit Serve Municipality or State Area	Not-For-Profit Serve Rural, Previously Underserved Areas	Generate Regulated Profit for Shareholders
Governance	Elected or Appointed Board, Sometimes with Advisory Committee State Regulation is Uncommon	Elected Board by Member Owners State Regulation is Uncommon	Board of Directors to Represent Shareholders Regulated by State
Capital	Low-Cost Tax-Exempt Bonds	Federal Low-Cost Financing – Rural Utilities Service (RUS)	Traditional Corporate Capital Structure of Debt and Equity

c. Evaluated Alternatives

There has already been significant, well-documented consideration of options to transform LIPA into a utility capable of providing excellent cost-efficient service to Long Island. Several alternatives have been investigated and are more fully described in Part 3 of this Interim Report. In summary, these options are as follows:

Privatize – Sell LIPA's assets and the right to serve LIPA consumers to a new private company or existing IOU. The privatization route has been evaluated several times in the past with the conclusion that a higher cost of capital would likely result in an increase in short to medium term rates. Cost implications would include loss of access to FEMA funds in the wake of major storms or disasters that damage utility infrastructure. Sale to a larger utility in the state or outside the state would likely diminish the potential for local customer engagement and control. Most privatization considerations, including the February 2023 Lazard Report to the Long Island Association, depend upon assumptions about sale price, capital structure, and acquired synergy or economy of scale-saving. Each of those assumptions have a wide range of potential outcomes and when compounded, would produce a variety of outcomes for Long Island electricity consumers, many of which would be unattractive.

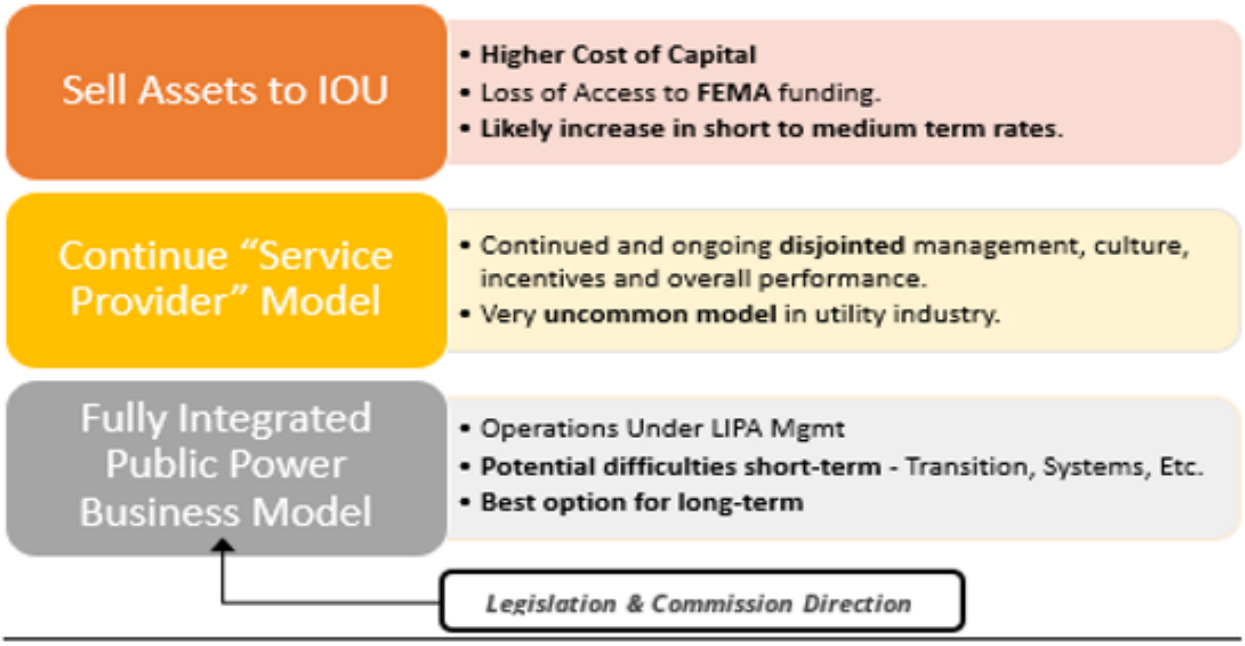
Continue the "Service Provider Model" – No other utility of LIPA's size and scale operates with the current third-party service provider model. Leading and managing through a relatively short-term contractual arrangement creates incentive misalignment within a business model that requires a solid long-term view. A service provider arrangement separates the strategic long-term view from the day-to-day execution. Whether LIPA continues with PSEG LI or transitions to a different service provider, it is difficult to imagine this service provider model could be as successful as other proven industry models. This is particularly the case given past failures in the third-party service provider model.

Fully Integrated Public Power Model – This approach transitions LIPA to a fully independent model that is consistent with best practices in the industry and positions LIPA for the best long-term outcomes. This model would allow LIPA to be governed by members of the Long Island community and simultaneously enhance accountability and

responsiveness to the specific priorities of the community. In comparison to the alternatives, this option provides more favorable risk-adjusted outcomes.

Each of these options will have short-term difficulties and challenges, as illustrated in Figure 4.

Figure 4



2. Public Power Performance

Comparing utilities based on cost and performance is difficult as many unique and influential variables cannot be easily contrasted from utility to utility. In addition, there are tradeoffs between cost and service. Excellent service is simply more expensive to provide. It is the job of a locally elected or appointed board, state regulatory commissions, and other utility governance officials to understand the preferences and needs of the customers and implement initiatives that reflect those preferences and needs while complying with all applicable laws and regulations.

The following are important factors that influence cost and performance:

Power Supply Mix – Local legislation, natural availability of renewable energy, favorable or unfavorable past power supply investments and other factors can have significant impacts on the cost to provide service.

Customer Density and Type – A ten-unit apartment complex costs less per customer to serve than ten small houses spread across one mile of road.

Physical Environment – Tree cover, air salinity, temperatures, sun, moisture, and terrain can make it more difficult and costly to provide service.

Contingency Preparedness – The level of contingency preparedness through operations excellence and smart system investment directly influences reliability and resiliency performance and therefore customer satisfaction.

Contingency Occurrences – The likelihood of storms and weather-related major events creates challenges for utilities with costal territory and in other areas where natural disasters are more prevalent.

While data is available to assess and draw performance comparisons between utilities, variations between utilities make comparisons imprecise.

According to data provided by the American Public Power Association ("APPA") and as shown in Figure 5, public power (all public power utility sizes) pays less per kWh than IOUs. Cooperatives, another form of public power, pay the least per kWh.

Figure 5

Average Cost per kilowatt-hour for residential customers.[372]

	Investor-Owned Utility	Cooperative	Public Power
Average residential rate per kilowatt-hour	$0.1370	$0.1182	$0.1217
Average kWh/month	855	1,121	920
Average monthly customer bill (extrapolated)	$117	$133	$112

Several categories of performance including reliability and resiliency are primarily driven by how well a utility exercises industry best practices within the unique environment and conditions when it operates. The reliability statistics depicted in Figures 6 through 8 demonstrate that on average, without considering major events such as storms, public power experiences less outage time than IOUs and that outage time is relatively consistent whether near the coast or not. When including major events into the system, average interruption index, the reliability distinction between public power and IOUs, is less clear. However, it remains clear that utilities within a state with coastal exposure experience more outage time than utilities within landlocked states.

Other performance categories such as customer satisfaction and community responsibility are more readily impacted by best practices within the utility business model and governance approach.

Figure 6

Average Duration of Outage (all reporting utilities, all sizes).[373]

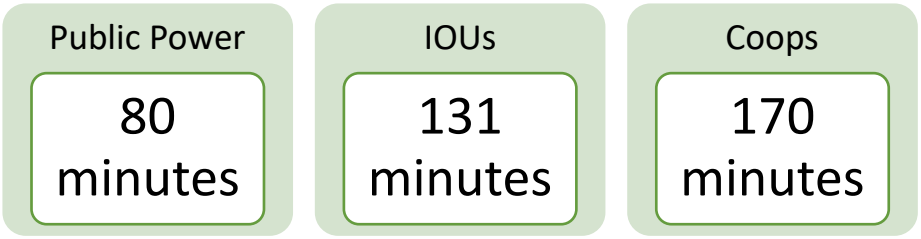


Figure 7

SAIDI (Without Major Events)[374]

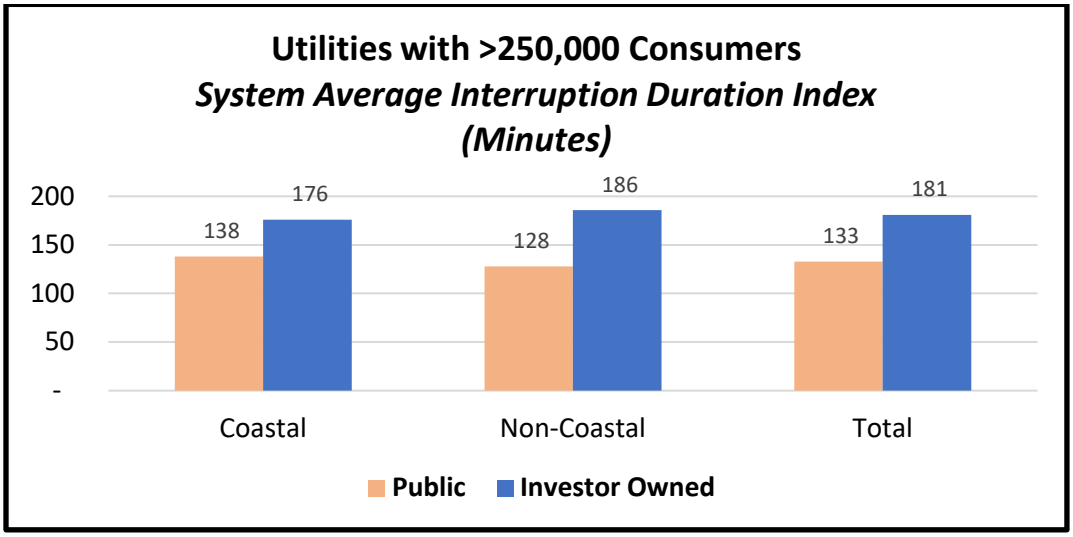
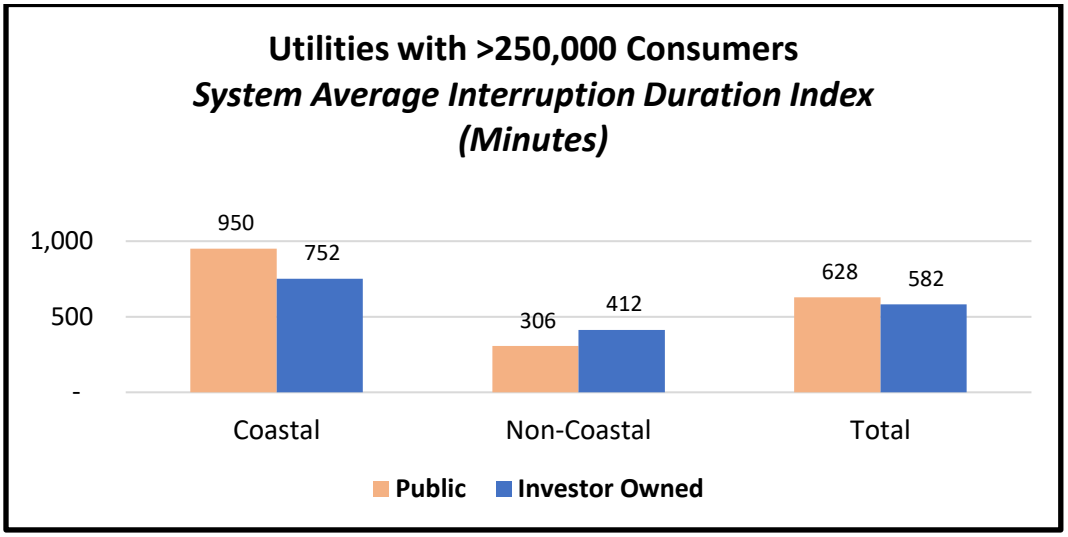


Figure 8

SAIDI (With Major Events)[375]



PART 5 – AN ANALYSIS OF THE COMMISSION'S RECOMMENDATIONS ON HOW TO CONVERT LIPA TO A TRUE PUBLIC UTILITY

The Commission considered how LIPA's transition to a true public power authority would affect stakeholders, operation of the grid, and Long Island's future energy needs. Accordingly, the Commission has determined what it believes are the best steps and strategies moving forward. The Commission's recommendations are summarized in this Part 5.

A. Cost Impacts

1. Ratepayers

LIPA has estimated in its Phase II Options Analysis that by transitioning to public power, and eliminating the third-party service provider, it can achieve an estimated $78 million in annual savings, which represents approximately 2% of LIPA's total annual revenue requirement.

The analysis of the potential impact on ratepayers of a transition to a public power utility necessarily begins with a review of LIPA's current costs and their source.

Figure 9 below demonstrates the overall costs required to be recovered from ratepayers and their relative percentages to the total annual costs that must be recovered.[376] This information was developed utilizing LIPA budgetary data and has been adjusted to reflect the total management fee for PSEG LI rather than only the expensed component.

LIPA is similar to other utilities in that its cost for power, debt service on capital infrastructure, and tax obligations comprise the overwhelming majority of the total annual revenue requirement. These categories will by and large not be impacted by a transition to a full public power utility. The minority share of expenses are found in the operational expense for primarily direct and indirect labor from LIPA, PSEG LI, and ServCo employees (the 2.8% and 19.8% categories found in the charts below). It is within these expenses that a transition to a public power utility will have the most direct effect.

2. LIPA and PSEG LI Operating Cost Recovery on Customer Bills

- **LIPA Operating Cost Recovery Requirement** - As mentioned above, Figure 9 represents the costs LIPA must recover from ratepayers for a typical budget year. More specifically, these costs can be broken down further as follows:
  - 77.5% = Power Supply (purchased power), T&D Debt Service (assets owned by LIPA), PILOT/Other.
  - 22.5% = Operational Expense of LIPA/PSEG LI/ServCo.

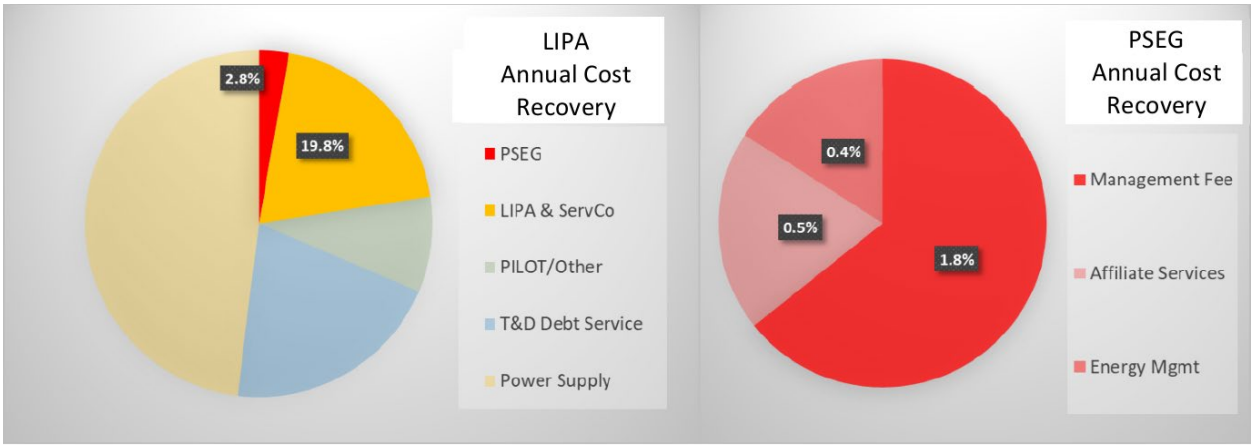
- **PSEG LI Component of LIPA Operating Cost Recovery Requirement** - Figure 10 shows the **three** distinct components of the PSEG LI portion of LIPA's total operating cost recovery requirements.

  - **Management Fee** – This fee is primarily for 19 contracted positions from PSEG LI. When transitioning to a fully integrated public power business model, moving away from contracted leadership and management of LIPA's operations will be the most influential component of change. For illustrative purposes, the capitalized portion of the PSEG LI management fee is included in the "Management Fee" component and that cost is subtracted from "T&D Debt Service" in order to approximate LIPA's budgeted total annual operating cost recovery requirement.

  - **Affiliate Services** – The affiliate services are pass-through in nature with fully burdened overheads. They include IT, Treasury, HR, Procurement and other miscellaneous services.

  - **Energy Management** – These services include activities such as bidding all generation assets under contract to LIPA, scheduling outages and tests of contract assets, management of forward energy hedges and fuel commodity purchases.

Figure 9 **Figure 10**



Figures 9 and 10 indicate the PSEG LI management fee represents a relatively small portion of the overall annual cost recovery requirement. When contemplating the cost implications of transitioning to an independent public power model, the focus should be on operational excellence and a long-term pursuit of quality, reliability, and best practices. As excellence in governance, leadership, management, and operations are achieved over time, increased cost efficiency and performance can also be achieved.

a. Short-Term Financial Implications Analysis

As discussed above, the three components of the PSEG LI fee paid by LIPA make up approximately 2.8% of LIPA's total costs that must be recovered from ratepayers. That 2.8% is approximately 12.5% of the LIPA, ServCo and PSEG LI utility operations cost (excludes PILOT, debt service and power supply). Of the PSEG LI costs, the energy management component is not expected to change significantly, whether or not PSEG LI continues to provide that service. The costs and functions covered by the management fee and affiliate services will be where the most operational change occurs. Long-term performance and cost efficiency will result from the deployment of industry best practices at the governance, leadership, management, and execution levels for aspects of the business model including generation, T&D, and customer interaction. Prudent consideration of the short-term (and long-term) financial implications of change is important to assuring continuous improvement and accountability.

Good decision making also requires a dynamic perspective of the future and a realistic assessment of risk. While future outcomes cannot be forecasted with precision, it is possible to

anticipate various future conditions and assess how they would impact a decision to move forward, do nothing, or consider other options. With that logic in mind, two future conditions are contrasted against the current or base case to assess various future outcomes and better inform a decision. The following analysis seeks to ascertain the most financially influential components of change and tests the sensitivity of the change case economics.

Three viewpoints are presented in Table 1 below:

- **Current Proforma Costs** – These costs track closely with (proforma viewpoint) LIPA's current budgeted annual operating cost recovery requirement.
- **LIPA Options Analysis** – These costs represent an updated and adjusted version of LIPA's Options Analysis for the full public power model.
- **Conservative Viewpoint** – This view is intended to provide a conservative (higher costs/lower savings) case for testing the potential impacts of a transition to a fully integrated public power model.

Table 1

LIPA Proforma Cost Components – Potential for Change

LIPA Proforma Cost Components ($ Millions)		Current Ratio of Costs	Current Profoma Costs	Change Estimates	
				LIPA Options Analysis	Conservative Viewpoint
PSEG	Mgmt Fee Expense	1.1%	48	3	9
	Mgmt Fee Capitalized*	0.7%	30	2	6
	IT / Affiliate Services	0.5%	24	23	33
	Energy Mgmt	0.4%	19	15	25
DPS Cost to LIPA		0.3%	13	13	13
LIPA & ServCo Operations Expense		20%	860		
PILOT		9%	385		
Capital Structure - Dep/Am		21%	915		
Power Supply		48%	2,080		
Annual Costs		100%	4,374	4,296	4,326
Annual Savings Relative to Current Case				**78**	**48**
				1.8%	**1.1%**

The following bullet points provide a description for each row of Table 1 above.

- **PSEG Cost Components**
  - **Management Fee** – The base or current management fee cost is estimated at $78 million based on (1) the total budgeted cost allocated between fixed and variable

compensation, and (2) the assumption that any ongoing acceptance of an OSA would demand strong performance relative to the performance metrics found within the Second A&R OSA. The LIPA Phase II Options Analysis suggests the 19 contracted positions can be hired for much less than currently, and further, that fewer than 19 positions are required to continue the same service and function. LIPA's estimate may be correct, but to account for potential underestimation of positions needed and the total cost of these positions, a hypothetical conservative estimate has been utilized that is three times the estimate utilized by LIPA and two times the estimated current compensation of the 19 contracted positions as reported by LIPA. The actual and estimated total compensation for each contracted position is reasonable for the 19 positions. This conservatism indicates that even with a degree of error in LIPA's assessment, there would still be meaningful savings.

- **IT/Affiliate Services** – The IT and affiliate services currently provided by PSEG LI are presently transitioning to standalone systems and operational functions. LIPA's Phase II Options Analysis assumed there would be limited savings associated with the transition of these services as the systems would be standalone and any human resource-related expense would transition to LIPA. Given the transition to standalone systems, that assumption is reasonable. While there is currently a tangible plan with milestones and incentives for transition of the IT systems, transition planning for the labor related affiliate functions is not well described within the Options Analysis. Accordingly, the conservative viewpoint assumes a loss of efficiency and an underestimation of required direct and indirect labor to meet or exceed the requirements for these functions. A premium of greater than 40%, or $9 million relative to the current estimated costs, is added for IT and affiliate services post transition.
- **Energy Management** – The Phase II Options Analysis anticipates the Energy Management function provided by PSEG LI would continue with approximately 20% savings. Energy management services could be provided by a third-party (including PSEG) or be performed internally by LIPA (internal energy management is not uncommon in the public power industry). The current cost for these services is a reasonable basis without a full analysis of specific services and receipt of pricing from third parties. The conservative viewpoint assumes an approximate

20% premium above what is reported as cost in the current model to address the potential for loss of economy of scale in a transition to public power.

- **DPS Cost to LIPA** – LIPA's DPS charges total approximately $13 million per year (LIPA budget figures). There is no projected change in these costs as the current DPS/LIPA relationship is expected to continue as LIPA transitions to a fully integrated public power model.

- **LIPA & ServCo Operations Expense** – Preservation of current compensation and benefits for ServCo employees is a priority. Therefore, continuity of ServCo and LIPA expenses is assumed.

- **PILOTs** – Transition to a fully integrated public power model will not create any changes in LIPA's PILOT payments.

- **Capital Structure/Depreciation & Amortization** – Transition to a fully integrated public power model will not change the capital structure of LIPA and is not anticipated to negatively influence LIPA's cost of capital.

- **Power Supply** - While PSEG LI currently completes LIPA's IRP on behalf of LIPA and its stakeholders, a transition to a fully integrated public power model will not significantly change the approach to assuring a reliable power supply for LIPA ratepayers and compliance, particularly because of the requirement to comply with the CLCPA.

Utilizing the conservative assumptions described above results in an estimated annual savings of approximately $48 million by transitioning to a public power model. This is predicated on LIPA assuming responsibility for, or outsourcing using standard industry practices, the management and other services currently provided by PSEG LI. This estimated savings would represent 1.1% of LIPA's total annual revenue requirement.

Any time major organizational changes occur, concepts such as economies of scale, synergies, and efficiencies are considered. The positive or negative implications of these concepts are difficult to predict. In this case, the transition to a fully integrated public power model will likely yield moderate changes in synergy and efficiencies which cannot be quantified in this Interim Report.

- Currently, all IT systems and most overhead functions are being transitioned to stand alone, independent of PSEG LI. This process is underway and will continue regardless of whether LIPA transitions to fully public power. Therefore, any anticipated synergies in these functions are or will be consistent between the base case and change case.

- Economies of scale and synergies have diminishing returns. LIPA is, based on customer count, one of the largest public utilities in the country, and it has the scale necessary to run efficiently.

- Greater scale can in some cases lead to improved cost efficiencies, but the competing consideration is usually a diminished level of tailored service and local customer engagement. Furthermore, transactions that rely upon synergies to create value, usually lead to reduction and sometimes relocation of work force.

b. One-Time Transition Costs

Transition to a public power model will involve unavoidable transition costs. Accordingly, the Commission has considered these costs, and reasonable associated risks, to ensure they do not offset the value of long-term change.

- **Termination Fees** – If the Second A&R OSA expires at the end of 2025 per the agreement, there will be no termination fee. LIPA's termination at any point prior to contract expiration will result in a termination fee (e.g., termination on December 31, 2024 could result in a termination fee conservatively estimated at $48 million). LIPA has contractual exit ramps that are triggered if and when PSEG LI does not meet certain performance metrics. In some or all of those cases, LIPA can terminate the Second A&R OSA without a termination fee. In this Interim Report, it is not anticipated that termination fees will be realized for any reason.

- **Transition of Energy Management Services** – The estimates are based on LIPA's reported costs from a prior transition for similar services in 2013. These cost estimates are considered conservative based on the offerings from today's service providers and the efficiency for which these offerings are exchanged throughout industry. Furthermore, a transition away from PSEG LI for these services is not necessary to implement the public

power model and no significant cost savings are projected. It is assumed that if seeking to transition IT systems to LIPA by the end of 2024, the transition of Energy Management function would be postponed to minimize the amount of short-term change.

- **IT & Affiliate Services Transition** – The affiliate services provided by PSEG LI include IT system support, IT project support, human resources, procurement, treasury, and legal services. IT services and systems and associated costs are the largest component. These associated costs are passed through to LIPA as incurred by PSEG LI. Plans have been developed by LIPA and PSEG with the review of DPS to transition all IT systems that support any operational or affiliate function to stand-alone LIPA systems by the end of 2024 or conclusion of the Second A&R OSA term at the end of 2025. The plan includes personnel to support any and all of these IT systems. The conservative estimate budgets $5 million (IT) and $1 million (affiliate services) for the residual efforts necessary to effectuate full transition. The estimates are derived from a percentage of total annual costs for the reported services and by tallying costs for incremental consulting fees, professional labor costs, hardware and software procurement, and other unanticipated transition costs.

- **Supplemental PSEG LI Transition** – While a 1.5 or 2.5-year timeframe for completion of all required transition activities is not unreasonable, significant cushion for potential continuity of those services, as has occurred in past transitions, is a reasonable consideration for testing the financial consequence sensitivities. The conservative estimate utilizes approximately two thirds of the stated IT and affiliate services annual costs which allows for duplication of effort for approximately 8 months. While many costs and systems would never require duplication in effort, this provides a conservative estimate as input to this economic analysis.

- **Employee Transitions** – It would be expensive to recruit and train new employees to replace PSEG LI positions funded by the management fee. In addition, there are likely costs associated with the structural transition for ServCo employees. The estimated one-time cost accounts for recruiting and transition costs on a per person basis for PSEG contracted employees and ServCo employees.

- **Employee Recruitment Overlap** – When transitioning responsibilities and tasks from one employee or organization to another, timeline overlap is important. In addition, because

all the transition activities will have specific deadlines and dates, an additional level of overlap will result from a recruiting timeline that can be variable in nature. A six-month overlap using LIPA's cost estimates for the 19 contracted positions is utilized as a conservative estimate. The overlap will also equip LIPA with a labor force to participate in the planning and execution of any change management.

- **Litigation Costs** – There may be litigation and associated costs as a result of either termination of the Second A&R OSA or expiration of the agreement. Any number of disagreements have the potential to result in litigation and significant costs. A consideration of how litigation could influence timelines and planning may be more important than the associated costs. It is not possible to estimate litigation costs in any context before a claim is asserted, but a conservative estimate that is 5 times the projection of LIPA in its Phase II Option Analysis has been used.

- **Policy and Procedure Rework** – Most existing protocols and procedures used by the 2,500 ServCo employees and PSEG LI managers will likely stay in place, at least in the near term. Short and long-term expenses should be anticipated for the transition of all procedures and policies in response to the new operations and governance model. While this effort is important, the overall cost of the effort will have a minor impact on the overall attractiveness or feasibility of the transition to a fully integrated public power model. Eight thousand hours of effort is budgeted for this effort.

- **Governance Model Construction** - Change to LIPA's governance structure and various decisions within that structure such as whether the board is elected or appointed would have one-time and potential long-term cost consequences. While these costs are likely not large enough to influence the decision-making process, they are real and should be budgeted and managed. Estimating a single cost amount for this activity is difficult without specific awareness of the resulting governance model construction. Again, while this effort is very important and should be accounted for, it will not impact any decisions that result from this economic analysis.

- **Rebranding & Other Transition Effects** – The physical and online branding transition will encompass everything from truck logos to website reconfiguration. More importantly, a short, medium, and long-term campaign to inform customers and stakeholders about

the transition and to gather customer support and customer satisfaction will be very important. These efforts will be costly. The included costs are formed from other budgeted and executed efforts for utility model transitions and formation efforts.

- **Contingency** - The Phase II Options Analysis report includes a contingency. Transitions of this magnitude take a tremendous amount of effort and there will be unexpected challenges that require time, effort, and financial resources to address. The conservative estimate creates and provide a contingency for identified categories where and when appropriate. Therefore, an additional contingency, beyond what is considered in the Phase II Options Analysis, is not necessary.

Based on the above, and to assess the financial sensitivity of transition to a fully integrated public power model, Table 2, below, provides two estimates of potential transition costs, one based on the LIPA Phase II Options Analysis and one from a more conservative viewpoint.

Table 2

One-Time Transition Costs Assume 12/31/25 Transition ($ Millions)	LIPA Options Analysis	Conservative Viewpoint
Termination Fees*	0	0
Transition of Energy Mgmt Services**	0	16
IT Transition Residual	5	5
Other Affiliate Services	0	1
Supplemental PSEG Transition Charges	3	15
Employee Transitions***	1	4
Employee Recruitment Overlap	0	4
Litigation Costs****	1	5
Policy & Procedure Rework	1	2
Governance Model Construction	0	1
Rebranding & Other Transition	2	3
Contingency	3	3
TOTAL	**16**	**59**

*Completion of all transition activities would be difficult to achieve by the end of 2024. A 12/31/25 transition date, consistent with termination of the OSA, is assumed.

**Transition of Energy Management Services are not necessary and significant annual savings are not anticipated if transitioning to another provider.

***The model utilized to assure the protection of ServCo employees when transitioning will have one-time and ongoing cost implications.

****Litigation costs will potentially be greater in the event of a transition prior to the end of the current OSA Term.

By using the estimates in the above analysis, and as derived from historical reporting, the financial implications associated with transition to a fully integrated public power model are as follows:

- Short-term annual savings estimates = $45 to $75 million (1 to 2% of the total revenue requirement).
- Transition one-time cost estimates = $16 to $59 million.
- The range of payback periods from best to worst case scenario is three to 16 months.

Generally, the LIPA Phase II Options Analysis provides a straightforward and reasonable portrayal of the economics associated with the transition to a fully integrated public power model. The more conservative estimates considered in this Interim Report results in a less significant savings impact than projected by LIPA, but in either case, the fully integrated public power model is sufficiently financially attractive that even with significant error in the savings estimates, it will still result in a positive net present value proposition or lower long-term costs for LIPA ratepayers. A transition toward industry best practices in public power will, with excellent leadership and prudent decision making, result in additional long-term value for Long Island residents.

Local Government

Because LIPA's tax-related expenses are imposed either by statute or by existing contractual obligations, a restructuring of LIPA would not substantially alter its property tax or PILOT obligations. If LIPA transitions to a full public power model, the impact on local taxation and PILOTs would be minimal.

3. Potential Rate Impacts from Changes in Governance and/or Oversight

LIPA utilizes an industry standard approach to ratemaking which steps through the revenue requirement, cost to serve analysis, and construction of rates for a fair and equitable recovery of costs from each identified customer class. These approaches are consistent across all electric utility models, whether public or private. However, state-based regulation is inconsistent among public and private utility models. LIPA, through the LRA, is subject to the "review and recommendation" authority of DPS. While DPS reviews all rate changes instituted by LIPA, LIPA's board has the final authority for all changes up to a 2.5% increase. DPS must review and make a recommendation regarding any proposed change over 2.5%, which must be implemented by the LIPA Board unless it makes a determination of inconsistency.

Operationally, the transition to a fully integrated public power model should not materially impact the methodologies and best practices that are currently utilized in the LIPA ratemaking process.

However, depending upon the selected governance model chosen, the authority to approve and influence the results and decisions that flow out of those best practices may change.

Three regulatory paths could emerge:

- **No DPS Involvement** – In this case, a transition to the traditional public model whereby the board is held accountable by customers to assure prudent provision of service, would result in an elimination of DPS involvement.
- **Continue Current Protocols** – The board could continue to share the rate-making process with DPS per existing legislation in the LRA.
- **Full Regulation** – Transition to full regulation as is consistent with IOUs in the state would transition ratemaking authority away from local directors to DPS.

After payback of the one-time transaction costs, the impact to rates should be as reported above, an estimated 1 to 2% reduction in costs or annual revenue requirement, which would directly translate to bill savings for Long Island citizens.

B. Contributions to Localities - Public Power Governance Best Practices

Public power utilities do not pay income tax but do make other types of payments and contributions to their local and state governments. These payments can take the form of property-like taxes, PILOTs and transfers to the general fund of the government body that owns and established the utility. The APPA surveys public power utilities every several years to provide a general assessment of the scope of these payments.

The most recent APPA survey in 2020 indicates that public power utilities contributed a median of 6.1% of electric operating revenue back to the communities they serve.[377] Public power utilities have also implemented innovative charitable giving programs funded by donations from their employees, as well as commitments of volunteer time to help support their community.

Eighty-two percent (82%) of respondents to the APPA survey contributed to local or state governments in the form of in-lieu taxes or government general fund taxes. The most common method used to determine the amount of the payments was a percentage of the electric utility's gross operating revenues. The median contribution was 4.6% of operating revenue for those responding utilities in the Northeast Region which includes the New England states as well as New York and New Jersey.

C. Reliability & Resiliency

1. Infrastructure Improvements & Storm Response - Public Power Performance, Best Practices, and Differentiators

As LIPA's future operations model and governance structure are contemplated, reliability and resiliency of system performance are key considerations. Long Island ratepayers need a utility provider that employs industry best standards that create the highest likelihood of positive system performance with the lowest costs and a responsible approach.

a. Reliability vs. Resiliency

Reliability and resiliency of electric power systems are closely related metrics with important distinctions. Reliability is the ability of the system and its components to withstand instability and failures during routine or reasonably expected events. Resiliency is the ability of the system and its components to recover following non-routine, high-impact disruptions such as hurricanes, tropical storms, ice storms, and wildfires.[378]

LIPA's T&D System has very good reliability, but Long Island has experienced many storm-related outages over the past two decades. The storm-related outages have understandably left customers and stakeholders of the electric utility grid questioning LIPA's ability to implement best practices and seeking an improved level of system resiliency.

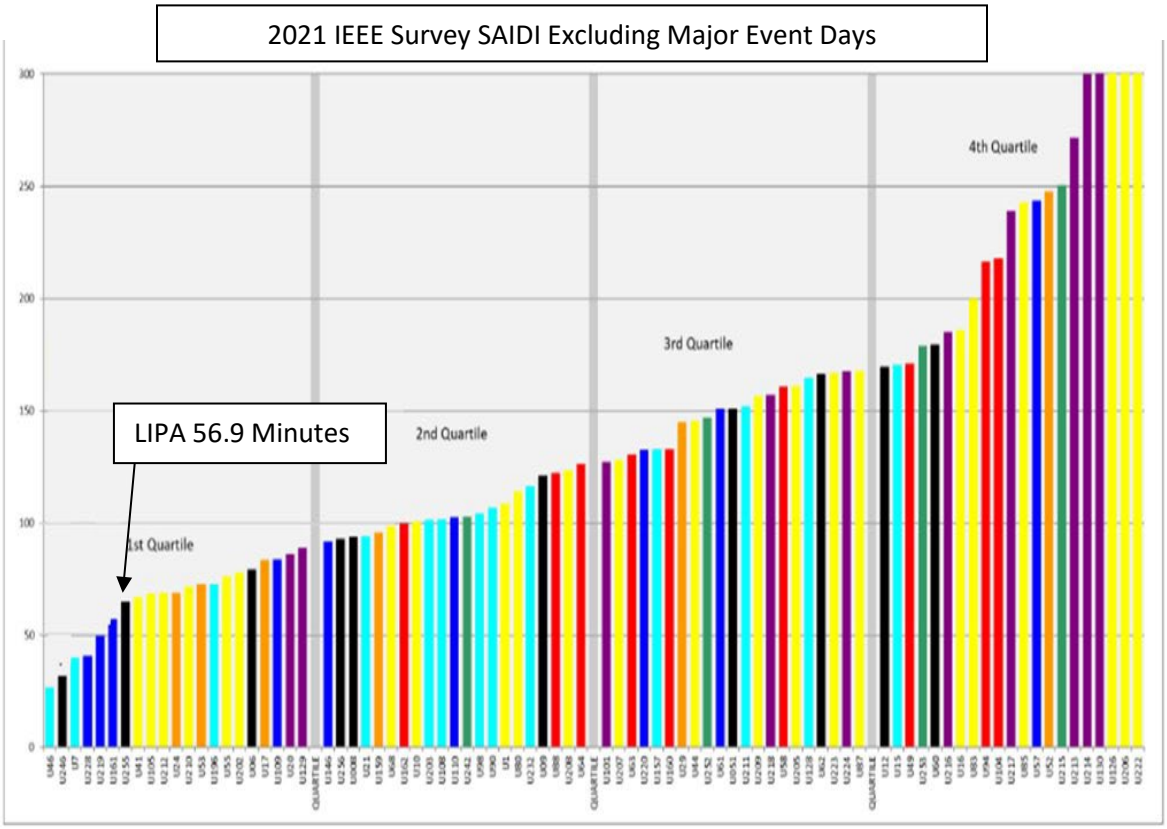
b. System Reliability and the Current Operating Agreement

LIPA's Second A&R OSA with PSEG LI shifts the responsibility for day-to-day operations of the utility, including storm preparedness, customer communication, and service restoration, to PSEG LI. LIPA, as owner of the utility assets, exercises contractual and statutory oversight over PSEG LI's budget and operations.

The Second A&R OSA contains high-level guidance regarding reliability. Specifically, PSEG LI is responsible for preparation of plans to determine the need for capital improvements to ensure the technical performance and reliability of the T&D System and to meet the goals and objectives set forth in the Long Range Plan and Utility 2.0 Plan.[379] The Second A&R OSA includes gating performance incentive metrics for reliability requiring PSEG LI to maintain a SAIDI score in the 37.5th percentile or better, without consideration of major event days, utilizing U.S. Energy Information Administration data. During the years 2019, 2020, and 2021, PSEG LI had SAIDI

values (excluding extreme storm) of 51 minutes, 65 minutes, and 54 minutes, which meets the applicable metric. Figure 11 compares LIPA's reliability to an industry reliability survey.[380]

Figure 11



For 2021, LIPA's SAIDI index excluding major events was in the first quartile (the fewer minutes of outage the better) for surveyed utilities with greater than 500,000 customers. PSEG LI achieved the reliability metric goal in 2021, demonstrating strong maintenance programs and management of aging infrastructure, and a dedicated work force able to effectively isolate outages and restore power. Given LIPA and PSEG LI's demonstrated reliability, it is difficult to expect higher goals for reliability. Rather, the focus should be to maintain the current first-in-class level of system reliability. LIPA's reliability has been achieved through significant investments in infrastructure, automation systems, and enhanced tree trimming measures.

c. Trend for Resiliency

A relatively new industry trend is to take steps to improve system resiliency. An overarching obstacle for resiliency is the inability to justify costs of storm hardening and resiliency system investments. The frequency of non-routine, high-impact disruptions cannot be predicted and is

subject to interpretation as to frequency and intensity. To achieve a high level of resiliency, the customer and leaders of the utility must recognize that resiliency investments are for the benefit of the community.

As discussed previously, LIPA and PSEG LI underperformed in response to Tropical Storm Isaias. Restoration required nearly eight days for this event. The breakdown of the system was due to failure of the OMS and the Advanced Meter Infrastructure ("AMI"), as well as the infrastructure used to inform and communicate with the public. LIPA's emergency command center was handicapped without real-time knowledge of outages and restoration via the OMS and AMI systems. These are operational components of storm preparedness and resiliency that depend upon excellence in operations, leadership, and execution, rather than physical system hardening investments.

d. Public Power and Major Storm Restoration

Federal support for public power is extremely important when considering future options for LIPA. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288), administered by FEMA, made public financial assistance available for repair, restoration and replacement of damaged facilities of state or local governments (including public utilities). This financial assistance is not available to private enterprises, so IOUs are ineligible for financial assistance under this program.[381]

Since Hurricane Sandy, LIPA has received $705 million in grants for storm repairs and $730 million in public assistance grants for additional hazard mitigation.[382] In addition, LIPA received a $277 million grant from FEMA for Tropical Storm Isaias. This assistance would not have been available had LIPA been an IOU, meaning these capital expenses would have been a burden to IOU rate payers.

e. Reliability and Resiliency – Funding and Programs

As a power utility, LIPA will continue to make future capital investments. Capital spending on LIPA's infrastructure ranged between $700 and $800 million per year for 2019 through 2022.[383] Public power offers a lower cost option for financing large capital investments compared to IOU models.

Development and implementation of programs is more straightforward in an IOU model than under the public power model. A state regulatory body has different goals than a local community

related to reliability and resiliency. A local community can decide to invest in programs and tools such as state-of-art technology, system hardening, and undergrounding practices without excessive oversight or non-localized opinions of a state-wide agency. Oversight is not absent in public power, but with a locally focused organizational structure, setting up new programs is a more cost-efficient process.

Justifying significant investment in storm hardening is difficult when a public utility can rely on FEMA for funding of some portion of restoration efforts - therefore no cash savings for the utility. However, the community may value the speed of restoration and/or mitigation efforts to avoid the outages from major events without the need for a traditional cost benefit analysis.

f. Emergency Response Plans – Community Based

Most utilities leverage FEMA's emergency planning guides when developing an incident command system. This hierarchy of individual response and implementation of the emergency response plan is similar for public power and IOUs. However, public power benefits from closer ties to the community. Emergency planning for communities where the electric infrastructure is owned by the private sector complicates strategy development and communication. Public power utilities are more integrated with communities and have vested interests in the communities they serve. Community ties are created through governance by elected officials. While rules can be promulgated for IOUs to require interaction with local authorities, public power is automatically tied into the community via governance and community interaction.

D. Power Supply, Climate Change & Green Energy

1. Power Supply - LIPA Status Quo, Alternatives, Climate Change Reaction

The power supply function is important as it constitutes over half of LIPA's annual operating budget. Several considerations regarding power supply are discussed below.[384]

2. Summary of LIPA Power Supply Function and Transmission Facilities

a. Transmission Facilities

LIPA's transmission facilities deliver capacity and energy from transmission interconnections and on-Island generation stations to LIPA's electric distribution system. As of December 31, 2021, LIPA's transmission system consisted of approximately 1,400 miles of overhead and underground lines with voltage levels ranging from 23 kilovolts ("kV") to 345 kV ("LIPA's System"). The on-Island transmission system has been constructed following standards similar to those followed by other major electric utilities in the Northeast, and components include wood poles, steel poles, and lattice steel towers. Many of the existing transmission structures support distribution circuits and/or connections for telephone, cable television, or fiber optics. The geographic location of the LIPA service area restricts the number of transmission interconnections between LIPA's System and other systems in the region. Seven major transmission lines connect the LIPA System with the Con Edison system to the west and with Eversource (Connecticut Light & Power) ("ES-CL&P") and United Illuminating Company to the north and Jersey Central Power & Light ("JCP&L") to the southwest. These interconnections are summarized in Table 3 that follows:

Table 3

SERVICE AREA TRANSMISSION INTERCONNECTIONS

Name	Off-System Terminal Locations	Summer Capacity (MW)	Interconnecting Utility	Voltage
Dunwoodie to Shore Road (Y-50)	Westchester County, NY	656	Con Edison	345 kV
East Garden City to Sprain Brook (Y-49)	Westchester County, NY	637	Con Edison	345 kV
Northport to Norwalk Cable (NNC)	Norwalk, CT	436	ES-CL&P	138 kV
Jamaica to Lake Success	Queens, NY	240	Con Edison	138 kV
Jamaica to Valley Stream	Queens, NY	268	Con Edison	138 kV
Shoreham to New Haven (CSC)	New Haven, Ct	330	United Illuminating	138 kV
Sayreville to Levittown (Neptune)	Sayreville, NJ	660	JCP&L	345 kV

In addition to these cable interconnections, LIPA has an extensive network of high voltage transmission on the Island proper. The levels of annual transmission repair and replace are within industry standards.

b. Power Generating Function and Fuel Supply

During 2021, LIPA's 18% interest in Nine Mile Point 2 ("NMP2") and its right to the capacity of the National Grid Generation ("GENCO") Generating Facilities provided approximately 3,836 MW of generating capacity. Purchases, including on-Island independent power producers and off-Island purchases from other suppliers, provided approximately 1,620 MW of additional capacity. In aggregate, these resources provided approximately 5,455 MW in 2021. LIPA's annual peak demand is approximately 5,000 MW. Table 4 contains a summary of existing power supply agreements and facilities.

Table 4
SUMMARY OF POWER SUPPLY AGREEMENTS

Unit Name	Summary Capacity (MW)	Contract Expiration
GENCO		
Steam Turbine	2,328	2028
Internal Combustion Simple Cycle	1,235	2028
Huntington Resource Recovery	24.3	2022
Babylon Resource Recovery	14.7	2022
Hempstead Resource Recovery	74.2	2022
Islip Resource Recovery	7.9	2022
J-Power Shoreham	84.9	2023
National Grid Glenwood Landing	82.5	2027
National Grid Port Jefferson	80.7	2027
J-Power Englewood	84.5	2023
Marcus Hook	685.0	2030
Calpine Bethpage 3	74.8	2025
Hawkeye Greenport	52.5	2023
J-Power Pinelawn	72.2	2025
Caithness	266.2	2029
Village of Freeport	10.0	2034
NYPA Hydro Sale for Resale (BNL)	15.0	2025
NYPA Flynn	150.0	2026
Long Island Solar Project (ELISP)	31.5	2031
Eastern Long Island Solar Project (ELIPS)	11.2	2032
Fitzpatrick	N/A	2023
South Fork Wind Farm	130.0	2042
Long Island Energy Storage – East Hampton	5.0	2038
Long Island Energy Storage – Montauk	5.0	2039
Shoreham Solar Commons	24.9	2038
Kings Park Solar 1	2.0	2039
Kings Park Solar 2	2.0	2039
Riverhead Solar Farm	20.0	2039
Long Island Solar Calverton	22.9	2052

LIPA procures fuel used at the GENCO Generating Facilities and certain non-GENCO facilities under the terms of its generation agreement. PSEG Energy Resources & Trade ("ER&T") provides fuel management services for both the GENCO and certain non-GENCO units. The fuel used for generation will depend on generation plant fuel capability, fuel supply, fuel price, transportation cost and availability, and environmental constraints. All the GENCO steam units are dual fuel. Dual fuel units can switch fuels based on overall most favorable economics.

The natural gas distribution system on Long Island shares natural gas delivery interconnections with neighboring gas utilities and interstate gas pipelines. Con Edison and two National Grid subcontractors have signed an agreement that provides for use of their joint systems to allow the parties to receive gas from interstate pipelines connected to their systems. Oil is stored on site or at locations accessible by each generation facility with the capacity to burn oil. Estimating oil storage capacity plus an active oil management program is employed by the applicable service providers for continuous fuel oil supply to the GENCO Generating Facilities and certain other non-GENCO units. Constellation is responsible for procurement of all fuel for NMP2, and LIPA reimburses Constellation for 10% of these fuel costs.

c. Current Operating Protocol for Power Supply Function

LIPA has contracts with GENCO as well as National Grid KeySpan Energy Delivery Long Island ("KEDLI"). The National Grid GENCO contract is associated with the legacy LILCO generating assets (~3,550 MW) as well as newer combustion turbines (~160 MW). These contracts provide for LIPA (currently PSEG ER&T as agent for LIPA) to bid these generating assets into the NYISO market. The KEDLI contract provides for the delivery of natural gas from the interstate pipelines to each natural gas generating unit LIPA has under contract on Long Island. As noted above, PSEG ER&T, as agent for LIPA, is currently responsible for this activity.

i. Summary of Services Provided by PSEG ER&T to LIPA

PSEG ER&T has two contracts with LIPA. The first is the Power Supply Management Agreement ("PSM") and the second is the Fuel Management Agreement ("FMA"). The PSM provides for the following: (i) bid of all generation assets under contract to LIPA into NYISO day ahead and real time markets and communicate results to generators; (ii) bid of LIPA's customer load requirement into NYISO day head market; (iii) bid of DC transmission cables (Neptune – PJM/NYIS and Cross Sound Cable – ISONE/NYISO) into their respective markets to bring lower cost power into the LIPA/NYIS Zone K market; (iv) maintaining 24x7 contact with all generators and ISOs; (v) working

with all generators to schedule outages and tests to limit cost impacts to LIPA's customers; and (vi) executive forward energy hedges consistent with LIPA hedge plan. The FMA governs the following services: (i) purchase natural gas to meet daily requirements for generators under contract to LIPA; (ii) schedule natural gas form interstate pipeline city-gate to respective generator sites with National Grid/(KEDLI); (iii) purchase #6 oil and arrange barge delivery to steam stations as required (Barrett, Northport and Port Jefferson); (iv) purchase light oil and arrange truck transportation to combustion turbine sites as required; and (v) execute forward fuel hedges consistent with LIPA hedge plan.

ii. Process to Issue and Evaluate RFPs for Purchased Power Owned by LIPA

Purchase power RFPs for LIPA are issued and evaluated by PSEG ER&T and presented to LIPA for approval. The finalists are contacted to provide their best and final offers. The portfolios are evaluated and ranked based on a valuation guide. The projects in the best portfolio are then contacted to initiate contract negotiations.

iii. Billing Procedures Between PSEG ER&T and LIPA for Services Rendered

The PSM and FMA contracts between LIPA and PSEG ER&T are fixed price contracts with an annual CPI escalation. PSEG ER&G bills LIPA monthly for services provided under these contracts.

d. Impacts on CLCPA and Improving Long-term Energy Planning

In 2019, New York enacted the CLCPA, which requires a reduction in economy-wide greenhouse gas emissions ("GHGs") of 40% by 2030 and no less than 85% by 2050 from 1990 levels. Among other requirements, the CLCPA also requires that 70% of electricity in New York State come from renewable sources by 2030, 9,000 MW of offshore wind by 2035, 6,000 MW of distributed solar by 2025 and a zero-emission electricity system be achieved by 2040. The CLCPA is one of the most comprehensive and protective climate laws in the nation, and it also contains important requirements to ensure equity, electrical system reliability and a just transition from a fossil fuel economy to a clean energy economy. Importantly, the CLCPA requires that New York's transition to a clean energy economy address burdens historically imposed on disadvantaged communities, establishing a 40% goal, and a minimum target of 35%, of overall benefits from investments in clean energy and energy efficiency to be realized by disadvantaged communities. In many respects, the CLCPA represents the future of New York State, and LIPA will play an important role in achieving CLCPA objectives.[385]

The Climate Action Council Scoping Plan is the product of more than two years of work by the Climate Action Council, with significant input from the public, and it provides detailed recommendations to ensure New York achieves the required GHG emission reductions. The Climate Action Council included several sector-specific Advisory Councils, including for power generation. GHG emissions from each of these sectors must be significantly reduced to achieve CLCPA requirements.

Transitioning to a zero-emissions electric system means both adding new clean sources of energy and retiring older, fossil-fueled power plants. The CLCPA mandates target amounts of clean energy additions for specific technologies. In addition, the Governor has announced more aggressive targets. Load flexibility and controllability must be incorporated into the statewide grid, and new and upgraded transmission and distribution systems will be needed.

The Climate Action Council Scoping Plan identifies the need for New York State to accelerate deployment of renewable energy resources, and "to upgrade its transmission and distribution system to allow for the maximum use of the renewable generators (i.e., get the power where it needs to go), improve management on the demand side of electricity use, and invest in energy storage technologies."[386]

The PSC, NYSERDA and DEC are each identified as having a significant role in implementing policies and programs to achieve CLCPA objectives, but LIPA is also identified as one of several key stakeholders in the process. It is expected that the LIPA's shares of these target amounts would be 1,125 MW of offshore wind (through bundled products or renewable attributes) by 2035, 1,310 MW of distributed solar by 2030, and 750 MW of energy storage by 2030. The LIPA Integrated Resource Plan (last adopted in 2017 and currently under review for revision in 2023) will build on these minimum targets and suggest additional flexible resources to complement the intermittency of the wind and solar additions.

Furthermore, the CLCPA adds a new initiative to establish a sustainable electric generation facility cessation mitigation program, calling on state entities to advance strategies to mitigate the impact of power plant closures on hosting communities. Governor Hochul subsequently announced a goal of 10,000 MW of distributed solar by 2030, a doubling of the State's energy storage goal to 6,000 MW by 2030.

As recognized in the CAC Scoping Plan, "[e]nergy system providers must continually reassess infrastructure vulnerabilities across the entirety of their service territories to determine appropriate resilience initiatives to mitigate potential disruptions due to the effects of climate change and make their infrastructure more adaptable to weather extremes."[387] A public LIPA, supported by ServCo employees with years of experience in responding to major storm events, is well positioned to determine how best to improve reliability and resiliency of its T&D System.

3. Power Supply Functional Changes Needed to Transition LIPA to a Fully Integrated Public Power Business Model

Given the Legislature's directives, the final question with regard to the power supply function is what, if anything, needs to change within LIPA in order to transition into a fully integrated public utility? Each major aspect of LIPA power supply, and any needed changes, is discussed below.

a. Transmission Function

Under the supervision of PSEG and its subsidiaries, the LIPA T&D System is operated and planned in keeping with industry standards. The NYISO manages the dispatch of generation using the T&D system that PSEG LI operates for LIPA. No changes in this function appear to be needed if LIPA assumes management of the T&D System.

b. Power Generation Function

Pursuant to the Amended and Restated Power Supply Agreement between Long Island Lighting Company d/b/a LIPA and National Grid Generation LLC, dated October 10, 2012 ("PSA"), LIPA purchases from National Grid the full capacity of electricity and ancillary services produced from certain National Grid generating facilities on Long Island. The PSA expires on April 30, 2028, although LIPA has the right to terminate the agreement, at its discretion, upon no less than two (2) years notice as long as such early termination is no sooner than April 30, 2025, and thereafter can only be effective as of any subsequent April 30. Since the agreement is directly between LIPA and National Grid, the agreement will remain effective upon a termination of the OSA, although any services provided by PSEG in managing such contract and/or the delivery of electricity will be borne by LIPA or its new service provider. To the extent that PSEG is the "LIPA Representative" as defined in the PSA, LIPA will need to notify National Grid upon such event.
Over two-thirds of the power generation needs are met via an agreement between GENCO and LIPA/PSEG. This agreement expires in 2028. In the meantime, LIPA has the contractual right to displace GENCO production as necessary. It is not unusual for a utility to purchase a major

amount of power generation from a third-party. Through PSEG-ER&T, LIPA also routinely issues RFPs for power generation which is also standard practice within the industry. Finally, the power management, schedule and dispatching the power supply functions are contracted out to PSEG-ER&T. Contracting these functions to a third-party is also standard practice as the skill sets and specialized equipment needed to perform this function are very unique and often times not cost-effective for utilities to perform in-house. As 2025 approaches, LIPA would need to issue a RFP from qualified firms to perform this power management function.

c. Impacts on CLCPA

The emission reduction goals of CLCPA are very aggressive. Attaining 70% renewable by 2030 and 100% zero emissions by 2040 is a significant undertaking. Given LIPA power supply mix is currently over 90% fossil fuel, a major change in LIPA power resource portfolio will be needed to achieve CLCPA's mandates. But given the required capital expenditures needed to meet CLCPA's mandates, LIPA may wish to consider increasing its internal power management subject matter experts.

Compliance with CLCPA will not be a minor undertaking. LIPA will need to construct and/or acquire 3,000-4,000 MW of renewable energy by 2030. While RECs may be available for CLCPA compliance in the short run, LIPA will ultimately need firm renewable energy resources. The capital expenditures to acquire this amount of renewable energy will be in the billions of dollars and exert significant upward pressure on LIPA retail rates. But this level of capital expenditure must be undertaken by LIPA whether the current management and operational protocol is maintained or LIPA transitions to a fully integrated public power utility. The necessary revisions to LIPA's power supply portfolio to comply with CLCPA are separate and distinct from how LIPA is managed and operated.

In sum, with respect to power supply, under a public power model, LIPA will need to issue an RFP for certain power supply functions, including management, schedule and dispatch functions. LIPA must also comply with CLCPA mandates, and geographic proximity to significant renewable development may help to facilitate an enhanced renewable portfolio.

E. LIPA's Workforce

1. Transitioning ServCo from PSEG to LIPA

Transfer of ServCo Interests

Immediately upon the expiration of the Second A&R Agreement, PSEG LI will transfer 100% of the membership interests in ServCo to LIPA or its designee, at no cost, free of all liens and encumbrances, and shall also deliver to LIPA or its designee all books and records of ServCo. The parties will mutually agree upon such instruments, agreements and other documents as may be reasonably necessary to affect such transfer.

ServCo holds no physical assets but simply employs the workforce necessary to perform the Operating Services under the Second A&R OSA. Nonetheless, it would be prudent to conduct proper due diligence to ascertain what other assets, liabilities and obligations in fact exist, particularly if LIPA agrees to acquire the membership interests in ServCo.

Transition Agreements

When LIPA transitioned to the PSEG LI and ServCo model, it entered into two Transition Services Agreements. The first was effective December 28, 2011, between the Long Island Lighting Company (dba LIPA) and PSEG (the "Initial Transition Agreement") and covered Front End Transition Services.

In 2010, while National Grid was LIPA's service provider, LIPA sent out an RFP soliciting proposals for the operation and maintenance of certain capital improvements to the T&D System and related facilities. PSEG LI won that bid and entered into the Initial Transition Agreement to undertake certain tasks in anticipation of the commencement of the OSA which was targeted to commence on January 1, 2014.

This agreement was followed by a Transition Services Agreement between National Grid Service Company, Inc. and PSEG LI, as agent for LIPA. If LIPA intends to retain a new service provider, these transition agreements can serve as templates for the efforts necessary to transition to a new third party.

2. Transitioning ServCo Contract from PSEG to LIPA

The Commission considers it critically important in any transition to a future "public power" version of LIPA that the current workforce and established relationship with the IBEW Local 1049 be maintained.

Under the current service provider model, the 2,500 employees who maintain LIPA's T&D System are employed by ServCo, a subsidiary of PSEG LI. The ServCo unionized employees and the non-unionized administrative employees have extensive institutional knowledge regarding LIPA's T&D System and operations that has been developed from decades of experience. To minimize disruptions to service and maintain efficiency of the T&D operations during any transition in the future, retaining this skilled workforce will be of paramount importance.

There are three potential models to transition the ServCo employees away from PSEG LI and place them under LIPA control while maintaining their employment status, wages, benefits and other terms of employment and preserving the relationship with IBEW Local 1049. These include:

1. LIPA corporate subsidiary (the MTA Model)
2. LIPA control of ServCo (the LLC Model)
3. LIPA employee leasing (the PEO Model)

The implications for current employees, collective bargaining agreements, and retirement and welfare employee benefit plans are addressed below with respect to each model.

a. LIPA Corporate Subsidiary (MTA Model)

One of several models available to LIPA as it considers its future operating structure is to adopt the approach taken by the Metropolitan Transportation Authority ("MTA") with respect to its subsidiary corporation, the Manhattan and Bronx Surface Transit Operating Authority ("MaBSTOA"). MaBSTOA was created by the New York State Legislature for the purpose of operating several private bus lines that were acquired by the City of New York.[388] MaBSTOA was created as a public benefit corporation owned by the New York City Transit Authority, i.e., the MTA.

The enabling legislation specifically provides MaBSTOA with the authority "to appoint officers and employees, assign powers and duties to them and fix their compensation."[389] The statute further provides that:

> *such officers and employees shall not become, for any purpose, employees of [New York City] or of the [MTA] and shall not acquire civil service status or become members of the New York City employees' retirement system* but, shall, for purposes of subparagraph (i) of paragraph three of subsection (c) of section six hundred twelve of the tax law be deemed to be officers and employees of a subdivision of the state.[390]

This language clarifies that MaBSTOA employees do not have civil service status and do not participate in the New York City retirement system. However, both the legislative history and case law clarify that MaBSTOA employees are subject to the Public Employees' Fair Employment Act (*i.e.*, the Taylor Law).[391] Significantly, this means that MaBSTOA employees are treated as public, rather than private, sector employees. They are subject to the Public Employment Relations Board's ("PERB") jurisdiction rather than the jurisdiction of the National Labor Relations Board ("NLRB").

The MTA model does permit continuation of the existing retirement plans. As noted, the enabling legislation that created MaBSTOA exempted its employees from the New York City retirement system.[392] Instead, the parties negotiated a continuation of the existing retirement benefit plans to continue to cover the bus employees who transitioned from the private bus companies to MaBSTOA employment.

Although several provisions of the LIPA Act are consistent with the MTA model, several legislative amendments would be required to clarify the nature of the arrangement. In its current form, the LIPA Act authorizes LIPA to "create or acquire one or more wholly owned subsidiaries" and "exercise and perform all or part of its powers and functions through one or more wholly owned subsidiaries . . ."[393] Thus, LIPA is already authorized to acquire a subsidiary such as ServCo for the purpose of providing electric services to its customers.

To clarify the terms and conditions of subsidiary employees' employment, however, the LIPA Act would need to be amended to include language similar to the language creating MaBSTOA. Such an amendment would provide that ServCo employees are not employees of New York State or LIPA, do not acquire civil service status, and are not members of the New York State and Local Employees Retirement System.[394]

Crucially, although the LIPA Act currently provides that LIPA employees "shall be exempt from the provisions of the public employees' fair employment act [i.e., the Taylor Law],"[395] this language does not speak to subsidiary employees. An exemption excluding subsidiary employees from the Taylor Law does not comport with the MTA model. As noted above, under the MTA model, subsidiary employees are subject to the Taylor Law and treated as public sector employees notwithstanding their exclusion from certain terms of employment typically provided to other public sector employees.

The MTA model demonstrates that a public authority, such as LIPA, may lawfully acquire a subsidiary, such as ServCo, and, with express legislative authority, treat subsidiary employees as excluded from obtaining certain status and benefits typically afforded to public employees – namely, civil service protections and state retirement benefits. While this model would satisfy the goal of bringing ServCo employees under LIPA's management and control, it would also necessitate the transition of ServCo employees from the private sector to the public sector. The result of such a transition is that subsidiary employees would be covered by the Taylor Law, rather than the National Labor Relations Act ("NLRA"). Among other things, this change impacts employees' right to strike and may require renegotiation of some of the terms in the IBEW collective bargaining agreements. While the IBEW could remain the bargaining representative of ServCo employees, the nature of that representation would necessarily change under this model. Thus, the MTA model fails to achieve one of the principal objectives of the transition to a municipal model.

b. LIPA Control of ServCo (the LLC Model)

A second alternative would be for LIPA to acquire the membership interest in ServCo. Presently, ServCo is a New York limited liability company ("LLC"). PSEG LI is the sole member of ServCo. The Second Amended OSA provides for PSEG LI to transfer to LIPA the membership interest in ServCo at the expiration or termination of the Second Amended OSA.[396]

Like the MTA model, to facilitate the transition of the current ServCo workforce and preserve the current retirement benefits, legislative amendments would be needed to confirm that ServCo employees would not be New York State or LIPA employees, would be exempt from personnel and civil service law requirements, and would be excluded from the New York State and Local Employees Retirement System.

Unlike the MTA model, the ServCo model anticipates that ServCo would remain a private sector employer. This distinction raises three issues.

The first is whether a public authority may lawfully hold the membership interest in an LLC or other private corporate entity, rather than operate through a public benefit corporation or similar public entity. The LIPA Act authorizes LIPA to "create or acquire one or more wholly owned

subsidiaries"[397] and empowers LIPA with broad authority to act through such subsidiaries. In particular, the current enabling legislation provides:

> [LIPA] shall have the right to exercise and perform all or part of its powers and functions through one or more wholly owned subsidiaries by acquiring the voting shares thereof or by resolution of the board directing any of its trustees, officers or employees to organize a subsidiary corporation pursuant to the business corporation law, the not-for-profit corporation law or the transportation corporations law. Such resolution shall prescribe the purpose for which such subsidiary corporation is to be formed.[398]

While the current legislation does not expressly reference a limited liability company,[399] a legislative amendment to include such business forms would appear consistent with the existing legislative intent.[400]

The second issue is whether State policy would permit a public authority to directly operate a municipal function through a wholly-owned private subsidiary. Again, it would appear that the existing legislation contemplated such an arrangement under the unique circumstances presented here, even though, in concept, the principle may not have broad application. As outlined in Part 1 of this Interim Report and expressed in the Legislature's findings:

> [A] situation threatening the economy, health and safety exist[ed] in the LIPA service area. Dealing with such a situation in an effective manner, assuring the provision of an adequate supply of electricity in a reliable, efficient and economic manner, and retaining existing commerce and industry in[,] and attracting new commerce and industry to[,] the service area, in which a substantial portion of the state's population resides and which encompasses a substantial portion of the state's commerce and industry, are hereby expressly determined to be matters of state concern. . . . Such matters of state concern best can be dealt with by replacing such [private] investor owned utility with a publicly owned power authority.[401]

The Legislature granted LIPA broad authority to carry out its mission, including through the use of corporate subsidiaries, and, as related to employment, authorized the hiring of employees "without regard to any personnel or civil service law, rule or regulation of the state."[402] Further, consistent with the nature of the transition from LILCO to LIPA, the Legislature provided: "if any such employees are hired as a consequence of an acquisition of all the stock or assets of LILCO, they shall be hired subject and be entitled to all applicable provisions of (i) any existing contract or contracts with labor unions and (ii) all existing pension or other retirement plans. . . ."[403] Thus, not only did the Legislature authorize LIPA to operate business corporations,[404] but also

specifically authorized LIPA to acquire the stock of LILCO, an arrangement that would be consistent with the proposed LLC model (*i.e.*, acquiring the membership interest in ServCo).

The third issue to consider, if ServCo were a wholly-owned subsidiary of LIPA, is whether New York State or federal labor law would control the relationship between ServCo and IBEW Local 1049.

ServCo is the employer party to the current collective bargaining agreements with IBEW Local 1049. The transfer of membership interest from PSEG LI to LIPA would have no direct impact on those agreements. ServCo would continue as the employer entity and the contracts would remain in place.

Currently, as an employer-union relationship in the private sector that affects interstate commerce, the NLRA would apply and the NLRB would have jurisdiction over any dispute between the parties. The NLRA, however, does not apply to state governments and their political subdivisions.[405] The NLRB evaluates two factors to determine whether a commercial operation that is owned or controlled by a government entity is subject to the NLRA. Specifically, the NLRB considers an entity to be an exempt political subdivision if it (a) was created directly by the state, so as to constitute a department or administrative arm of the government; or (b) is administered by individuals responsible to public officials or governed by a board directly elected by a voting class that is comparable to the electorate for general public elections.[406]

Under this model, the NLRB would likely retain jurisdiction. The fact that ServCo is a pre-existing private entity that was not created by the State supports NLRA jurisdiction under the first factor of the analysis. With regard to the second factor, the NLRB will find an entity to be exempt from jurisdiction if the composition of the group of electors eligible to vote for the entity's governing body is sufficiently comparable to the electorate for general political elections (e.g., the general population of Long Island) or if the individuals who administer the entity are appointed or subject to removal by public officials.[407] Thus, the structure of LIPA's governing board and the board's vote in administering ServCo could raise a question as to whether the NLRB would find that LIPA-owned ServCo was an employer under the NLRA. The Legislature's decision on the governance structure for LIPA will be an important factor in that analysis. A governance structure for LIPA that includes an appointed board, rather than an elected board, would support NLRA jurisdiction.

To further reduce any uncertainty over NLRA jurisdiction, at the time of the transfer of the membership interest in ServCo, LIPA and IBEW Local 1049 would enter into an agreement

confirming their understanding that the change in ServCo's ownership does not, and is not intended to, change the private sector nature of the employment, voluntarily consenting to be treated as an employer and union as defined in the NLRA, and subject to the jurisdiction of the NLRB. While not binding on the NLRB, such an agreement would be strong evidence of the parties' intent. There would also be value if the enabling legislation included an acknowledgement that there was no intent to alter or withdraw ServCo from the jurisdiction of the NLRB.[408]

If the NLRB nonetheless were to conclude that it no longer had jurisdiction over ServCo and the LIPA legislation exempted LIPA subsidiaries from the Taylor Law, then the New York Labor Relations Act would apply and regulate the relationship between LIPA and IBEW Local 1049.[409] While similar to the NLRA, particularly in the regulation of employer conduct where the workforce is already unionized, the legal principles under the NY Labor Relations Act are significantly less-well developed, which may pose difficulties for LIPA, or ServCo employees in the event of future labor negotiations or union disputes.

Finally, as with the MTA model, with the appropriate legislative approval, the ServCo retirement plans could be transitioned under the LLC model (*i.e.*, LIPA's acquisition of the ServCo membership interest). There are three issues of note.

First, LIPA's ownership would most likely cause the ServCo retirement plans to be treated as governmental plans exempt from the current federal regulation under the Employee Retirement Income Security Act ("ERISA"). A governmental plan is a plan established and maintained by the federal government, any state government, political subdivision, or any governmental agency or instrumentality.[410] Factors supporting the conclusion that ServCo's plans would be governmental plans under the LLC model include that LIPA's governing board is controlled by the State or a political subdivision; it would have complete ownership of ServCo with no private investment; and it has been delegated the authority to exercise sovereign powers (e.g., the power of eminent domain).[411]

According to a study prepared by Cheiron, the actuarial firm engaged by LIPA, if LIPA directly managed the ServCo benefit programs, expenses would be reduced by an estimated $39 million per year without a change to benefits.[412] According to Cheiron, while the benefit liabilities would remain the same, the expense reduction would occur due to the cost accounting requirements under the Government Accounting Standards and the alternative funding standards available to governmental plans.[413]

Second, to preserve the status quo and address potential concerns from the IBEW or employees over the likely loss of ERISA protections, LIPA/ServCo and IBEW Local 1049 may choose to add a requirement to their CBAs that the ServCo plans continue to meet the relevant ERISA standards, such as funding, disclosure and fiduciary conduct, even if a change in the ownership of ServCo would, as a matter of law, cause the plans to fall outside of ERISA coverage as governmental plans.[414]Such an approach was not studied by Cheiron and may impact the savings estimated in its report.

Third, ServCo sponsors two 401(k) plans. Under the Internal Revenue Code, a governmental employer cannot sponsor a 401(k) plan.[415] There are other, similar defined contribution plans that LIPA could establish for ServCo (e.g., §457(b) plans)[416] that would mirror the terms and conditions of the existing ServCo plans, without any material change to the benefits provided to ServCo employees, and a process to transition the employees from their participation in the ServCo 401(k) plans to the mirror image plans upon LIPA's acquisition of ServCo.[417]

In summary, while not free from doubt, the LLC model with LIPA owning and managing ServCo after acquiring its membership interest from PSEG LI could be an effective option for preserving the private sector advantages currently held by IBEW 1049's members.

c. LIPA Employee Leasing (the PEO Model)

A third approach to public/private venture arrangements involves the use of a professional employer organization or PEO. A PEO is a business arrangement that essentially outsources the human resources function (payroll, employee relations, benefits management, etc.) to a separate entity, the PEO, which serves as the employer, while the "client" manages those employees under a contractual agreement with the PEO. In New York, PEOs are regulated by the New York Professional Employer Act.[418]

In the public/private venture context, the PEO model is principally designed to address potential concerns about preserving the private sector status of the employees. As explained above in discussing the LLC model, those concerns could include whether it is lawful and appropriate for a public authority to own and operate a private subsidiary to carry out a municipal function, and whether such a subsidiary would be a covered employer under the NLRA.

Under this model, a PEO is identified or established to serve as the employer, the existing workforce is transitioned from the current service provider to the PEO, and then leased by the PEO to the public entity. Under this co-employment or joint employment structure, the public

entity manages the day to day operations of the workforce. The PEO handles the human resources functions. Because the PEO is a private sector entity, the collective bargaining agreements and employee benefit plans can be transferred from the current service provider to the PEO without any change in their terms or the governing legal authority. This model was used in 2017, for example, by Stony Brook University Hospital, a public entity, when it acquired Southampton Hospital, a private sector health care employer.[419]

With respect to LIPA and the ServCo operations, the PEO model would likely preserve the private sector status of the ServCo employees, and allow for the continuation of the current IBEW relationship, the CBAs and the employee benefit plans. However, it has several significant shortcomings including:

- the PEO model is a more complicated structure than either the MTA or LLC models and, in particular, would require identifying or establishing a certified PEO.
- the PEO model carries forward aspects of the inefficiencies in the operation of ServCo that exist in the present structure. While the management function would be streamlined and consolidated into LIPA, personnel decisions, labor negotiations and other union issues would require coordination between LIPA and PEO management.
- the inclusion of the PEO adds risk with respect to its legal compliance with the human resources functions under its control and data privacy concerns with respect to the employee personal information.
- the inclusion of the PEO also adds an additional layer of cost to the ongoing operation of LIPA. No study has been done to estimate this cost for LIPA. Market data indicates that the PEO costs could range from 3% to 12% of total payroll.[420] ServCo's large, sophisticated operation would likely push the fees to the higher end of the range.

In summary, the PEO model represents a potentially viable approach but with more significant complications and costs as compared to the LLC model.

Amendments to the Public Authorities Law to change revisions made in the LIPA Act and the LRA would be necessary to address current provisions that contemplate a third-party service provider model.

F. Governance, Transparency and Community Engagement

1. Public Power Governance

Table 5 below represents the various governance structures either regularly found within public power utilities or that can be adapted from the current structure utilized by LIPA. Several important decisions must be made when constructing a governance structure that reflects the industry common Fully Integrated Public Power Model:

(1) Board – Will the Board be elected or appointed?
(2) Stakeholder Representation – Who, if anyone in addition to the Board, will represent the interests of stakeholders?

Table 5

<table>
<tr><th rowspan="2">Governance Models</th><th rowspan="2">Current LIPA</th><th>A</th><th>B</th><th>C</th><th>D</th><th>E</th></tr>
<tr><th colspan="5">Future – Fully Integrated Public Power Model</th></tr>
<tr><td>Board Construct</td><td>Appointed</td><td rowspan="2">Locally Elected Board</td><td rowspan="2">Locally Elected Board with Advisory Committee</td><td rowspan="2">Locally Elected Board with DPS Regulatory Lite</td><td colspan="2">Appointed Board</td></tr>
<tr><td>External Stakeholder Representation</td><td>DPS Regulatory Lite</td><td>DPS Regulatory Lite</td><td>*Full DPS Regulatory Oversight</td></tr>
</table>

Lite = consistent with LIPA Reform Act
* Likely not feasible due to bond covenant implications

a. Public Power Governance Examples

Three distinct governance structures consistently exist in public power entities: (1) elected independent boards (e.g., Sacramento Municipal Utility District; Salt River Project; and Omaha Public Power District); (2) appointed independent boards (e.g., Los Angeles Department of Water & Power; Jacksonville Electric Authority; and Nashville Electric Service); and (3) elected governmental bodies responsible for both governmental functions and oversight of the jurisdiction's electric utility (e.g., Seattle City Light; Austin Energy; and Colorado Springs Utilities).

b. Elected Boards

There are two types of elected boards in public power. The most common is composed of individuals who conduct non-partisan campaigns seeking election specifically to the public utility board. The other is composed of individuals who campaign and run for their local governing body (e.g., City Council). After individuals are elected to the governing body, they are responsible for governmental functions, but have a secondary responsibility to provide governing oversight for

the local public power utility (e.g., election to the City Council also results in appointment to the public power utility board).

c. Appointed Boards

There are also two types of appointed boards in the public power industry. The most common is comprised of board members appointed to an independent public utility board by a local governing body. Under this model, the independent public utility board has full and ultimate authority over all utility-related decisions and actions.

The other type involves board members appointed by a local governing body to serve a specific term. In practice, this type of appointed board does not have ultimate authority over utility operations and instead relies on the governing board to make major decisions.

Frequently, appointed board candidates are chosen for their unique expertise or they represent an important element of the community.

d. Regulatory Oversight

Most public power utilities in the United States are governed solely by utility boards. In other words, they self-regulate and are not subject to regulation by a state public utility commission. Reasons for this include that it is generally accepted that locally elected or appointed utility boards provide local control and decision-making that better reflects the unique values and needs of the communities they serve. Overarching state utility commissions must often create regulations to fit all utilities in all locations, regardless of unique characteristics among the individual communities served.

e. Citizen Advisory Committees

Citizen Advisory Committees ("CAC") are typically used to supplement the expertise and experience of the public utility board (whether elected or appointed), to promote citizen involvement and ensure balanced representation from the broader community. These committees are used to obtain input from the community, but they do not typically have formal authority over the utility board's final decision-making process. CACs are established in many different ways but the most common is where the criteria are established and selection of members is made by the public utility board itself. CACs can be created as standing committees that advise on all topics, but many utility boards create ad hoc citizen advisory committees to consider only specific issues and challenges that may arise.

2. Public Power Governance Structure Performance

Given LIPA's size and customer base, data was gathered on public power utilities with at least 250,000 customers. Of the 14 utilities meeting this size threshold (referred to herein as the "Comparison Group" and described below), four are governed by elected independent boards, three are governed by elected government officials who also serve as public utility boards, and seven are governed by appointed independent boards. Certain performance metrics were examined for each utility in the Comparison Group. A CAC can also be a method to involve local or state elected officials in the formation of policy for the public utility. Local elected officials from the utility's service territory can participate in the selection of citizens from their defined jurisdictions to serve on the committee.

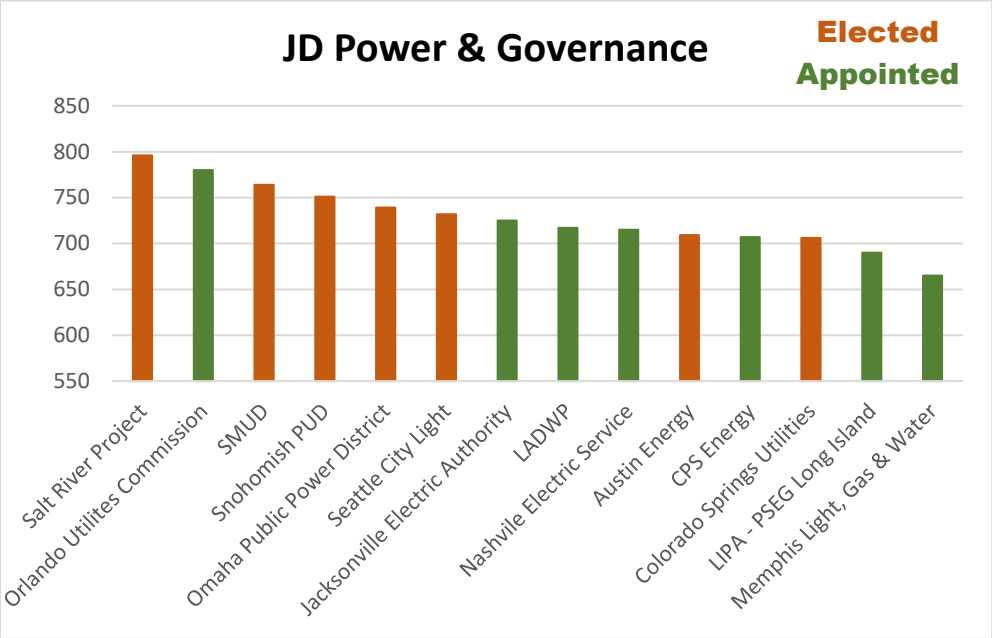
a. Customer Satisfaction

Customer satisfaction is determined from the published results of the 2022 J.D. Power Electric Utility Residential Customer Satisfaction Study. The J.D. Power Study is based on responses from interviews conducted between January 2022 and November 2022 of residential customers of the 145 largest electric utility brands across the United States, which represent more than 105 million households. The scores are based on a 1000-point scale with a higher number being better.

These customer satisfaction scores can vary year to year based on circumstances such as large storms and associated outages, rate increases, power supply decisions past and present, and other macro and micro influences. Based on the 2022 results, five of the highest ranked six public power utilities are governed by elected officials, while five of the top nine utilities are governed by elected officials.

The scores of the Comparison Group utilities are shown in Figure 12.

Figure 12



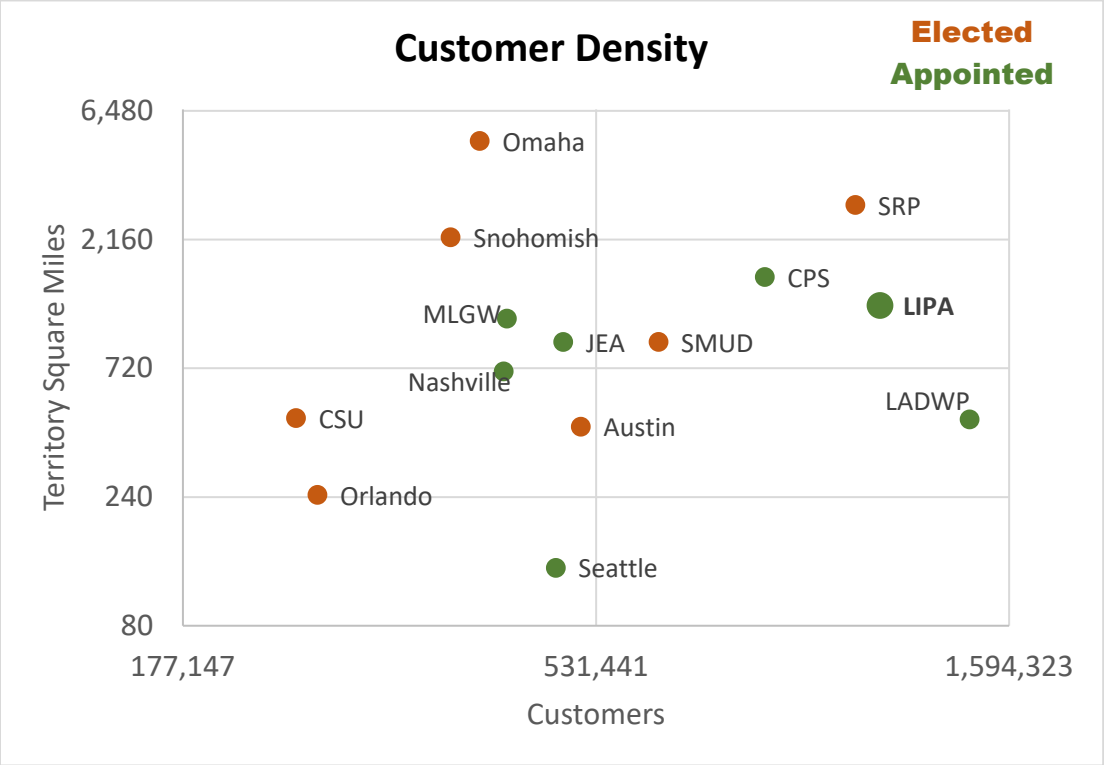
b. Reliability

The 2021 Energy Information Administration reliability indices for each of the utilities in the Comparison Group along with customer and territory data also provide an important performance metric.

Density, or the number of customers served per square mile of territory, is a metric used to assess the level of difficulty of providing service to customers. Service territories with lower customer densities have more grid system exposure, a factor that can affect reliability. Other factors that can affect reliability include terrain, climate, presence of trees, and threat from natural disasters such as ice storms and hurricanes. While LIPA's territory has a relatively attractive density metric compared to other public power utilities, the other factors such as climate, weather, coastal proximity, and tree cover negatively affect LIPA's ability to provide reliable and resilient service.

Figure 13 below shows the relative density of each utility (for which data was available) in the Comparison Group.

Figure 13



System Average Interruption Index ("SAIDI") and System Average Frequency Index ("SAIFI") are the two primary reliability metrics used in the utility industry. It is important to note that, in an effort to have a more comparable reliability statistic when reporting SAIDI and SAIFI reliability statistics, utilities do not report outages that result from non-routine, high-impact disruption such as hurricanes, tropical storms, ice storms, and wildfires, because these events do not occur on a consistent basis. Figure 14 below shows SAIDI for utilities in the Comparison Group (for which data was available), which represents the average outage duration for each customer served relative to system density. Typically, as more system infrastructure is required per customer, and as the conditions for operating that system become more challenging, reliability (and resiliency) suffers assuming a consistent level of infrastructure investment, technology and storm hardening deployment.

Figure 14

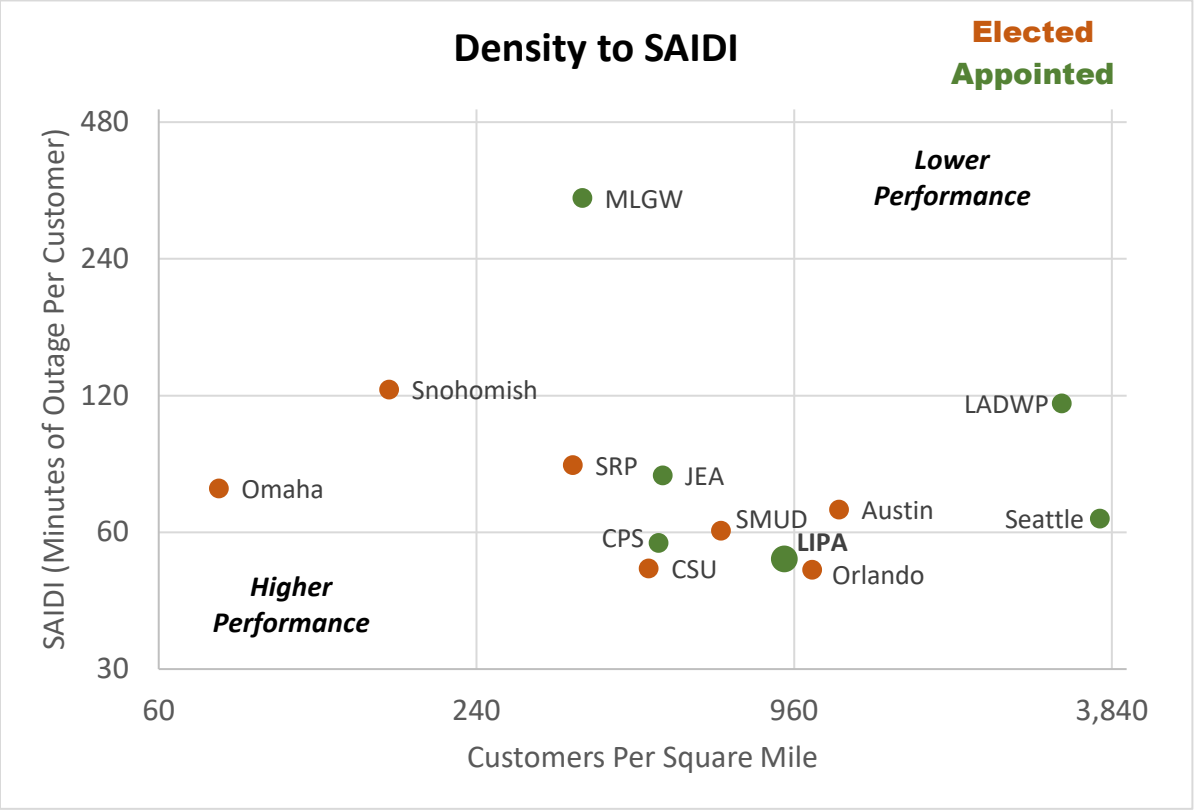
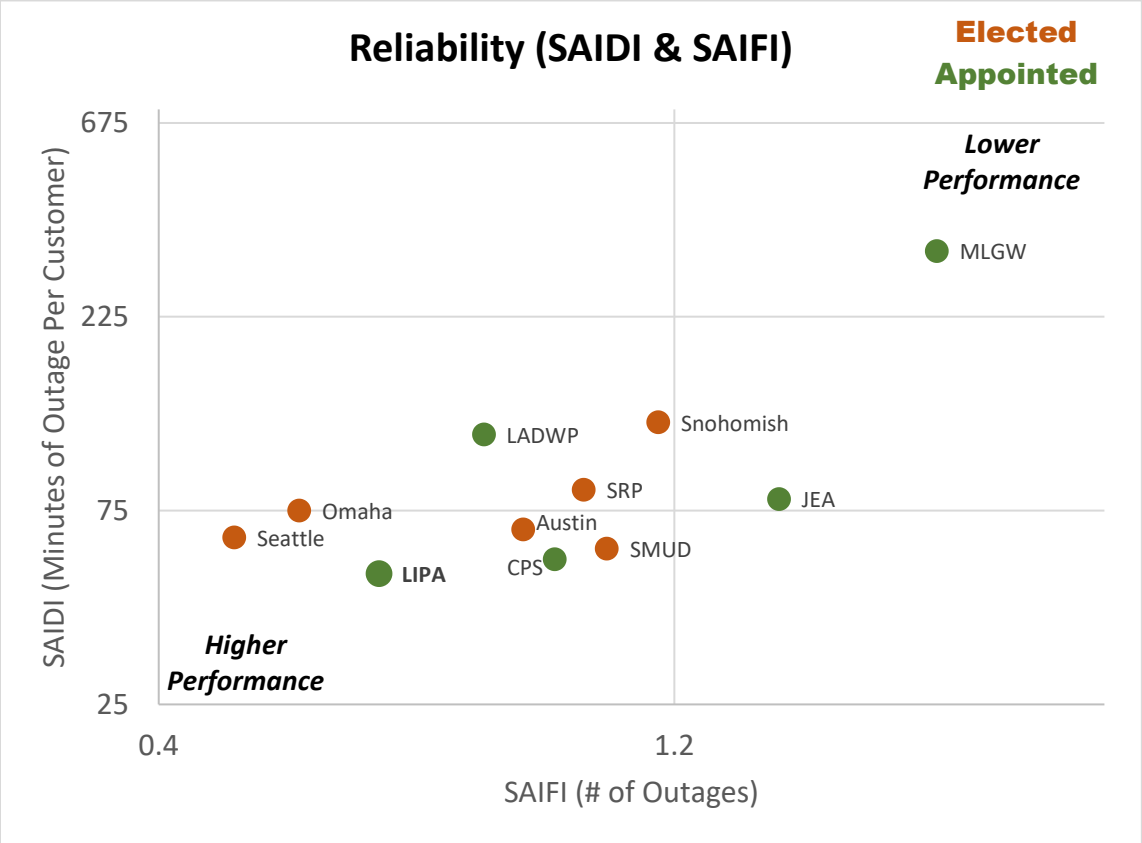


Figure 15 shows SAIDI plotted against SAIFI for utilities in the Comparison Group (for which data was available). The specific outage numbers are minutes are also shown in the table below the next graphic. These metrics are directly dependent upon one another.

Figure 15



A tabular representation of what is shown in Figure 15 is as follows:

Utility	Governance	SAIFI # Outage	SAIDI Minutes Outage
Orlando	Appointed	not reported	50
CSU	Elected	not reported	50
LIPA	Appointed	0.6	52
CPS	Appointed	0.9	57
SMUD	Elected	1.0	60
Seattle	Elected	0.5	64
Austin	Elected	0.9	67
Omaha	Elected	0.5	75
JEA	Appointed	1.5	80
SRP	Elected	1.0	84
LADWP	Appointed	0.8	115
Snohomish	Elected	1.2	124
MLGW	Appointed	2.1	326
Nashville	Appointed	not reported	not reported

The reliability data for the Comparison Group indicates that three out of the top four best SAIDI scores were attained by utilities with appointed boards. However, when looking at the top six SAIDI scores, the utilities are evenly matched between appointed and elected boards. For SAIFI scores, two of the top three utilities are governed by elected boards and, once again, the top six utilities are evenly distributed between elected and appointed boards.

Accordingly, there is no obvious correlation between favorable performance and governance model (elected or appointed). Reliability is primarily a function of excellence in system investment, operation, leadership, and the specific characteristics of the service territory as described above.

It is important to note that the reliability of an electric utility does not always result in great performance for resiliency which is often measured as the speed of recovery from major events.

c. Credit Rating

Another performance metric is the most recent credit rating by one or more of the three major rating agencies. These include Fitch Group (Fitch), Standard and Poor's (S&P), and Moody's Investor Services (Moody's). The credit rating represents an entity's perceived ability to pay its debts (creditworthiness), and the higher the rating, the easier and less expensive it is to access money. Table 6 shows the credit ratings for the Comparison Group.

Table 6
Rank Largest Public Utilities – Credit Rating

Utility	Governance	Commission Regulation	Fitch	S&P	Moody's
Seattle	Elected	No	AAA		Aa2
CSU	Elected	No	AA	AA+	Aa2
Nashville	Appointed	No	AA+	AA	
SRP	Elected	No		AA+	Aa1
LADWP	Appointed	No	AA-	AA	Aa2
Snohomish	Elected	No	AA-	AA	Aa2
Omaha	Elected	No		AA	Aa2
Orlando	Appointed	No	AA		Aa2
CPS	Appointed	No	AA-		Aa2
SMUD	Elected	No	AA		Aa3
Austin	Elected	No	AA-	AA-	Aa3
JEA	Appointed	No	AA	A+	A1
MLGW	Appointed	No		A+	Aa2
LIPA	Appointed	No	A	A	A2

Three of the four highest ratings are assigned to utilities with elected boards. However, if including the four utilities tied for fifth place, six of the top ten rated utilities have elected boards, and four utilities have appointed boards.

d. Election Process for Utility Board Members

If an elected board were chosen, candidates seeking election only as a public utility board member would do so as nonpartisan. Where candidates seek election to a local governing body (e.g., City Council) and the position also results in a public utility board position, the positions are predominately designated as partisan. In either case, candidates must follow all applicable rules and procedures for elective office as defined by the local governing authority.

A candidate's out-of-pocket expenses for a utility board election are typically self-financed by the candidate or funded through contributions from third parties. These third-party contributors usually exclude utility staff members. Public funds to pay for campaign expenses are not available for the Comparison Group utilities surveyed. It is common in utility board elections for the names and contribution amounts to be filed with the local public disclosure government agency. These funding reports are publicly available.

e. Appointment Process for Utility Board Members

The appointment process is almost universally carried out by the local or state governing authority. For municipal power utilities, it is typical for the mayor (or equivalent position) to appoint utility board members, typically with a confirming vote from the local governing body. There are also some large municipal utility examples where the mayor serves as a member of the utility board.

There is no general rule regarding the criteria necessary to be appointed as a utility board member. The focus is often on specific expertise in areas such as engineering, accounting and finance, law, labor relations, sustainability, customer service or construction. Sometimes, board members are appointed primarily to represent the different geographical areas (e.g., a district) of the utility's service area. Even if geographical representation is the primary consideration, in some cases additional criteria are used to further refine the appointment process. Increased attention is being focused on ensuring the utility board reflects the makeup of the community it serves.

If industry-related expertise is not used as a selection criterion, the expectation is that newly appointed board members will have a steep learning curve to understand the utility's business and operations. For this reason, the term of appointed members is typically at least four years, so board members have adequate time to make contributions.

f. Electric Utility Board Member Compensation

Serving as an active board member for a large public power utility involves a significant commitment of energy and time if the member is appropriately engaged in the utility business and community. Perhaps for that reason, most utilities in the Comparison Group compensate board members, whether elected or appointed. The range of compensation within the Comparison Group is from $13,000 to slightly over $25,000 per year. In addition, there are typically provisions for travel reimbursement and often an additional stipend for meeting attendance.

However, compensation is not universal within the Comparison Group. Several of the utilities, including Nashville Electric Services, Orlando Utility Commission and LIPA, do not compensate board members. Each of these utilities has an appointed board.

3. National and Local Public Power/Authority Governance Models

Other public power organizations in New York State and around the country present a basis of comparison for factors relevant to LIPA's future and governance structure. These include municipal utilities, rural electric cooperatives, and, most notably, NYPA.

a. Municipal and Rural Electric Cooperative Utilities

There are approximately 50 small municipal public utilities in New York that serve less than 2% of the population. The typical governance model for a municipal utility is an established "village" board composed of several local trustees and often the mayor and public works director, who collectively oversee the operations of the local sewer, water, and electric systems. There are some similarities between these very small utilities and larger public utilities in that the local officials, especially the mayor, are involved in appointing the board of trustees as well as serving on the board themselves. These municipal boards do not typically deal with the depth and complexity of issues that a large public power utility board must manage.

Four rural electric cooperatives are also present in New York.[421] These cooperatives serve their members by purchasing power (including at wholesale from NYPA) and distributing it to their members in defined geographic areas. Cooperatives are governed by by-laws adopted by

cooperative members, and are managed by a board of directors elected by the members. The board is responsible for hiring staff and for conducting day-to-day operations of the cooperative. Rates are generally set by the board of directors, but in the case of some cooperatives, rates may be approved by NYPA.

b. New York Power Authority

NYPA is a New York State public-benefit corporation. However, it is a generation and transmission ("G&T") utility that provides wholesale power supply. NYPA provides almost a quarter of New York's electricity[422] and its operations encompass generation, transmission, and institutional customers. NYPA has 16 generation assets in New York, with the bulk of its electricity produced by two facilities in western and upstate New York. These assets are bid into the NYISO market, and electricity is provided to approximately 1,000 customers, none of whom are retail customers. Instead, NYPA customers include local and state governmental entities, municipal utility systems, rural electric cooperatives, and economic development customers. NYPA also owns, operates, and maintains approximately 1,400 miles of high-voltage transmission lines in New York State. NYPA complies with industry reliability standards set by the North American Electric Reliability Corporation ("NERC"), Northeast Power Coordinating Council ("NPCC"), FERC, and the International Organization for Standardization ("ISO").[423]

NYPA's T&D assets are maintained by NYPA employees.[424] Five Regional Administrators oversee NYPA's T&D operations in the Northern, Central, Western, Eastern and Southern regions of New York. NYPA has a real estate department responsible for overseeing the maintenance and operation of both the transmission line rights-of-way and NYPA's generation facilities.[425] NYPA employs almost 2,500 workers in a variety of disciplines.[426] NYPA also contracts with the IBEW for electricians, line workers, and other skilled craft employees.[427]

Board of Trustees

NYPA's seven board members are appointed much the same way municipal boards are appointed, but by the Governor and State Senate. NYPA's board members must have the ability to understand the fundamental financial and management operations of NYPA, as well as the operational decisions of NYPA.[428] The NYPA Board selects the CEO and certain other officers and employees.[429] It also establishes the duties and determines the compensation for these officers and employees.[430] The board adopts an operation and maintenance budget and a capital budget for NYPA's operating facilities and support departments which is submitted to the OSC.[431]

Additionally, the board reviews an annual capital expenditure plan, summarizing all present and proposed capital projects.[432]

The NYPA Board publishes an annual report covering a series of statutorily defined topics, including the amount of power and energy generated by each of NYPA's facilities; the kilowatt-hour sales by project facility and by customer; and basic financial and operating information for the reporting year such as income and expense statements, balance sheets, changes in financial position, debt structure, and a summary of funds on a cash basis.[433] This report must be certified by NYPA's executives[434] and submitted to the Governor and the Legislature.[435]

NYPA's Rates and Budget Process

NYPA is a fiscally independent public corporation. NYPA's operations are financed through the sale of bonds, notes to investors, and revenues earned through electricity sales, as opposed to tax money or state credits.[436] NYPA's rates are governed by contract and not through PSC regulation or any public service law regulating rates.[437]

c. National Public Power Governance

The Comparison Group referenced above includes the 14 largest public power models in the United States. Based on their size, the structure of each is instructive when considering the future of LIPA. An overview of important details about each member of the Comparison Group, including board type and size, is set forth below.

1. <u>Los Angeles Department of Water & Power (LADWP)</u>

Customers Served: 1,435,572
Service Territory: 465 square miles
A transmission system network totaling more than 3,600 miles operates to transport power from the Pacific Northwest, Utah, Nevada, Arizona, and areas in California to Los Angeles.
Size of Board: Five members
Term: Five years
Selection Process: Appointed by Los Angeles Mayor and confirmed by City Council. The Mayor also appoints the General Manager.
Election/selection area: Local citizens chosen at the discretion of the elected Mayor
Citizen Advisory Committee: N/A
Neighborhood councils supported by the city provide input to the LADWP Board.

Performance Indicators:
Credit Rating: Fitch: AA- Outlook: Stable
S&P: AA
Moody's: Aa2
Reliability: SAIDI of 115.3 minutes out/year SAIFI of 0.80 outages/year
Customer Satisfaction (JD Power): 717/1000

2. Long Island Power Authority (LIPA)

Customers Served: 1,131,776
Service Territory: 1,230 square miles
Electric transmission and electric distribution system serving Nassau and Suffolk Counties and the Rockaways.
Size of Board: Nine members
Term: Four years
Selection Process: Appointed
Five appointed by the Governor, two by the Senate Majority Leader, and two by the Assembly Speaker. The Chair is appointed by the Governor.
Election/selection area: Board members must live in LIPA's service territory. Existing electoral districts that do not directly overlap with LIPA's service territory.
Citizen Advisory Committee: Community Advisory Board of 19 members with experience in energy, education, business, economic development, government, and finance. Members are appointed by LIPA's CEO.

Performance Indicators
Credit Rating: Fitch: A Outlook: Positive
S&P: A Outlook: Stable
Moody's: A2 Outlook: Stable

Reliability: SAIDI of 52.4 minutes out/year SAIFI of 0.64 outages/year
Customer Satisfaction (JD Power) for PSEG Long Island: 690/1000

3. Salt River Project (SRP) (District Only)[438]

Customers Served: 1,060,016
Service Territory: 2,900 square miles
SRP serves the Central Arizona/Phoenix metropolitan area
Size of Board: 14 members
Term: Four years
Selection Process: Elected by landowners
Election/selection area: District is divided into ten geographical voting divisions. The District Board members are elected from among the District electors (landowners) for four-year terms. One board member is elected from each of the ten voting divisions, and four additional board members are elected at-large. Landowners also elect the District's President, who is an ex officio board member, and Vice President. With the exception of the four at-large board members, all are elected by votes weighted in proportion to the amount of eligible land owned by each elector. The four at-large Board positions are elected based on one person, one vote by eligible District electors. Landowners also elect 30 council members, three from each of the ten voting divisions.
Citizen Advisory Committee: The Customer Utility Panel serves as a voice for electric customers who reside outside of the District voting boundaries. The Customer Utility Panel provides the comments, input, and recommendations regarding rates, generation resource mix, community activities, SRP public processes, and other topics.

Performance Indicators
Credit Rating: Fitch: N/A
S&P: AA+
Moody's: Aa1 Outlook: Stable
Reliability: SAIDI of 84.3 minutes out/year SAIFI of 0.99 outages/year

Customer Satisfaction (JD Power): 796/1000

4. CPS Energy (CPS)

Customers Served: 832,590
Service Territory: 1,566 square miles
Formerly "City Public Service Board of San Antonio" and is the municipal electric utility serving the City of San Antonio, Texas
Size of Board: Five members (four appointed and Mayor serves as voting member)
Term: Five years, eligible for one additional five-year term
Selection Process: Appointed. Rate adjustments, condemnation proceedings, and issuances of bonds, notes, or commercial paper must be approved by the City Council.
Selection/election area: One resident from each of the four geographical quadrants of the City
Citizen Advisory Committee: Yes
15-member CAC provides a channel for two-way communication between the community and the utility. City Council members nominate ten of the 15 members, one representing each district. The other five members are at-large candidates interviewed and nominated by the CAC from those submitting applications and resumes. The CPS Energy Board of Trustees appoints all members to the CAC. Members can serve up to three two-year terms. The CAC meets monthly with the primary goal of providing judicious advice from a customer perspective on utility-related projects and programs. Also has a separate Rate Advisory Committee (RAC) made up of 21 members comprised of 11 appointees by the Board of Trustees, including Mayoral appointees and ten City Council appointees.

Performance Indicators
Credit Rating: Fitch: AA- Outlook: Negative
S&P: N/A not recently rated
Moody's: Aa2 Outlook: Stable
Reliability: SAIDI of 56.85 minutes/year SAIFI of 0.93 outages/year
Customer Satisfaction (JD Power): 707/1000

5. Sacramento Municipal Utility District (SMUD)

Customers Served: 627,845
Service Territory: 900 square miles
SMUD is a community-owned, not-for-profit electric utility based in Sacramento, California. SMUD serves over 1.5 million electrical customers and has been in business for more than 75 years.
Size of Board: Seven members
Term: Four years
Selection Process: Elected
Election/selection area: Each director represents a different geographic area or "ward."
Citizen Advisory Board: Yes
Board appointed citizen Rate Advisory Committee. SMUD also has a Business Advisory Council that consists of leadership representatives from business-based civic and trade organizations as well as public agencies.

Performance Indicators
Credit Rating: Fitch: AA Outlook: Stable
S&P: N/A not recently rated
Moody's: Aa3 Outlook: Positive

Reliability: SAIDI of 60.4 minutes out/year SAIFI of 1.04 outages/year
Customer Satisfaction (JD Power): 764/1000

6. Austin Energy

Customers Served: 510,430
Service Territory: 437 square miles
Size of Board: 11 members
The utility oversight board is the City Council, which has ten members, and the mayor
Term: Commensurate with the City Council Term which is four years and two-term limit
Selection Process: Elected
Austin Energy is part of the City of Austin and City ordinance established oversight by the Austin City Council. The Austin Energy Utility Oversight Committee reviews issues related to the City's electric utility. The Austin Energy Utility Oversight Committee is a committee of the whole council.
Election/selection area: Elected City Council Members and Mayor. There are ten single-member districts.
Citizen Advisory Board: Yes
Austin Energy Low Income Customer Advocates, Austin Generation Resource Planning Task Force

Performance Indicators
Credit Rating: Fitch: AA-
S&P: AA-
Moody's: Aa3
Reliability: SAIDI of 67.27 minutes out/year SAIFI of 0.87 outages/year
Customer Satisfaction (JD Power): 709/1000

7. Jacksonville Electric Authority (JEA)

Customers Served: 487,412
Service Territory: 900 square miles
Size of Board: Seven members
Term: Four years
Selection Process: Appointed
Four members are nominated by the Jacksonville Council President and confirmed by the City Council; three members are appointed by the Mayor of Jacksonville and confirmed by the Jacksonville City Council.
Election/selection area: Jacksonville citizens are chosen at the discretion of the elected Mayor and City Council
Citizen Advisory Committee: No

Performance Indicators
Credit Rating: Fitch: AA Outlook: Stable
S&P: A+ Outlook: Negative
Moody's: A1 Outlook: Stable
Reliability: SAIDI of 80 minutes out/year SAIFI of 1.5 outages/year
Customer Satisfaction (JD Power): 725/1000

8. Seattle City Light (Seattle)

Customers Served: 477,577
Service Territory: 131 square miles
Size of Board: Five members (Seattle City Council Members on Committee)
Seattle City Light is a department of the City of Seattle and has basic oversight by the Economic Development, Technology & City Light Committee of the Seattle City Council. This Committee is appointed/approved by the City Council members and each Council member heads one of the City's nine special Commissions. This City Light Commission makes recommendations to the Mayor and City Council on major decisions that require legislative action.
Term: Four years (applies to City Council position)
Selection Process: Elected
The Mayor and City Council serve as the ultimate utility governing body and approve City's Light's annual budget, set rates, and approve debt issuance, along with other functions set forth in the City Charter.
Election/selection area: City of Seattle – Seven Council Members by district and two at-large
Citizen Advisory Committee: Yes
The Seattle City Light Review Panel was created through City Council ordinance and is the successor to the City Light Advisory Board/Committee (2003 – 2010) and the Rate Advisory Committee (2009), and combines the duties of both groups. There are nine experience-specific panel positions, and members come from City Light's customer groups and areas of utility business expertise. Five members are nominated by the mayor and four members are nominated by the city council, serving staggered three-year terms.

Performance Indicators
Credit Rating: Fitch: AAA Outlook: Stable
S&P: N/A
Moody's: Aa2 Outlook: Stable
Reliability: SAIDI of 64.3 minutes out/year SAIFI of 0.47 outages/year
Customer Satisfaction (JD Power): 732/1000

9. Memphis Light, Gas and Water Division (MLGW)

Customers Served: 419,568
Service Territory: 1,100 square miles
Serving the city of Memphis and Shelby County, Tennessee.
Size of Board: Seven members
Oversight is provided by a Board of Commissioners, which consists of five voting members nominated by the Mayor and approved by the City Council and two advisory, non-voting members which were added in 2017.

Term: Board members serve staggered terms of three years each. Every two years, the Board elects a Chairperson and a Vice Chair, whose terms begin January 1. Board members continue to serve until a new board member is appointed by the Mayor and confirmed by the City Council.
Selection Process: Appointed
The Memphis Mayor appoints the President/CEO and the Board members with the approval of the Memphis City Council
Election/selection area: Memphis area
Citizen Advisory Committee: Two citizen advisors with specific backgrounds are appointed to serve on the board

Performance Indicators
Credit Rating: Fitch: N/A
S&P: A+
Moody's: Aa2
Reliability: SAIDI of 326.4 minutes out/year SAIFI of 2.1 outages/year
Customer Satisfaction (JD Power): 665/1000

10. Nashville Electric Service (NES)

Customers Served: 415,840
Service Territory: 700 square miles
Size of Board: Five members
Term: Five years
Selection Process: Appointed
Appointed by Mayor of Nashville and confirmed by the Metro Council.
Election/selection area: The Metropolitan Council is the legislative authority of the Metropolitan Government of Nashville and Davidson County, a city-county consolidated government created on April 1, 1963.

Performance Indicators
Credit Rating: Fitch: AA+ Outlook: Stable
S&P: AA
Moody's: N/A
Reliability: SAIDI of N/A SAIFI of N/A NES simply indicates it meets the standard
Customer Satisfaction (JD Power): 715/1000

11. Omaha Public Power District (OPPD)

Customers Served: 390,321
Service Territory: 5,000 square miles (covers all or part of 13 counties in southeastern Nebraska)
Size of Board: Eight members
Term: Five years
Selection Process: Elected
Election/selection area: Elected by the people in the areas served
Citizen Advisory Committee: Not formally established, however, the OPPD Board of Directors has established four committees of the Board to focus its attention on certain topics with major significance to OPPD's business:
Bylaws
Governance Committee Charter
Finance Committee Charter
Public Information Committee Charter
System Management & Nuclear Oversight Committee Charter

Performance Indicators
Credit Rating: Fitch: N/A
S&P: AA Outlook: Stable
Moody's: Aa2 Outlook: Stable
Reliability: SAIDI of 74.9 minutes out/year SAIFI of 0.54 outages/year
Customer Satisfaction (JD Power): 739/1000

12. Snohomish County Public Utility District (Snohomish)

Customers Served: 361,114
Service Territory: 2,200 square miles
Size of Board: Three members
Term: Five years
Selection Process: Elected
Election/selection area: Elected from three geographical districts on a nonpartisan basis by the people of Snohomish County and Camano Island.
Citizen Advisory Board: No
Board and management put in extensive effort to engage, inform and solicit input from public

Performance Indicators
Credit Rating: Fitch: AA- Outlook: Stable
S&P: AA Outlook: Stable
Moody's: Aa2 Outlook: Stable
Reliability: SAIDI of 123.6 minutes out/year SAIFI of 1.16 outages/year
Customer Satisfaction (JD Power): 751/1000

13. Orlando Utilities Commission (Orlando)

Customers Served: 253,449
Service Territory: 244 square miles including cities of Orlando and St. Cloud and portions of unincorporated Orange County and Osceola County.
Size of Board: Five members (four Commissioners and Mayor of Orlando is an ex officio member)
Term: Four years (Can serve two terns)
Selection Process: Appointed by mayor and City Council
Election/selection area: The five-member Commission is composed of the Mayor of Orlando, two City residents, one member who must be an OUC customer living in unincorporated Orange County, and one member who may be a city resident or non-resident.
Citizen Advisory Board: No
City of Orlando considers and refers to the Orlando Utilities Commission as Citizen Board

Performance Indicators
Credit Rating: Fitch: AA Outlook: Stable
S&P: N/A
Moody's: Aa2 Outlook: Stable
Reliability: SAIDI of 49.6 minutes out/year SAIFI is not reported
Customer Satisfaction (JD Power): 780/1000

14. Colorado Springs Utilities (CSU)

Customers Served: 239,446
Service Territory: 470 square miles
Size of Board: The City Council is the Utility Governing Body and consists of nine Council members.
Term: Four years
They are limited to two consecutive terms. City Council elections are held every two years in odd-numbered years. Each Councilmember serves a four-year term.
Selection Process: Elected

Citizen owners elect City Council, who also serve as the Utilities Board and governing body for Colorado Springs Utilities.
Election/selection area: Election of one Councilmember from each of the six Council districts and three At Large Councilmembers.
Citizen Advisory Committee: Yes
The Utilities Policy Advisory Committee is a utilities board directed advisory committee that reviews, analyzes and provides recommendations to the Utilities Board on specific issues or policies. Currently there are nine citizens on the Utilities Policy Advisory Committee.

Performance Indicators
Credit Rating: Fitch: AA Outlook: Stable
S&P: AA+ Outlook: Negative
Moody's: Aa2 Outlook: Stable
Reliability: SAIDI of 49.9 minutes out/year SAIFI of N/A
Customer Satisfaction (JD Power): 706/1000

d. The Ultimate Governance Model

Based on a review of the performance data referenced in this Interim Report, and from broad general industry observation, no single clear and distinct governance model can guarantee LIPA's success. Even within the electric power industry itself there is no consensus on the best model. Some utilities with high credit ratings had the foresight decades ago to build hydroelectric projects that today produce large volumes of clean, low-cost electricity. There are also utilities that decided, when faced with resource inadequacy, to develop nuclear plants and today those utilities are experiencing financial challenges. Other utilities are located in areas where storms cause widespread damage every other year. Despite differing circumstances, governance structure contributes to ensuring the best decisions and outcomes; the exercise of good leadership creates and drives effective execution of a well-developed strategic plan.

While the governance model itself cannot ensure success, some fundamental elements can establish a sound supporting foundation for an elected or appointed board:

> **Board Independence** - The board should be independent and have full and ultimate authority. Anything less will undermine accountability, transparency, and effectiveness. The citizens served by the public power utility must know and understand that the board has ultimate authority, otherwise there will be confusion and frustration as to where citizens' input can be most impactful. When there are multiple layers of authority, the decision-making process can be drawn out to the detriment of the utility and the citizens they serve.

DPS Oversight – The vast majority of public power utilities are not subject to regulation by a public utility commission. LIPA is required to pay all costs and expenses of DPS LI, which currently total approximately $13 million annually. While DPS LI has review and recommendation authority over LIPA, the LIPA Board is still legally independent because it is not required to implement DPS LI recommendations if the Board determines so doing would be inconsistent with sound fiscal operating practices, contractual or operational obligations or the provision of safe and adequate service. If DPS LI did not exist, LIPA would save approximately $13 million in annual costs.

Access to Low-Cost Capital - The electric utility industry is highly capital intensive due to the need for expensive equipment and technology. It is critical for a successful utility to have efficient access to low-cost capital. Credit rating agencies have a rating methodology that favors utilities with boards that can authoritatively pledge to ensure maintenance of retail electricity rates at levels necessary to make debt payments. If the utility board's authority is secondary to or bifurcated with another governmental entity, then the board will be seen as less creditworthy and that will be reflected in credit ratings.

Board Size - Within the Comparison Group, the board size ranges from three to 15 members, with an average size of 7.2 members. It is generally accepted that a board must be large enough to represent the geographical footprint of the service territory but small enough to allow for reasonable interaction among the board members as they discuss and deliberate in a transparent public setting.

Board Term - Similarly, within the Comparison Group, the board member term of office ranges from three to five years with an average term of 4.2 years. Most elected utility boards with four-year terms have similar terms of office and shared election schedules with the other elected offices from the community. The electric utility industry is very complex and deals with a myriad of issues such that there is typically a steep learning curve for new board members. Longer terms allow board members to come up to speed and contribute, while returning board members help sustain institutional knowledge over time. Although long tenure denotes a seasoned board member with full capacity to contribute, it is most common for governing bodies to have a two-term limit for public utility board members.

Governance Best Practices - Regardless of governance structure, the following are good policies and initiatives for successful utility boards:

- focus on strategic policy and leadership with lesser emphasis on administrative detail
- commit to ongoing education[439]
- be willing to collaborate and strive for collective decisions that consider all inputs
- be proactive and available within the community to share information and listen
- deal effectively with immediate challenges but also maintain long-term vision
- acknowledge and respect roles and distinction between policy makers and staff
- when a board meeting adjourns, all parties must leave with a clear, shared understanding of next steps and expectations
- speak as one with regards to formally adopted written board policies

Considerations for Elected or Appointed Models - After a governance model is selected, the following are some of the critical foundational elements that must be defined:

Elected or Appointed

- board size
- board member term, with specifical consideration for staggered terms and whether a term limit will apply
- compensation (salary, per meeting pay, expense reimbursement, health benefits, etc.)
- determination of whether CAC will be created, and if so, how it will be utilized
- whether state public service regulatory involvement continues, and if so, with what level of oversight

Elected Board

- election timing (associated with general election, school elections or standalone timing)
- election representation area (geographic, established election districts, etc.)
- partisan or nonpartisan
- adherence to regular election campaign rules or some derivation (disclosure, etc.)

Appointed

- by whom (local and/or state elected officials, etc.)
- selection criteria (geographic, demographic, expertise, etc.)
- whether an any elected official(s) will receive an ex officio position on the board

Board and Board Member Job Description - There must be a clear understanding of board members' responsibilities and the duties of the board as a whole. For guidance, the following are typically included in the job description for public utility boards and their members. These board duties can be modified and finalized once a determination is made as to the structure and authorities granted the public utility board.

- hiring, oversight, evaluation of CEO
- approve employee and labor contracts, compensation, and benefits
- authorize certain wholesale contracts for purchase and sale of energy
- financial oversight
- developing and approving the utility budget
- setting rates and financial policies for long-term viability
- reviewing financial indicators and metrics
- authorize property acquisition by condemnation and the disposition of certain properties and associated payment
- approving large expenditures
- approving issuance of debt through bonds
- initiation of litigation
- acquisition of insurance and establishment of special funds
- oversee ultimate compliance with all applicable State and Federal Environmental Statutes
- strategic planning

LIPA's Future Governance - LIPA's potential transition to a full public power operational entity requires consideration of a more responsive, accountable, and transparent model. The performance of various large public power utilities in areas such as customer satisfaction, reliability and credit rating, clarifies that there is no one governance model that consistently outperforms.

Expanding regulatory, security, technological, and climate imperatives have significantly increased the complexity of operating an electric utility. This is especially true for large utilities with more than a quarter million customers, such as LIPA and those in the Comparison Group. Credit rating agencies also have a negative perception of large public utilities that must go through multiple layers of approval processes to make decisions and implement necessary actions. Based on the required time commitment, complexity of issues, responsiveness requirements, and other factors, it is generally accepted that the best utility governance model is one with an independent board that has final approval authority.

A high-performing governing board can be one of an electric utility's most valuable assets. To achieve the best results for the utility and its customers, these board members must understand their responsibilities, stay current on industry challenges, and serve as ambassadors, who both inform and listen to the people in their community.

Policy Maker and Utility Staff Summary - As noted above, a wide range of governance models for fully integrated public power utilities have worked well and produced affordable rates and good reliability. The best fitting governance model is typically fashioned around the local characteristics, political climate, and customer base, but successful public power utilities do have similarities, including:

- the board has all decision-making authority and direct control over the CEO.
- significant customer involvement is a primary goal.
- the control of the organization is vertically oriented where there is direct accountability from the CEO, through middle management, and down into the lowest levels of the utility.
- the management teams are full-time, dedicated utility staff all working jointly to achieve the board's objectives.

These key similarities should be considered in any LIPA restructuring.

The Commission believes an appointed board will provide LIPA with the best opportunity to ensure the continued jurisdiction of the National Labor Relations Board ("NLRB"), to retain the current ServCo workforce and to maintain their existing terms and conditions of employment. The

details of how an appointed LIPA Board would be structured remains an open issue still to be determined (e.g., who has appointment authority, the term of the appointment, etc.).

G. Transition Plan & Timing

1. Key Transition Steps and Planning

The ability to effectuate and adapt to change is usually rooted in excellent planning and execution. Any circumstance of considered change in the way LIPA operates will face a variety of challenges and short-term business continuity risks. A review of published documentation regarding the potential for change demonstrates that significant thought has been directed toward assessing the necessary transition tasks and the associated transition risks. The LIPA Phase II Options Analysis identified many of those risk factors:

> *"A shift to local management introduces short-term business continuity risks and costs associated with transition. LIPA management would need to put forth a transition plan that adequately mitigates the risks involved in hiring a new management team, shifting 2,500 employees to a new organization, and migrating certain IT systems.*
>
> *"We have also identified certain risks that need to be carefully considered, including the potential difficulty of attracting and retaining qualified management, the need for customer and stakeholder buy-in, and the potential challenges associated with using compensation as an incentive for management performance. Undertaking a significant change in business model would require the full support of our state's elected officials, regulators, stakeholders, and most importantly customers, as well as a transition plan that adequately mitigates the risks involved in hiring a new management team, shifting 2,500 employees to a new organization, and migrating certain IT systems."*

Once the Legislature chooses a model for LIPA and other milestones are achieved in the process for change, a detailed plan for transition should be constructed and tailored to match the overall vision and guidance from the Commission. That robust plan should address and include at least the following key topics:

Timeline – There are approximately 33 months prior to the end of the current OSA on December 31, 2025. Utility transactions and changes of this magnitude almost always take longer and cost more than what is anticipated as there are always unforeseen challenges. Past transitions should provide a guiding force since LIPA, PSEG and ServCo have all been through similar changes in the past.

Replace Industry Professionals – No matter the number, attracting, hiring and retaining quality industry professionals is difficult. Finding these people, particularly if some of the

incumbent positions want to transition, is not an insurmountable challenge, if there is a reasonable lead time and compensation is not an obstacle.

Systems – IT and Affiliate Functions – Transitioning the IT and affiliate functions away from PSEG LI and towards an independent LIPA managed system is probably the most difficult challenge. However, according to LIPA leadership and the Second A&R OSA, major portions of those transitions are underway (an IT Separation Plan was approved by LIPA's Board on September 28, 2022) and should be complete by 2025. Managing that process, construction of timeline and cost mitigation plans, and assuring top caliber leadership is in place is key to transition success.

ServCo Labor Transition – Once the future ServCo structure is identified and secured through legislation, the transition requires collaboration with IBEW Local 1049 and PSEG LI. The prior ServCo transitions can provide a basic roadmap with continued emphasis on retaining the workforce and maintaining consistent terms of employment.

Governance Structure Planning & Execution – Deployment of a new governance structure will require a great deal of planning and policy development. This task and the myriad details required for success should not be underestimated. Depending on how the governance model evolves, effort and time will be required to assure that all necessary policies and systems are ready and in place to execute the new model.

Legal and Contracting Transition – While there are no identified legal impediments that may prevent a successful transaction, there is a tremendous amount of work required to effectively transition these processes and relationships.

Legislation / Potential Required Enabling Legislation – Obviously, any time legislation is or may be required, there are many qualitative factors and considerations in play, particularly when there is a large volume of interested stakeholders and interested parties.

Branding and Messaging – The Long Island ratepayers are the primary stakeholders and whose satisfaction with the future for LIPA matters the most. As described previously, attaining early customer buy-in and management of expectations is critical for success. This requires diligence and proactive commitment. It requires an explanation for how these changes *will* positively impact Long Island. LIPA will need to engage outside third parties to assist in messaging and build out is own internal capabilities to assure

competence in this area. LIPA will need to pursue activities such as initiating community involvement, construction of advisory committees and action groups, proactively speaking with the community and soliciting input, including from disadvantaged communities, and sponsoring and promoting initiatives that are important to the citizens of Long Island. The remainder of the tangible branding, such as logos and website documentation is also key, but more tangible and checklist oriented.

Corporate Culture Evolution – A difficult to quantify but critical transition requirement is the construction of a corporate culture with a long-term, "all for one and one for all" approach to managing LIPA's future and LIPA's customers well-being. This may well be the most important long-term goal for transition.

- Requires excellent leadership throughout the organization.
- Executives and stakeholders should expect challenges.

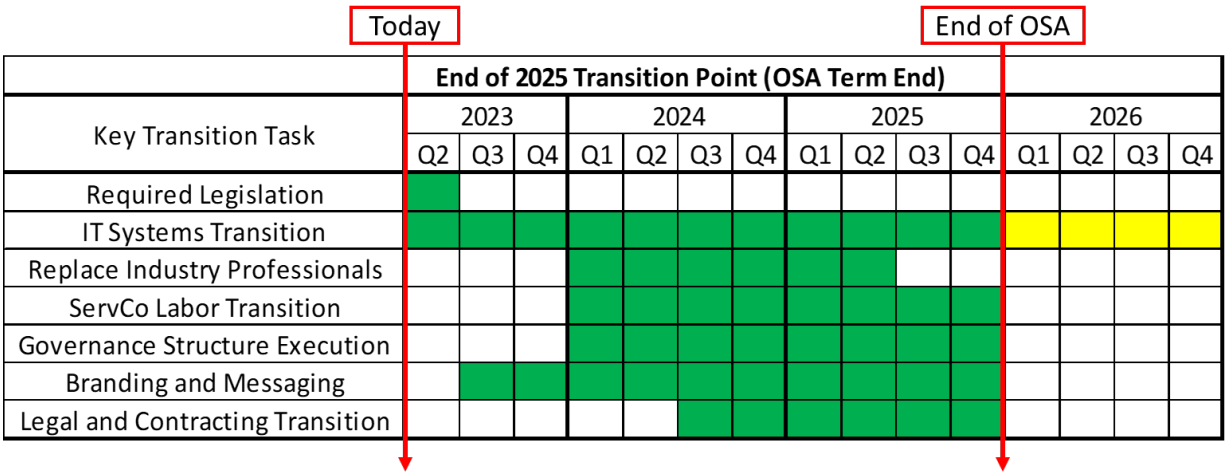
a. Timeline Considerations

LIPA, PSEG LI, ServCo, and other entities that are affiliated with LIPA have implemented a similar scope of changes in the past to that which is contemplated. Furthermore, over the last several years, proactive steps have been taken related to IT systems and other integrated affiliate services to allow for a less challenging evolution away from the existing model.

The LIPA Options Analysis states that 1-2 years will be required to complete all required transition activities. Depending upon the amount of change and the types of change that the Legislature elects, 2 years does not seem unrealistic, but completion in 1 year is likely not feasible given all that will be required.

Given the time required to successfully complete a transition, the end of the Second A&R OSA should be targeted as the transition date. Figure 16 below expresses the timeline for completion of the critical transition activities, while the notes below the figure provide commentary regarding each activity.

Figure 16



b. Transition Timeline Components

Required Legislation – To accomplish the goal of completing the transition to coincide with the expiration of the Second A&R OSA, the required legislation (outlined in Part 6 below) and completion of required procedures (including passing of legislation within the current legislative session) needs to occur in 2023. **This is a critical path activity.**

IT Systems and Affiliate Services Transition – As noted above, this transition has already begun. An additional 33 months plus the option to continue to contract for services into 2026, as has occurred in past transitions, should provide enough time to effectively transition IT systems and affiliate services.

Replace Industry Professionals – Given the need for overlap with existing PSEG staff and new LIPA staff (estimated at 6 months) to effectively transition and the limited labor market for capable utility industry professionals, an eighteen-month timeline is estimated as reasonable so long as an effective recruiting plan is put in place.

ServCo Labor Transition – Depending on the future workforce model chosen, a twelve to eighteen month transition period is likely required for the ServCo transition.

Governance Structure Execution – Given the large volume of planning and policy /development required for this activity, a 24-month period is suggested to accommodate the unknown challenges that will certainly arise. **This is a critical path activity.**

Legal and Contracting Transition – This component could have a significant impact on the timeline depending on whether there is litigation. In addition, even if there is no overall service

provide contract to negotiate, other contracts (such as with regard to fuel supply) will be needed to effectuate a smooth public power transition.

Branding and Messaging – Community messaging should begin as soon as confidence exists through the passing of legislation or other milestones about the future for LIPA. A minimum of 1 year should be utilized for this purpose.

While a target transition date of December 31, 2024 may be desirable, it is realistically not feasible (and likely would result in a substantial termination fee). Completing a transition when the current Second A&R OSA term concludes on December 31, 2025 should be feasible with excellent planning and leadership/stakeholder ambition.

2. Contracts, Authority & Implications

a. Ending the LIPA-PSEG Relationship

i. Operating Agreement Expiration and Transition

In response to the Phase II Options Analysis, the relationship between LIPA and PSEG LI was recalibrated resulting in the Second A&R OSA dated December 15, 2021, incorporating the eight core reforms cited in Part 1.B.2.a.ii above, in addition to the continuing essential elements of the relationship. The Second A&R OSA primarily transferred all operating responsibilities to PSEG LI, while giving LIPA the ultimate control over all major decisions. The relationship is somewhat bottom up, in the sense that PSEG LI, in many circumstances, is required to initiate the suggestions necessary to enhance and maintain the T&D System, with LIPA ultimately having the final decision-making role. The Second A&R OSA is scheduled to expire on December 31, 2025.

Options: As the expiration date approaches, LIPA has the option of (1) extending the Second A&R OSA on its current terms (with PSEG LI's consent), (2) renegotiating the Second A&R OSA on new terms, (3) retaining a different service provider while allowing the agreement to expire, (4) terminating the agreement early upon notice to PSEG LI, if LIPA desires to fully assume operations itself ("Municipalization"), or (5) fully assume the operations by allowing the agreement to expire. If LIPA elects to proceed with either option (4) or (5), then LIPA needs to follow certain notice requirements (as it relates to option 4) while focusing primarily on three components: (1) the transfer of the workforce, primarily through the transfer of the ServCo membership interests or another favored mechanism, (2) the decoupling of the IT system so that LIPA can

access independent control over the system, and (3) the assumption of preferred ancillary vendor and service arrangements and agreements.

The transfer of the workforce will be discussed in detail in Part 2.F.5.b below. The decoupling of the IT system will be accomplished through the IT System Separation Plan which, as discussed above, is already in the implementation phase. The assumption of desired vendor and contractual relationships must be explored through a more detailed due diligence process.

Timing: If the Second A&R OSA runs through its full term, the timing will be clear and unambiguous. The Second A&R OSA will end at the end of 2025 and the "Back-End Transition Services" as set forth in the Second A&R OSA will commence nine months prior to expiration (Section 8.5 (F) of the Second A&R OSA). In the event of a Municipalization by LIPA, with the intention of terminating the Second A&R OSA early, LIPA must give PSEG LI notice no earlier than six months prior to the effective date of termination, as set by LIPA, which shall be the date of LIPA's employment of the T&D System operating and maintenance personnel of ServCo or LIPA's acquisition of ServCo's membership interest.

Termination Fee and Expenses: If LIPA terminates the Second A&R OSA early pursuant to a decision by the Legislature to fully municipalize, PSEG LI may be entitled to a Termination Fee equal to $66.7 million as of 2011 in 2011 dollars, reduced by $6.67 million dollars for each contract year thereafter (prior to giving effect to a CPI escalation). Using this calculation, in 2025, the fee would be $33.35 million in 2011 dollars (without any further adjustments). PSEG LI will also be entitled to (i) wind-down expenses, (ii) Pass-Through Expenses, (iii) its Management Services Fee, and (iv) any Incentive Compensation that might be due until termination.

Transition Itself: If LIPA ultimately decides to transition from PSEG LI, then the Second A&R OSA contemplates a transition process requiring PSEG LI to participate in certain Back-End Transition Services.

Back-End Transition Services

Section 9.2 of the Second A&R OSA provides that "[n]o later than the earlier of (a) nine (9) months before the expiration of this Agreement and (b) thirty (30) days after the start of Back-End Transition Service…, Service Provider will be required to provide a plan for implementing the Back-End Transition Services specified in the Contract Administration Manual (the "Back-End Transition Plan"). These services shall include (as found in Sections Appendix 4.2 (A)(6) and 9.2 and the Contract Administration Manual):

- identification of PSEG LI's team for the transition;
- cooperation with LIPA including familiarizing LIPA personnel with any facilities, furnishings, material, supplies, and equipment used in providing Operation Services;
- familiarizing LIPA with intellectual property to be used;
- familiarizing LIPA with the records management program;
- familiarizing LIPA with the functional areas;
- preparation and delivery of information to LIPA relative to the staffing of ServCo as well as associated benefits programs, work rules and labor contracts;
- transferring the Contract Administration Manual and Operations Manual to LIPA;
- familiarizing LIPA with the IT systems;
- familiarizing LIPA with storm and emergency response plans;
- familiarizing LIPA with third party contracts; and
- cooperation on the Exit Test (discussed later).

The Back-End Transition Plan will include the following:

- transfer of all records (other than proprietary financial records), including employee records, customer lists and account information, manuals, and personnel information;
- transfer all documentation associated with work in progress and provide a status report;
- sell all existing materials and supplies used in the operation to LIPA at PSEG LI's cost;
- cease operations on a date set by LIPA;
- protect and preserve all T&D System materials, equipment, tools, facilities and property;
- remove all equipment and property from the T&D System site which will not be transferred and repair all damage from such removal;

- allow all ServCo employees to accept offers of employment with LIPA and to remove all other personnel;
- promptly deliver to LIPA copies of all subcontracts with a statement of: (i) items and services ordered but not yet delivered; (ii) the expected delivery date of such items and services; (iii) the total cost of each agreement and terms of payment; (iv) the cost of cancelling and assigning each agreement;
- deliver to LIPA a list of (i) all special orders previously delivered but not yet incorporated in its services; (ii) all service contracts including detailed scope of work and progress reports; (iii) all other supplies, materials, equipment and other property previously delivered to or fabricated by PSEG LI or subcontractor but not yet incorporated in its services;
- advise LIPA of any special circumstances that might limit or prohibit cancellation of any Subcontract;
- as directed by LIPA, terminate or assign to LIPA all Subcontracts and make no additional agreements with Subcontractors, unless LIPA approves;
- as directed by LIPA, transfer title and deliver to LIPA, all special-order items;
- furnish to LIPA all information used in the preparation of reports and other data necessary for LIPA to operate the T&D System and use all commercially reasonable efforts to obtain third party consents required;
- notify LIPA promptly in writing of any legal proceedings against PSEG LI; and
- take such actions and execute such documents as may be necessary to confirm the aforementioned items or as may be necessary or desirable to minimize LIPA's cost.

Exit Test

LIPA will have the ability to monitor the progress and effectiveness of PSEG LI's performance in the transition process through the "Exit Test." LIPA, in consultation with PSEG, will establish the specific requirements and procedures of the Exit Test which will be conducted in accordance with agreed upon policies and procedures. The Exit Test will commence at least six months prior to expiration to confirm (1) that PSEG LI has performed or will perform the maintenance and capital improvements provided for in the approved or Default Budget for the final year of the Second A&R OSA, and (2) that PSEG LI has completed or will complete any remedial tasks to cure maintenance or Capital Improvement deficiencies. LIPA may retain an independent engineer, subject to PSEG LI's reasonable approval, to perform the Exit Test. If LIPA's engineer finds deficiencies or tasks not completed as described above, then PSEG LI must complete and cure

identified deficiencies and perform necessary remedial tasks prior to expiration of the Second A&R OSA.

IT System Separation Plan

The IT component will be a critical piece of the assets, personnel, and systems transitioned to LIPA in any transition plan. The Second A&R OSA contemplates that it would be beneficial to segregate all IT Systems serving LIPA from any other systems operated by PSEG LI and lays out a process to accomplish this. This includes the Enterprise Resource Planning System, infrastructure, application systems, and cyber-security support systems. It should be noted that the cost associated with the separation will be paid by LIPA as a pass-through expenditure. The Second A&R OSA further provides that LIPA and PSEG LI will form a joint "IT Team" to develop an "IT Team Proposal" to identify which systems need separation and a schedule for accomplishing the separation. An IT System Separation Plan has been devised and approved after input from DPS. Thus far, the IT Team has identified 46 systems that need to be decoupled from PSEG LI's system and proposed a timeline which will conclude by the end of Q4 in 2024, recognizing that total separation of some of the administrative and support functions may extend into 2025. If this timeline is met, the separation will be complete before the expiration of the Second A&R OSA.

Affiliates/Post-Expiration

The Second A&R OSA also provides that PSEG LI will cause its existing affiliates to provide technical advice and support as well as Back-End Transition Services to LIPA. Such advice and support shall be for a period of six months once the Back-End Transition Services begin. More specifically, the support will include providing plans, drawings, blueprints, operating and training manuals for all facilities, personnel information, specifications and other useful information.

In addition, if requested by LIPA post expiration, PSEG LI will use reasonable efforts to retain senior managers and make them available to provide on-site, real-time consulting advice. PSEG LI will provide these services for an additional six months after expiration. LIPA will compensate PSEG LI for such services on the basis of PSEG LI's fully allocated time and materials charge.

Also, all licenses and sublicences will terminate on expiration unless needed to complete the post-expiration work, in which case they will continue until the services cease.

b. Other LIPA-PSEG Contractual Obligations

Subcontracts/Third Party Agreements

The Second A&R OSA contemplates that PSEG may subcontract for certain of its responsibilities and further provides (section 4.12) that PSEG LI can act as the agent for LIPA in procuring goods and services needed in PSEG's performance of the Operating Services. The Contract Report dated September 23, 2022, submitted by LIPA, PSEG LI, and ServCo to the New York State Office of State Comptroller lists more than 250 contracts.

If LIPA is not deemed a contracting party to these agreements and it is decided that it will assume full responsibility for the operation of the T&D System, it will need to have these contracts assigned to it, enter into new contracts with these vendors or contractors, or make some other provision to obtain the product or service provided.

Therefore, as part of the transition process, it will be necessary that each of the contracts or subcontracts with any vendor or contractor be analyzed to determine the continued need of that contract or vendor, the actual principal (ServCo, PSEG LI or LIPA) holding such contract, whether such contract can be terminated and, if necessary, the assignability of that contract.

3. New Staffing & Compensation Requirements Assessment

It is critically important in any transition to a future LIPA structure to maintain the current workforce and established relationship with IBEW Local 1049. The ServCo unionized employees and the non-unionized administrative employees have extensive institutional knowledge regarding LIPA's T&D System and operations acquired from decades of experience. To minimize disruptions to service and maintain the efficiency of T&D operations during any transition and into the future, retaining the skilled workforce, with particular knowledge gained through years of experience on LIPA systems, is of paramount importance.

Further, currently LIPA, through PSEG LI and ServCo, has an effective working relationship with IBEW Local 1049. In any transition, avoiding labor unrest requires maintaining a positive relationship with the IBEW. To achieve this result likely requires maintaining the current collective bargaining agreements, including the existing benefit plans.

Maintaining the current collective bargaining relationship and agreement terms also serves to protect the living standards for the approximately 2,500 ServCo employees and their families. In

particular, wages, health and retirement benefits, job security and opportunities for advancement within the company can be preserved with a continuation of the IBEW labor agreements. The value and significance of these goals and principles was demonstrated by the fact that they were expressly included in LIPA's authorizing legislation.[440]

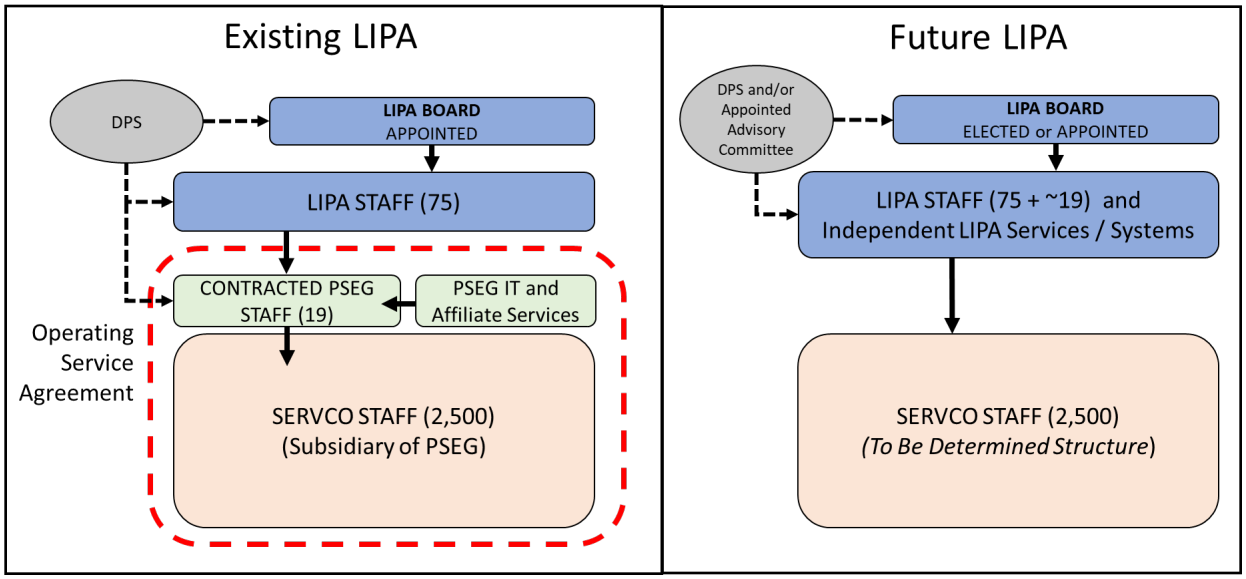
Another objective in the transition is to improve the efficiency of the management of the T&D workforce. Currently, LIPA has only indirect control over the ServCo workforce. Day to day operations are controlled by the management employed within ServCo, who report to senior management at PSEG LI. LIPA does not have direct access or control of the ServCo management team. Under the Second A&R OSA, LIPA leadership is forced to "steer the ship" by working through PSEG LI senior management, who in turn translate LIPA's direction to the ServCo management team. The inherent inefficiency in this structure is apparent.

One approach to address this inefficiency would be to replace the senior leadership structure, that currently exists in PSEG LI, with LIPA management, to obtain direct managerial control over ServCo. This model would envision LIPA augmenting its management team, as needed, to replace the 19 PSEG LI directors and officer positions that are currently overseeing the operation of ServCo. Currently, five ServCo managers fill all the roles designated for the PSEG LI employees. LIPA leadership has also identified a significant degree of functional overlap with eight existing LIPA professionals. As a result, LIPA anticipates the need to hire only six managerial personnel to fill these functions, and effectively replace the 19 PSEG LI managerial positions.

a. Operational Approach – Organizational Structure

The existing operational model whereby ServCo staff and the LIPA-owned T&D System are managed by a third-party 19-person management team via an operating service agreement does not exist elsewhere in the power industry. Figure 17 below describes the existing LIPA operational structure and a future LIPA operational structure after transitioning to a fully integrated public power model.

Figure 17



As discussed previously, when transitioning to a fully integrated public power model, there are two potential major components of change which are distinct from one another:

Operations – The changes that would have real operational influence on the organization would occur after termination of the Second A&R OSA. This would include replacing the 19 (or an alternative number as required) contracted positions currently provided or managed by PSEG LI and integrating them into the LIPA management group, and completing the transition towards independence from PSEG IT systems and affiliate services.

Governance – The potential governance changes stem from how the LIPA Board is constructed (elected or appointed) and if or how the DPS and/or an appointed advisory committee would represent customer and stakeholder interests to that board. There are in effect, three potential governance paths:

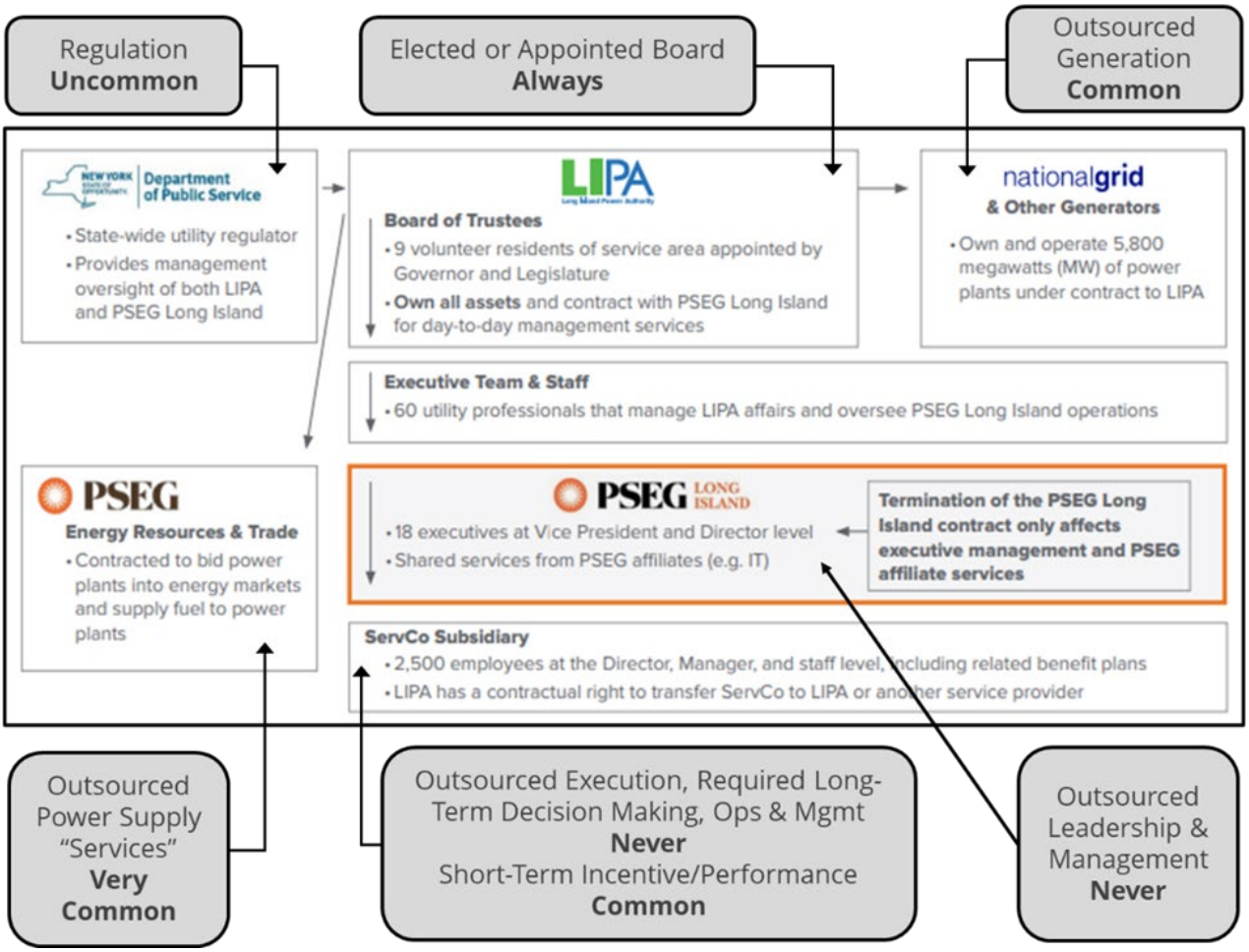
DPS Full Regulation: This is an unlikely outcome as adding further regulation and therefore rate-making authority would trigger bond and financing issues.

Middle Ground: Continuity of DPS review and recommendation oversight of LIPA operations and/or DPS participation on an advisory committee to the LIPA Board (the latter is commonly found in public power).

LIPA independent from DPS: An elected or appointed board with full authority and potentially additional customer advocacy from a CAC or CAB is most common within the fully integrated public power model.

Figure 18 below has been taken from the LIPA Options Analysis Report. The grey boxes indicate how each function exists elsewhere in industry for a fully integrated utility business model. Clockwise from left to right starting with the PSEG provided Power supply services:

Figure 18



Energy Resources & Trade – It is very common for utilities to utilize outside entities to provide power supply "**services**" to manage power supply contracts, hedging, and provide advisement to executive leaders. There are suitable entities to provide this service should LIPA want to further evolve away from PSEG LI. The services provided in this category

are tactical in nature and most often day-to-day. Strategic elements of any decision should flow from direction received from LIPA executives and the LIPA Board.

Department of Public Service – It is relatively uncommon for state commissions to regulate public power entities.

Board of Trustees – Public power is always governed by an elected or appointed board. How that board is formed and how they interact with their stakeholders varies.

National Grid – It is common for generation assets to be operated, maintained, and managed by third parties.

PSEG Long Island Contract – There is not a utility that outsources leadership and executive management to a third party like LIPA currently does with PSEG LI.

ServCo Subsidiary - ServCo, as an entity dedicated to serve LIPA customers, appears to function as in-house long-term dedicated employees. Many of these employees have transitioned between different operating service agreements prior to PSEG. A local long-term workforce serving the community is most common and ideal for a public power model. The ServCo function can be segmented into two pieces:

1. Functions that require long-term decision making in operations and management. Utilities never outsource the decision-making and management of their business.
2. Functions or tasks that can accept short-term views, incentives and performance. Utilities commonly outsource tasks and operations components that are commoditized, only in need in the short-term, or that require some type of specialized expertise.

Any successful business model requires short *and* long-term incentive operational alignment in order to achieve favorable results which include customer satisfaction, excellent service and financial performance. The utility industry, because of its capital-intensive territorial model, requires a commitment to strategic and disciplined long-term decision making.

Table 7 below is intended to provide some examples of functions, tasks and capabilities that are common within the utility industry for internal and external execution. It contrasts tasks that require long-term strategic viewpoint versus tasks that require short-term expertise.

Short-Term Expertise Required - The external activities column are short-term in nature and/or require specific expertise; these activities commonly utilize external contracting or service-oriented mechanisms. Functions that require short-term specialized expertise can be performed with external contracting.

Strategic Long-Term Decision Making Required - The internal activities column identifies activities that typically require internal leadership and long-term stakeholder representation. They are typically a long-term required competency. Functions that require long-term competency and strategic thinking should be executed internally.

While significant effort was made in the Second A&R OSA between LIPA and PSEG LI to align interests and incentivize performance, this approach is not seen in or could not be considered an industry best practice for long-term strategic operational excellence.

Table 7

Alignment Consideration	**INTERNAL** **Leadership & Stakeholder Representation** **Required Long-Term Decision Making** **(Ongoing Requirement / Competency)**	**EXTERNAL** **Contract, Advisory or Service Oriented Actions** **Short-Term Incentive/Performance** **(Specific Expertise, Short-Term Need)**
Work Function Examples	System Storm Hardening & Design for System Reliability & Resiliency.	Contracted Engineering Design Studies. Deployment of Storm Hardening Measures
	Vegetation Management Planning to Assure System Reliability.	Contracted Tree-trimming.
	If, How and When to Offer Unbundled Rate Structures or Other Strategic Rate Design Considerations.	Rate-study Analysis and Advisement Provided by Consultants.
	Strategic Management and Operation of IT Systems and Other G&A Support Services	Cybersecurity Audit and Advisement Provided by Consultants.

a. High-Level IT Transition Plan Review

Transition of the IT systems that serve all facets of LIPA's business model towards independence from PSEG LI has been identified by LIPA and other outside entities as the largest challenge for transition to a fully integrated public power model.

When considering such a major transition, there are many key considerations, including: overall goal and scope, the migration team(s), contractors, qualifications of teams and contractors, security before, during, after each component transition, including NDA and clearances, communications with interested stakeholders (e.g., customers, staff, management, and third parties including vendors), security and firewall maintenance during project(s), scope definitions such as applications identified to migrate and *not* migrate, type of transition (in-house or cloud), migrate only, migrate with upgrade, migrate via replacement, timeline, training and budget.

In the Second A&R OSA, the parties agreed it would be beneficial for all IT Systems serving LIPA to be separate and distinct from the system, data, reports, and information of PSEG LI and its affiliates. A joint LIPA and PSEG LI "IT Team" was organized in April 2022 to form a joint cross-functional team to prepare a Plan for IT System Separation by July 29, 2022. The team objective is simple: implement the separation requirements specified in the Second A&R OSA.

The relevant systems include: IT Operational Technology (OT), Cybersecurity (Cyber), any systems used at or by PSEG LI but owned or controlled by PSEG or its affiliates. The Separation Plan "envisions an end-state where none of the systems remain intermingled by the end of Q4 2024" but with "recognition that some administrative and support function may extend into 2025."

The IT Transition plan appears to effectively address all required transitions or migrations. The process for migration may currently lack the level of detail that will ultimately be required, but the plan is a work in progress. The caliber of professionals enlisted to effectuate change appear adequate, although the contractors and labor utilized for execution are not yet known. As with any complicated IT transition process, time and budget is a consideration. It is understood that the transition costs are pass-through in nature and as a result not a limiting factor of success. As for timeline, the most recent status documentation indicates some slippage in several different milestones.

In terms of concerns, some sections of the plan appear to have no specific references to contract or vendor management processes. Further, in terms of security, it is not clear a process exists to ensure cyber security and data protection is monitored and engaged throughout the separation. In sum, the transition is in process and both PSEG LI and LIPA have either direct or indirect incentives to effectively accomplish the transition. It is recommended that as the Commission approaches and eventually draws conclusions regarding the future model for LIPA, new third-party expertise in IT change management be deployed to pay close attention to the progress and assist in capturing milestones to assure that the transition of the many IT systems do not hinder the Commission's preferred timeline.

PART 6 – A SUMMARY OF THE LEGISLATIVE CHANGES THAT ARE NECESSARY FOR LIPA TO BECOME A TRUE PUBLIC UTILITY

Through the research and analysis conducted in drafting this Interim Report, the Commission has identified specific steps and legislation that must be passed to facilitate LIPA's transition to a fully integrated public power model, as required by Legislative Law section 83-N. Legislative action may require amendment of the existing Public Authorities Law and Public Service Law, as applicable to LIPA.

- To the extent that LIPA's transition to a fully integrated public power model will require a new governance model, the roles and responsibilities of LIPA Board members should be revised accordingly. Article 9, Title 2 of the Public Authorities Law governs the roles and responsibilities of boards of public authorities. Through adoption of the LIPA Act and LRA, the LIPA Board's responsibilities were modified from those afforded to the boards of other New York State public authorities. Thus, amendment of Title 1-A of the Public Authorities Law is required to allow LIPA's Board to function with full authority under Article 9, Title 2 of the Public Authorities Law. LIPA's Board must have the legislative authority to effectively oversee LIPA's public power operations.

- Legislation is required to set forth the new board governance model, whether appointed or elected, and the process to appoint or elect board members. The legislation should also specify the number of board members, term length, compensation (if any), and election or appointment criteria. Additionally, legislation can address the creation of a Citizen Advisory Committee and specify the Committee's authority and scope and selection process for members.

- The Public Authorities Law must be amended to remove references to LIPA's service provider. This legislation may be extensive in form, as many provisions in the LIPA Act require LIPA to oversee actions performed by the service provider or coordinate with the service provider for performance of LIPA's duties. Under a fully integrated public power model, LIPA will be solely responsible for all aspects of its performance. The LIPA Act must also be revised to remove any responsibilities assigned to the service provider, including preparation of the ERP as well as any processes that require consultation between LIPA and the service provider. Further, provisions of the Public Authorities Law that require specific actions by the service provider must be removed or reassigned to LIPA (for example, the service provider's obligation to submit performance metrics data to DPS).

- The LRA amended the Public Authorities Law to require LIPA staffing be kept at levels only necessary to ensure it can meet its core obligations, including oversight of its service provider. If LIPA is to operate under a fully integrated public power model, it will have increased staffing needs to replace roles and functions currently handled by PSEG LI employees. Accordingly, section 1020-f(c) of the Public Authorities Law must be amended to allow LIPA to employ necessary staff positions to successfully operate as a true public power utility.

- Legislation may be necessary depending on how ServCo employees are transitioned to LIPA. Specifically, legislation will be necessary to clarify the terms and conditions of LIPA subsidiary employees' employment. Amendments to the Public Authorities Law are required to exempt ServCo employees from the provisions of the Taylor Law, to ensure ServCo employees do not acquire civil service status and do not become members of the New York State and Local Employees Retirement System, and to best position the relationship between LIPA and the ServCo workforce to continue to be subject to the jurisdiction of the NLRB. Similarly, legislative approval may be needed to ensure ServCo retirement plans could be transitioned.

- Pursuant to the LIPA Act, LIPA contracts are subject to "state agency" procurement rules. This means that all of LIPA's contracts in excess of $50,000 are subject to review by the New York State Attorney General's Office and "pre-audit" by the OSC. Historically, LIPA's contracts have been executed by LIPA's service provider and therefore not subject to the

"state agency" procurement rules. Amendment of the Public Authorities Law is necessary to allow LIPA flexibility to enter into contracts, such as power purchase agreements, with values over $50,000. Such contracts often require time-sensitive action and LIPA's ability to function will be severely limited if "state agency" procurement rules remain effective. Accordingly, amendment of the existing approval requirement is necessary.

- The LIPA Act broadly exempted LIPA from PSC jurisdiction, with only certain limited exceptions, and the LRA granted DPS "review and recommendation" authority over LIPA, rather than the more traditional regulatory authority DPS exercises over IOUs. This is attributable to the State Pledge, which is a LIPA Act requirement that the State will not limit or alter the rights vested in LIPA by the LIPA Act until LIPA's obligations, together with the interest thereon, are fully met and discharged and/or such contracts are fully performed on the part of LIPA. The State Pledge is set forth in LIPA's bond resolution and constitutes part of LIPA's contract with its bond and noteholders. While no legislation is explicitly required, the Legislature should ensure that the State Pledge remains effective upon LIPA's transition to a fully integrated public power model. This could include confirmatory language in either the Public Authorities Law or Public Service Law.

- As a fully public power utility, LIPA's ratemaking can be accomplished through LIPA's existing statutory authority, which includes limited DPS oversight. Alternatively, LIPA can transition to a traditional public power model where the Board is held accountable by customers to ensure prudent provision of services, thus eliminating the need for DPS involvement in the ratemaking process. Legislation would be required to limit DPS' current oversight of LIPA's ratemaking process.

1. Legal Work Required

LIPA's transition to a fully integrated public power utility will require a significant amount of non-legislative legal work. The Commission has identified several key areas where legal work is required to allow LIPA to function as a fully integrated public utility.

Initially, a new LIPA subsidiary must be created for ServCo employees. This Interim Report outlines three options including the MTA Model, the LLC Model, and the PEO Model. Once a ServCo employee model is chosen, considerable legal work will be required to effectuate the transition. As discussed above, depending on the model chosen, new legislation may also be required.

Legal work will also be required to transition or assign PSEG-LI and PSEG ER&T contracts and subconsultant agreements to LIPA. Initially, all such contracts and agreements must be obtained from PSEG-LI and PSEG ER&T and reviewed by LIPA's legal representatives to determine if they can or should be terminated or assigned to LIPA. Costs associated with termination and/or assignment must also be calculated. Following an assessment of LIPA's internal capabilities and assigned contracts and subconsultant agreements, additional agreements may need to be negotiated to continue performance of certain LIPA duties.

2. Operational/Organizational

A substantial amount of work is required from an operational perspective to transition responsibilities and job functions currently performed by PSEG LI to in-house positions at LIPA. As previously discussed, LIPA's staffing needs must be addressed legislatively and legally through creation of a LIPA subsidiary. Following completion of those steps, LIPA must hire and train new employees to take on work previously performed by PSEG LI. Specifically, LIPA must hire six to ten competent employees to manage ServCo. It must also hire new power management subject matter experts to assist with preparation of IRPs, CLCPA compliance, and other technical functions. Once legislative amendments are passed allowing LIPA to hire additional staff, LIPA must ensure that job roles are created and filled such that there is no disruption to service or other operational functions.

LIPA will need to issue an RFP for the power management services that are currently managed by PSEG ER&T. Public power utilities typically contract with third parties for performance of power management services including power supply, management, schedule, and dispatch functions. The required skills and specialized equipment are unique such that these services cannot be cost-effectively performed by the utility itself.

Additionally, LIPA may want to rebrand itself to better represent its new operational model to the community and stakeholders. This rebranding should include professional consultation from an outside marketing or professional relations firm.

A. Open Decisions

1. Governance

LIPA's potential transition to a full public power operational entity requires consideration of a more responsive, accountable, and transparent model. The Legislature must decide which form of governance is best suited to LIPA, its territory, and its customers. The performance of various large public power utilities in areas such as customer satisfaction, reliability, and credit rating, clarifies that there is no one governance model that consistently outperforms. The most significant element for LIPA's transition to a true public power model is the determination of the appropriate method of governance.

a. Board Model

Governance is focused on utility leadership, with an initial determination of whether LIPA's board should be elected, appointed or involve a hybrid model (both appointed and elected), along with the role a citizens' advisory committee or energy observatory would play. No single clear and distinct governance model can guarantee LIPA's success. Even within the public power industry itself there is no consensus on the best governance model, in part because of differences among utilities and the challenges they face. However, selection of the appropriate governance structure ensures the best utility decisions and outcomes, and the exercise of good leadership creates and drives effective execution of a well-developed strategic plan.

A key component in determination of the governance model is determination of whether the governing board will be appointed or elected. Regardless of which board type is selected, the Legislature should determine the fundamental elements, including but not limited to (i) board size, (ii) board member terms with special consideration for staggered terms and whether staggered terms apply; (iii) compensation (salary, per meeting pay, expense reimbursement, health benefits, etc.); (iv) determination of whether a CAC (or some other model – e.g., observatory) will be created, and if so, how it will be utilized; and (v) whether state public service regulatory involvement continues, and if so, with what level of oversight. If an elected board model is chosen, the following will need to be determined: (i) election timing (associated with general election, school elections or standalone timing); (ii) election representation area (geographic, established election districts, etc.); (iii) partisan or nonpartisan; and (iv) adherence to regular election campaign rules or some derivation (disclosure, etc.). If an appointed board is chosen, the following elements will need to be determined: (i) by whom (local and/or state elected officials,

etc.); (ii) selection criteria (geographic, demographic, expertise, etc.); and (iii) whether any elected official(s) will receive an ex officio position on the board.

A high-performing governing board can be one of an electric utility's most valuable assets. To achieve the best results for the utility and its customers, board members must understand their responsibilities, stay current on industry challenges, and serve as ambassadors, who both inform and listen to the people in their community. Lastly, the Legislature should ensure that there is a clear understanding of board members' responsibilities and the duties of the board as a whole.

b. Impacts on DPS Oversight

The Legislature must determine the extent DPS will have oversight over LIPA following its transition to a fully integrated public power model. Where the Board is held accountable by customers to assure prudent provision of service in a public power model, DPS oversight may no longer be needed. Alternatively, the Board, whether elected or appointed, could continue to be subject to the same DPS oversight that exists today, including for the rate-making process. In the third option, transition to full regulation as is consistent with IOUs in the state would transition ratemaking authority away from any locally elected or appointed directors and to DPS, but would likely have an impact on bond ratings.

2. Workforce Structure

a. ServCo Employees

Another vital decision that must be made is how ServCo employees will be transitioned to LIPA. Per the Second A&R OSA, following its expiration, PSEG LI will transfer 100% of the membership interests in ServCo to LIPA or its designee, at no cost, free of all liens and encumbrances, and shall also deliver to LIPA or its designee all books and records of ServCo. The parties will mutually agree upon such instruments, agreements and other documents as may be reasonably necessary to affect such transfer.

As discussed previously in this Report, there are three potential models to transition the ServCo employees away from PSEG LI and place them under LIPA control while maintaining their employment status, wages, benefits and other terms of employment and preserving the relationship with IBEW Local 1049. These include:

(1) LIPA corporate subsidiary (the MTA Model)
(2) LIPA control of ServCo (the LLC Model)
(3) LIPA employee leasing (the PEO Model)

The implications for the current employees, collective bargaining agreements, and retirement and welfare employee benefit plans vary between models. A prudent decision must be made to seamlessly transition ServCo employees and their collective experience and expertise with LIPA's System, to LIPA control.

b. Additional Contractors

The Second A&R OSA contemplates that PSEG may subcontract for certain of its responsibilities and further provides (section 4.12) that PSEG LI can act as the agent for LIPA in procuring goods and services needed in PSEG's performance of the Operating Services. The Contract Report dated September 23, 2022, submitted by LIPA, PSEG LI, and ServCo to the New York State Office of State Comptroller lists more than 250 contracts.

It is not clear whether the listed contracts were executed by PSEG LI or ServCo as agent of LIPA as a disclosed principal or whether PSEG LI or ServCo executed those contracts in their own names. If LIPA is not deemed a contracting party to these agreements and decides to assume full responsibility for the operation of the T&D System, it will need to have these contracts assigned to it, enter into new contracts with these vendors or contractors, or make some other provision to obtain the product or service provided.

In any event, it will be necessary during the due diligence phase of any transition, that each of the contracts or subcontracts with any vendor or contractor be analyzed to determine the continued need of that contract or vendor, the actual principal (ServCo, PSEG LI or LIPA) holding such contract, whether such contract can be terminated and, if necessary, the assignability of that contract.

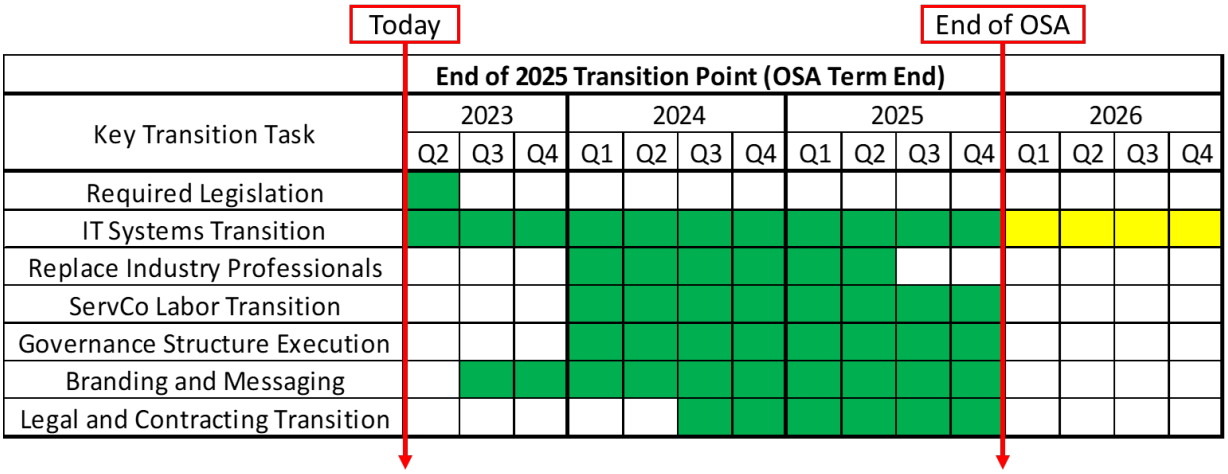
3. Schedule

The LIPA Phase II Options Analysis states that one to two years will be required to complete all required transition activities. Depending upon the amount of change and the types of change that the Legislature elects, any timeline that occurs prior to the termination of the Second A&R OSA on December 31, 2025 is likely not feasible.

Fortunately, over the last several years, proactive steps have been taken related to IT systems and other integrated affiliate services to allow for a less challenging evolution away from the existing model. LIPA, PSEG LI, ServCo, and other entities that are affiliated with LIPA have implemented a similar scope of changes in the past to that which is contemplated. Additional

transition activities will be necessary in order to transition into a new governance model. Figure 16 below is repeated from page 111 as it expresses the timeline for completion of the critical transition activities, while the notes below the figure (see pages 111 to 112) provide commentary regarding each activity.

Figure 16



Drafting legislation and governance structure execution are critical path activities for the transition. The Commission and its Staff will need to work with the Legislative Bill Drafting Commission on drafting required legislation and the completion of required procedures (including passing of legislation within the current legislative session) that need to occur in 2023 to facilitate a timeline that results in termination of the Second A&R OSA effective December 31, 2025. In addition, given the large volume of planning and policy/development required for the governance structure execution, a 24-month period is suggested to accommodate the unknown challenges that will certainly arise.

As noted above, legal and contracting transitions will also have a significant impact on the timeline of implementation due to the potential for litigation associated with changes in the governance structure. In addition, even if there is no overall service provider contract to negotiate, other contracts (such as with regard to fuel supply) will be needed to effectuate a smooth public power transition. These transitional components are expected to take at least eighteen months to complete.

Depending on the future workforce model chosen, a 12-to-18-month transition period is likely required for the ServCo transition. Given the need for overlap with existing PSEG staff and new LIPA staff (estimated at 6 months) to effectively transition and the limited labor market for capable

utility industry professionals, an eighteen-month timeline is estimated as reasonable so long as an effective recruiting plan is put in place.

As noted above, the IT transition has already begun. An additional 33 months plus the option to continue to contract for services into 2026, as has occurred in past transitions, should provide enough time to effectively transition IT systems and affiliate services.

Community messaging should begin as soon as confidence exists through the passage of legislation or other milestones about the future for LIPA. A minimum of 1 year should be utilized for this purpose.

Given the time required to successfully complete a transition, the end of the Second A&R OSA on December 31, 2025 should be targeted as the transition date.

[1] B. Lambert, *The End of LILCO, as Long Island Has Come to Know It*, N.Y. Times (May 28, 1998), https://www.nytimes.com/1998/05/28/nyregion/the-end-of-lilco-as-long-island-has-come-to-know-it.html; *Citizens for an Orderly Energy Pol'y, Inc. v. Cuomo*, 78 N.Y.2d 398, 407 (1991).
[2] T. Reid, *Let There Be Light: The History of LILCO in Northport*, Teresa Reid (January 25, 2020).
[3] *Citizens for an Orderly Energy Pol'y, Inc. v. Cuomo*, 78 N.Y.2d 398, 407 (1991); *Dismantling of the Shoreham Nuclear Plant is Completed*, N.Y. Times (Oct. 13, 1994), https://www.nytimes.com/1994/10/13/nyregion/dismantling-of-the-shoreham-nuclear-plant-is-completed.html
[4] *Citizens for an Orderly Energy Pol'y, Inc. v. Cuomo*, 78 N.Y.2d at 407.
[5] J. Goldman, *New York Agrees to Scuttle Never-Used Nuclear Plant,* L.A. Times (May 27, 1988), https://www.latimes.com/archives/la-xpm-1988-05-27-mn-4326-story.html ; Long Island Power Authority Shoreham Nuclear Power Station Supplement to Envtl. Report (Decommissioning), United States Nuclear Regulatory Comm'n Dkt. No. 50-322 at 1-3 (Dec. 1990).
[6] Long Island Power Authority Shoreham Nuclear Power Station Supplement to Envtl. Report (Decommissioning), United States Nuclear Regulatory Comm'n Dkt. No. 50-322 at 1-3 (Dec. 1990).
[7] M. Wald, *LILCO AND SHOREHAM*, N.Y. Times (June 8, 1984), https://www.nytimes.com/1984/06/08/nyregion/lilco-and-shoreham.html
[8] *Dismantling of the Shoreham Nuclear Plant is Completed*, N.Y. Times (Oct. 13, 1994).
[9] *Long Is. Light. Co. v. Cnty. Of Suffolk*, 119 A.D.2d 128, 130 (2d Dept. 1986) (*citing* N.Y. Public Authorities Law ["PAL"] § 1020-a).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Dismantling of the Shoreham Nuclear Plant is Completed*, N.Y. Times (Oct. 13, 1994).
[14] *Id.*; J. Goldman, *New York Agrees to Scuttle Never-Used Nuclear Plant*, L.A. Times (May 27, 1988).
[15] *Dismantling of the Shoreham Nuclear Plant is Completed*, N.Y. Times (Oct. 13, 1994).
[16] M. Wald, *LILCO AND SHOREHAM*, N.Y. Times (June 8, 1984).
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] Long Island Power Auth. Shoreham Nuclear Power Station Supplement to Envtl. Report (Decommissioning), United States Nuclear Regulatory Comm'n Dkt. No. 50-322 at 3-1.
[21] Comprehensive Mgmt. and Operations Audit of the Long Island Power Auth. and PSEG Long Island at I-7 (June 2018).
[22] *Id.*
[23] *Long Is. Light. Co. v. Cnty. Of Suffolk*, 119 A.D.2d 128, 130 (2d Dept. 1986); *see also* K. Grossman, *The Rise and Fall of LILCO's Nuclear Power Program*, The Long Island Historical Journal (Fall 1992).
[24] PAL § 1020-a.
[25] *Id.*
[26] *Id.*
[27] PAL § 1020-a.
[28] *Id.*
[29] 2007 N.Y. Op. Att'y Gen. 31 (2007) (2007 WL 2966815) (*citing* PAL § 1020-c).
[30] *Id.* at (2); *see also* § 1020-b.
[31] PAL § 1020-p.
[32] PAL § 1020-c (3).
[33] PAL § 1020-a.
[34] *Id.* at (a), (b), (c), (o), (s), (w), (x), and (y).
[35] *Id.*
[36] *Id.* at (t).
[37] *Id.* at (f), (k), (m) and (p) – (q).
[38] *Id.* at (t).
[39] PAL § 1020-h(1)(a).
[40] *Id.*
[41] *Id.*
[42] *Id.* at (1)(b).
[43] *Id.* at (1)(d).
[44] *Long Is. Power Auth. v. Shoreham Wading River Cent. School. Dist.*, 88 N.Y.2d 503, 509 (1996).
[45] Long Island Power Auth. Shoreham Nuclear Power Station Supplement to Envtl. Report (Decommissioning), United States Nuclear Regulatory Comm'n Dkt. No. 50-322 at p. 1-2 (Dec. 1990).

[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.* at § 1020-g.
[50] *Id.* at (a), (b) and (d).
[51] *Id.* at § 1020-t.
[52] *Id.*
[53] *Id.* at §§ 1020-p and 1020-q
[54] *Id. at* § 1020-s.
[55] Comprehensive Mgmt. and Operations Audit of the Long Island Power Auth. and PSEG Long Island at II-2 (June 2018).
[56] Rather, John, *Finding a Future for LIPA*, New York Times (April 25, 2004), available at https://www.nytimes.com/2004/04/25/nyregion/finding-a-future-for-lipa.html?searchResultPosition=12.
[57] *Id.*
[58] Office of the State Comptroller, Long Island Power Authority: Response to Hurricane Earl (2010).
[59] *Id.* at 6, I-2.
[60] *Id.*
[61] Case 12-E-0283, *In the Matter of the Review of Long Island Power Authority's Preparedness and Response to Hurricane Irene* (June 2012).
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *See* Kaplan, Thomas, *Cuomo Faults Utilities on Slow Return of Power on L.I.*, New York Times City Room (Sept. 2, 2011), available at https://archive.nytimes.com/cityroom.blogs.nytimes.com/2011/09/02/cuomo-criticizes-utilities-slow-restoration-of-power-on-long-island/?searchResultPosition=8.
[69] Office of the State Comptroller, Public Authorities by the Numbers: Long Island Power Authority (2012).
[70] *See id.* at 5-8.
[71] *Id.*
[72] *Id.* at 7.
[73] *Id.* at 10.
[74] *Id.*
[75] *See* Moreland Commission on Utility Storm Preparation and Response, Final Report 5, 15 (2013).
[76] *Id.*
[77] *Id.*; Moreland Commission on Utility Storm Preparation and Response archived website, 2012 [available at https://wayback.archive-it.org/8438/20121228145132/https://moreland.ny.gov/].
[78] *See* Update 1-New York commission recommends privatizing LIPA, REUTERS (Jan. 7, 2013), https://www.reuters.com/article/storm-sandy-lipa/update-1-new-york-commission-recommends-privatizing-lipa-idUSL1E9C79EB20130107 ; *see also* Cuomo Announces Release of Final Moreland Commission Report Exposing Deficiencies & Troubling Conduct at LIPA & Proposing Dramatic Reform to Utilities, Longisland.com (June 23, 2023), https://www.longisland.com/news/06-23-13/cuomo-announces-release-of-final-moreland-commission-report-exposing-deficiencies-troubling-conduct-at-lipa-proposing-dramatic-reform-to-utilities.html
[79] *See* Moreland Commission, Final Report at 16-17.
[80] *See generally* Moreland Commission, Interim Report at 13-25; *accord* Senate Standing Committee on Investigations and Government Operations & Senate Standing Committee on Corporations, Authorities and Commissions, *Report on the Hearing Held February 27, 2013 On the Future of the Long Island Power Authority* at 3 (2013).
[81] Moreland Commission, Interim Report at 5; Moreland Commission, Final Report at 16.
[82] Moreland Commission, Interim Report at 5.
[83] *Id.* at 26-29; *Report on the Hearing Held February 27, 2013 On the Future of the Long Island Power Authority* at 3-4.
[84] *Report on the Hearing Held February 27, 2013 On the Future of the Long Island Power Authority* at 4; *see also* Moreland Commission, Interim Report at 6.
[85] Moreland Commission, Interim Report at 26-27.
[86] *Id.* at 27-28.
[87] *Id.*
[88] *Id.* at 29.
[89] *Id.*
[90] *Id.* at 28.
[91] *Id.*
[92] Moreland Commission, Final Report at 16-17.
[93] *Id.* at 16, 21.

[94] *Id.* at 26.
[95] *Id.* at 25.
[96] New York State Assembly, A8073 Bill Jacket at 9 (2013).
[97] *Id.* at 6.
[98] Bill Jacket at 12.
[99] Bill Jacket at 12.
[100] *Id.*
[101] *Id.*; Assembly Bill A8073 at 13.
[102] New York State Comptroller Office of Budget and Policy Analysis, Long Island Power Authority by the Numbers *A Public Authority in Transition* (2015). The Office of the State Comptroller issued a preliminary analysis of an earlier version of the bill in 2013. *See* Office of the State Comptroller, Preliminary Analysis of Governor's Program Bill #6 *Restructuring of the Long Island Power Authority (LIPA)* (2013). The 2015 report largely incorporates points from the 2013 analysis insofar as they relate to the adopted law.
[103] *Id.*
[104] *Id.*
[105] *Id.* at 12.
[106] *Id.*
[107] *Id.*
[108] *Id.* at 26.
[109] *Id.* at 28.
[110] *Id.*
[111] *Long Island Power Authority by the Numbers* at 29-30.
[112] New York State Department of Public Service, *Interim Investigation Report on Tropical Storm Isaias*, Case 20-E-0586, at 5; Long Island Power Authority Isaias Task Force, *Tropical Storm Isaias 90-Day Report* 15 (2020).
[113] *See generally* Case 20-E-0586 *Interim Investigation Report*; Long Island Power Authority Isaias Task Force, *Tropical Storm Isaias 30-Day Report* (2020); Long Island Power Authority Isaias Task Force, *Tropical Storm Isaias 90-Day Report* (2020); Long Island Power Authority, *Options Analysis for the Management of LIPA Assets Phase I Report* (2020); Long Island Power Authority, *Options Analysis for the Management of LIPA Assets Phase II Report* (2020).
[114] Case 20-E-0586 *Interim Investigation Report* at 3.
[115] *See* LIPA *90-Day Report* at 10-11; *see also* Long Island Power Authority, *Findings from LIPA's Tropical Storm Investigation* (Last Revised May 12, 2021).
[116] *See* LIPA *90-Day Report* Appendix 2 and Appendix 3.
[117] Long Island Power Authority, *Reforming Long Island's Electric Service*, at 1.
[118] Letter from Joseph Suich, Director, DPS Office of Investigations and Enforcement, and Rory Lancman, Special Counsel for Ratepayer Protection, to Hon. Ralph V. Suozzi, Chairman of LIPA Board of Trustees, at 4, 5 (Nov. 13, 2020).
[119] LIPA *90-Day Report* at 10, 26-28.
[120] *Id.* at 10-11, 48-53; LIPA *Findings from LIPA's Tropical Storm Investigation* at 1-2.
[121] LIPA *90-Day Report* at 11.
[122] *See* Case 20-E-0586 *Interim Investigation Report* at 23-24; LIPA *90-Day Report* at 11, 44.
[123] LIPA *Findings from LIPA's Tropical Storm Investigation* at 3.
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] LIPA *Phase I Report* at 3.
[130] LIPA *Phase II Report* at 6.
[131] LIPA *Phase I Report* at 5.
[132] LIPA *Phase II Report* at 8.
[133] *Id.* at 28
[134] *Id.* at 28.
[135] *Id.* at 28-29.
[136] *Id.*
[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] DPS website, Audit Scope Area Request for Proposal https://dps.ny.gov/audit-lipa-and-pseg-long-island
[141] Chapter 517 of the Laws of 1986.
[142] Second A&R OSA, Section 4.4, p. 41.
[143] Second A&R OSA, Section 4.4, pp. 41-43.
[144] *Id.*
[145] *Id.*

[146] *Id.*
[147] *Id.*, Section 5.1, p. 55-56.
[148] This process is discussed in more detail in Part 1 Section G.2 of this Report.
[149] Second A&R OSA, Section 8.1, pp. 87-88.
[150] By-Laws and Charters, Article IX, p. 8.
[151] Prior to passage of the LIPA Reform Act, the Board of Trustees had fifteen members.
[152] Currently, LIPA has only an eight-member Board of Trustees. The current LIPA Board of Trustees members include Mark Fischl, Vice Chair, Elkan Abramowitz, Drew Biondo, Valerie Anderson Campbell, Reverend Alfred L. Cockfield, Sheldon L. Cohen, Nancy S. Goroff, Ph.D., and Laureen Harris. *See*, https://www.lipower.org/about-us/board-of-trustees/. Former LIPA Board of Trustee, Ali Mohammed, left the Board in September 2022 and has not yet been replaced.
[153] Oversight of LIPA and PSEG Long Island, https://www.flipsnack.com/lipower/fact-sheet-utility-oversight/full-view.html.
[154] The Board-elected Officers include the CEO, CFO, and General Counsel (By-Laws and Charters, LIPA Board Resolution #1322, pp. 38-39, https://www.lipower.org/wp-content/uploads/2022/12/Board-Policies-12-2022.pdf).
[155] *Id.*
[156] The Board compares: "(i) the LIPA's performance to the policies established by the Board, and (ii) the skills of the CEO to the competency profile established for the position. The Board periodically reviews the CEO's compensation using a benchmarking survey. The CEO's cost-of living adjustments ("COLA"), if any, are tied to performance. If the CEO's performance 'meets expectations', the COLA equals the rate of inflation. If the CEO 'significantly exceeds expectations', the COLA equals the rate of inflation plus one percent. If the CEO's performance is 'outstanding,' the COLA equals the rate of inflation plus two percent." Board Policies p. 19, Board Resolutions #1338, #1435, #1485, #1538, #1643, LIPA Board Policies, Sept. 2022, https://www.lipower.org/wp-content/uploads/2022/10/Board-Policies-9-2022.pdf.
[157] Per LIPA's By-Laws, the Board-appointed Officers include: the Chief Executive Officer, the Chief Financial Officer, and the General Counsel. Additional officers are appointed by the Chief Executive Officer, as he or she may from time to time deem necessary or desirable.
[158] By-Laws of the Long Island Power Authority Article V, p. 6.; *see also* https://www.lipower.org/about-us/board-of-trustees/committee/
[159] LIPA Board Policies, Sept. 2022, https://www.lipower.org/wp-content/uploads/2022/10/Board-Policies-9-2022.pdf.
[160] LIPA Organizational Chart, https://www.lipower.org/wp-content/uploads/2022/09/Director-Level-Organization-Chart-2.pdf.
[161] https://www.lipower.org/leadership/.
[162] By-Laws and Charters, LIPA Board Resolution #1322, pp. 39-40, https://www.lipower.org/wp-content/uploads/2022/12/Board-Policies-12-2022.pdf.
[163] LIPA 2022 Annual Work Plan, p. 9, https://www.flipsnack.com/lipower/lipa-2022-annual-work-plan-report/full-view.html.
[164] Id.; Appendix A.
[165] Id.; Appendices B and C.
[166] Second A&R OSA, Section 4.6, p. 50.
[167] *Id.*
[168] *Id.*
[169] LIPA Reform Act.
[170] https://www.lipower.org/careers/.
[171] Part B of Chapter 173, Laws of New York 2013. Part B of the LIPA Reform Act is also referred to as the "Securitization Law."
[172] *Id.*
[173] *Id.*
[174] USDA Operating and Governance Policies, https://www.lipower.org/udsa/udsa-operating-and-governance-policies/.
[175] USDA 2022 Board Meeting Calendar, https://www.lipower.org/udsa/schedule/.
[176] Due to LIPA's management contract with PSEG Long Island, Section 3-(b) of the LRA uses the terms "service provider" and "PSEG Long Island" interchangeably. Note that Public Service Law section 3-b uses the general term, "service provider" and defines that term as, "the entity under contract with the authority to provide management and operation services associated with the authority's electric transmission and distribution system and any subsidiary of such entity that provides such services under contract. However, the service provider and any affiliate of the service provider with whom the authority or service provider contracts to provide services associated with the authority's electric transmission and distribution system shall not be considered an electric corporation under this chapter." PSL §§ 3-b(1) & (2)(b).
[177] PSL § 3-b(3)(a)(i).
[178] PSL §§ 3-b(a)-(h).
[179] Oversight of LIPA and PSEG Long Island, https://www.flipsnack.com/lipower/fact-sheet-utility-oversight/full-view.html.

[180] PAL 1020-f(u)(4) (Board must implement recommendations associated with a rate proposal); (bb) (Board must implement recommendations from any comprehensive and regular management and operations audit).
[181] Specifically, DPS has oversight of the follow activities and responsibilities of PSEG Long Island: emergency response plan; storm report; review of performance during emergency event; electric reliability report; undergrounding T&D; siting of major utility transmission facilities; balanced score card; energy efficiency renewable plan; management audit; management audit implementation plan updates; U 2.0 long range plan and progress report; rate case filing; delivery rates notice to LIPA; capital expenditure plan; audit & annual reports; achievement of State's clean energy goals; standardized interconnection requirements; on-bill recovery; and LIPA overnight practices. Oversight of LIPA and PSEG Long Island, https://www.flipsnack.com/lipower/fact-sheet-utility-oversight/full-view.html.
[182] Note that if a full municipal model is chosen, all contractual oversight DPS has pursuant to the Second A&R OSA will be terminated.
[183] Second A&R OSA, Section 5.1(A)(3)(b).
[184] PAL § 1020-f(u).
[185] *See* Matter 15-00262, *In the Matter of a Three-Year Rate Proposal for Electric Rates and Charges Submitted by the Long Island Power Authority and Service Provider, PSEG Long Island LLC.*
[186] LIPA Reform Act; PSL § 3-b(u).
[187] *Id*.
[188] PAL § 1020-f(u)(4).
[189] PAL § 1020-f(u)(2).
[190] PAL § 1020-f(u)(3).
[191] PAL § 1020-f(bb); PSL § 3-b(d).
[192] This is a broad topic which includes review LIPA's application of industry standards to manage debt, LIPA's receipt of necessary approvals for debt management, an audit of LIPA's debt management practices, the effectiveness of LIPA's debt management strategies relative to its debt obligations, and LIPA's treasury options and fixed obligation coverage ratio. Audit Scope Areas, DPS website, https://dps.ny.gov/audit-lipa-and-pseg-long-island
[193] PAL § 1020-f(bb)(2).
[194] PAL § 1020-f(bb)(3).
[195] PAL§ 1020-f(bb)(4).
[196] *Id*.
[197] *Id*.
[198] *Id*.
[199] *Id*.
[200] *Id*.
[201] PAL § 1020-f(bb)(5).
[202] PSL § 66(21).
[203] LIPA Board Policies, Board Resolution #1683, p. 8, https://www.lipower.org/wp-content/uploads/2022/12/Board-Policies-12-2022.pdf.
[204] PAL § 1020-n.
[205] PAL § 1020-w.
[206] PAL § 1020-cc.
[207] PAL § 1020-k(4).
[208] PAL § 1020-mm(1).
[209] Second Amended OSA § 4.5.
[210] In addition to the active employees, ServCo provides benefits to approximately 420 retired union and nonunion employees.
[211] These include: 8 Directors: Project Management, Strategy and Planning, Power Resources and Contract Management, Transmission Operations, Engineering, Planning, Emergency Management and Human Resources; 2 Senior Directors: Electric T&D Operations (East) and (West); 2 Managing Directors & Vice Presidents: Legal and Business Services; a Chief Information Security Officer, and a Managing Director/Chief Information Officer.
[212] NYPA Strategic Alternatives, p. 7, https://www.lipower.org/wp-content/uploads/2022/03/NYPA-2013-Study-of-LIPAs-Strategic-Alternatives.pdf
[213] Phase II Options Analysis, p. 3, https://www.lipower.org/wp-content/uploads/2021/04/3.-Discussion-Phase-II-Option-Analysis-Consideration-Direction-Next-Steps-April-2021.pdf.
[214] The language of the Transparency Plan is nearly identical to the language in Board Resolution #1437. Board Policies, pp. 5-57, https://www.lipower.org/wp-content/uploads/2022/12/Board-Policies-12-2022.pdf.
[215] PAL § 1020-x.
[216] *Id*.
[217] *Id*.
[218] *Id*.
[219] *Id*.
[220] LIPA 2022 Annual Work Plan, p. 9, https://www.flipsnack.com/lipower/lipa-2022-annual-work-plan-report/full-view.html.
[221] https://www.lipower.org/community-advisory-board/.

[222] Implementation of Board Recommendations on Strategic Planning, https://www.lipower.org/wp-content/uploads/2021/08/6.-Discussion-of-Board-Governance-and-Strategic-Planning.pdf.
[223] *Id.*
[224] EthicsPoint is a third-party, confidential reporting tool. EthicsPoint, https://secure.ethicspoint.com/domain/en/default_reporter.asp
[225] https://www.lipower.org/investors/.
[226] The public hearings were held by the New York State Legislative Commission on the Future of the Long Island Power Authority on November 29, December 15, and December 16, 2022.
[227] See Fred Thiele, Rethinking LIPA: A demand for transparency, RiverheadLOCAL, May 4, 2013, available at https://riverheadlocal.com/2013/05/04/rethinking-lipa-a-demand-for-transparency-2/.
[228] L. 2021, c. 765, § 1 (eff. Dec. 22, 2021) (amended L. 2022, c. 49, § 1).
[229] PAL § 1020-kk.
[230] *Id.*
[231] PSL § 111-a; L. 2021, c. 826, § 1 (eff. Mar. 31, 2022) (amended L. 2022, c. 121, § 1.
[232] Based on unaudited figures supplied by LIPA.
[233] Section 1020-k.6 of the LIPA Act.
[234] Section 1020-f(u) of the LIPA Act.
[235] Section 701 of the Electric System General Revenue Bond Resolution, adopted May 13, 1998 (the "General Bond Resolution").
[236] Section 1020-o of the LIPA Act provides: "The state of New York does hereby pledge to and agree with the holders of any obligations issued under this title and the parties to any contracts with the authority hereunder that the state will not limit or alter the rights hereby vested in the authority until such obligations together with the interest thereon are fully met and discharged and/or such contracts are fully performed on the part of the authority, provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such obligations of the authority, or those entering into such contracts with the authority. The authority as agent for the state is authorized to include this pledge and agreement by the state in all agreements with the holders of such obligations and in all such contracts."
[237] Section 708 of the General Bond Resolution.
[238] *Patterson v. Carey*, 41 NY2d 714 (1977).
[239] *Id.* at 720.
[240] *Id.*
[241] Section 1020-f(u) of the LIPA Act.
[242] *Id.*
[243] LIPA 2020 Property Tax Report at 9.
[244] LIPA 2021 Board Policy on Taxes and PILOTS at 3.
[245] *Id.*
[246] LIPA 2020 Property Tax Report at 9 (citing American Public Power Association, 2018); LIPA 2021 Board Policy on Taxes and PILOTS at 3.
[247] LIPA 2020 Property Tax Report at 21.
[248] PAL § 1020-p.
[249] Falcone Response to BSK Request for Documents at p.5; *see* LIPA 2021 Board Policy on Taxes and PILOTS at 21-22.
[250] LIPA 2020 Property Tax Report at 21.
[251] *Id.*
[252] PAL § 1020-q; 2013 N.Y.S. Assembly Bill A8073 at 13.
[253] LIPA 2021 Board Policy on Taxes and PILOTS at 3.
[254] LIPA 2020 Property Tax Report at 11, n.6.
[255] LIPA 2021 Board Policy on Taxes and PILOTS at 3-5; LIPA 2020 Property Tax Report at 11.
[256] LIPA 2020 Property Tax Report at 11.
[257] Northport Settlement Agreement, Exhibit B; Town of Brookhaven Amended Stipulation Exhibit A; Village of Port Jefferson Amended Stipulation Schedule A; E.F. Barrett/Glenwood Settlement Agreement, Schedule A.
[258] The possible merger of LIPA and NYPA has not received as much consideration as the other options, but has also been evaluated on occasion. A merger with NYPA presents concerns because NYPA has no experience in retail utility operations – as a representative of NYPA Development testified at a December 15, 2022 public hearing, NYPA's role in wholesale markets is different than that of a retail utility.
[259] *Id.* at 6, I-2.
[260] *Id.* at 9, 11-12, I-6.
[261] *Id.* at 6, I-3.
[262] *Id.* at I-7.
[263] *Id.* at I-7, I-8.
[264] *Id.*
[265] *Id.* at 24, V-2.
[266] *Id.* at 24, 35, V-2

[267] *Id.*
[268] *See id.* at I-9, I-10.
[269] Note that this issue is discussed in detail in LIPA's Phase II Report. *See* Section 2(b)(i), *supra*.
[270] *Id.* at I-9.
[271] *Id.* at I-10.
[272] *Id.*
[273] *Id.* at 11, 12, I-11.
[274] *Id.* at 36.
[275] *Id.*
[276] *Id.*
[277] *Id.* at 12.
[278] *Id.* at 34.
[279] *Id.* at 37.
[280] *Id.* at VI-6.
[281] *Id.*
[282] *Id.* at 23.
[283] *Id.*
[284] *Id.*
[285] *Id.* at 29.
[286] *Id.* at 23, 31.
[287] Lazard at 7 (Dec. 20, 2012).
[288] *Id.*
[289] *Id.* at 12.
[290] *Id.* at 10.
[291] *Id.* at 14.
[292] *Id.* at 2.
[293] *Id.* at 2.
[294] *Id.*
[295] *Id.* at 2, 13.
[296] *Id.* at 21.
[297] *Id.*
[298] *Id.*
[299] *Id.*
[300] *Id.*
[301] *Id.*
[302] *Id.* at 17.
[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] New York Power Authority, *Report on Strategic Alternatives for Long Island Power Authority*, 3 (2013).
[307] *Id.* at 2.
[308] *Id.* at 6.
[309] *Id.* at 7.
[310] *Id.* at 4-5.
[311] *Id.*
[312] *Id.*
[313] These included the 2010 Brattle Report (*see* endnote 191, *supra*) and a 2011 review performed by Navigant.
[314] *See* NYPA *Report on Strategic Alternatives* at 15-16.
[315] *Id.* at 15.
[316] *Id.* at 16.
[317] *Id.* at 16.
[318] *Id.* at 17.
[319] *Id.*
[320] *Id.*
[321] *Id.* at 18.
[322] *Id.*
[323] *Id.*
[324] *Id.* at 19.
[325] *Id.*
[326] LIPA *Phase I Report* at 3.
[327] LIPA *Phase II Report* at 6.
[328] LIPA *Phase I Report* at 5.
[329] LIPA *Phase II Report* at 8.

[330] LIPA *Phase I Report* at 5; LIPA *Phase II Report* at 8.
[331] LIPA *Phase I Report* at 7; LIPA *Phase II Report* at 10.
[332] LIPA *Phase I Report* at 8; LIPA *Phase II Report* at 11.
[333] LIPA *Phase I Report* at 9; LIPA *Phase II Report* at 12. Over the past ten years, LIPA has received an average of $160 million per year and a total of over $1.7 billion in disaster recovery grants from FEMA and other sources. *Id.*
[334] LIPA *Phase I Report* at 10; LIPA *Phase II Report* at 13.
[335] *Id.* Full exploration of privatization is costly, with one recently failed evaluation by another public power utility incurring estimated costs in excess of $13 million. *Id.*
[336] *Id.*
[337] LIPA *Phase II Report* at 14.
[338] *Id.*
[339] LIPA *Phase I Report* at 14; LIPA *Phase II Report* at 16.
[340] LIPA *Phase I Report* at 13; LIPA *Phase II Report* at 16.
[341] LIPA *Phase I Report* at 15; LIPA *Phase II Report* at 17-18.
[342] LIPA *Phase II Report* at 18.
[343] *Id.* at 18-19.
[344] LIPA *Phase II Report* at 21.
[345] *Id.*
[346] *Id.*
[347] *See id.* at 18-19, 21.
[348] *Id.*
[349] *Id.* at 22.
[350] *Id.*
[351] *Id.*
[352] *Id.*
[353] *Id* at 23, 31.
[354] *See* LIPA *Phase II Report* at 24.
[355] *Id*.
[356] *Id*. at 26-27.
[357] *Id*. at 26.
[358] *Id*.
[359] *Id*.
[360] *Id*.
[361] *Id*. at 24.
[362] *Id*. at 28
[363] *Id*. at 28.
[364] *Id*. at 28-29.
[365] *Id*.
[366] *Id*.
[367] *Id*.
[368] *Id*.
[369] *Id*.
[370] *Id*. at 29
[371] *Id*.
[372] 2022 Public Power Statistical Report | American Public Power Association | PublicPower.org
[373] 2021 APPA Data
[374] IEEE 2021 Reliability Reported Statistics
[375] IEEE 2021 Reliability Reported Statistics
[376] Data from LIPA's 2023 Approved Budgets.
[377] *Public Power Pays Back, Payments and Contributions by Public Power Utilities to State and Local Governments in 2020*, American Public Power Association (May 2022).
[378] Advancing Reliability and Resilience of the Grid, by T.J. Galloway, Sr.
[379] Second A&R OSA, p. 25.
[380] *Id.* at 272.
[381] Federal Disaster Assistance Response and Recovery Programs; Brief Summaries, Congressional Research Service RL31734.
[382] Enhancing Resilience of the Nation's Electricity System: Leveraging Federal Assistance, Craig Zamuda NARUC November 19, 2019.
[383] 2022 Proposed Budget: Clean, Reliable, Customer-First December 15, 2021 Tamela Monroe.
[384] The Annual Disclosure Report for Long Island Power Authority (Fiscal Year 2021) was used to inform portions of this section.
[385] LIPA CEO Thomas Falcone is a member of the Climate Action Council.
[386] Scoping Plan, p. 226.

[387] *Id*. at p. 416.
[388] PAL § 1203-a(2).
[389] *Id*. at § 1203-a(3)(a).
[390] *Id*. at § 1203-a(3)(b) (emphasis added).
[391] New York Bill Jacket, 1997 S.B. 5159, Ch. 312; *Collins v. Manhattan & Bronx Surface Transit Operating Auth. (MABSTOA)*, 62 N.Y.2d 361, 372, 465 N.E.2d 811 (N.Y. 1984) ("That the Legislature included public authority employees within the Taylor Law's ameliorative purposes does not require the conclusion that they are also employees of the State or 'a civil division thereof' within the more restricted scope of the constitutional provision.").
[392] PAL § 1203-a(3)(b).
[393] PAL §§ 1020-f(o) and 1020-i(1).
[394] Similar provisions were contained in the LIPA Act initially to preserve terms of employment in the transition out of LILCO. See PAL § 1020-e.
[395] PAL § 1020-u.
[396] Second Amended OSA at § 8.5(G) ("Immediately upon the expiration or any earlier termination of this Agreement . . . , the Service Provider [PSEG LI] will transfer all the Membership Interests in ServCo and all ServCo corporate books and records to LIPA or, at LIPA's direction, its designee free and clear of all Liens and Encumbrances and LIPA shall accept such transfer at no cost to LIPA or its designee.")
[397] PAL § 1020-f(o).
[398] PAL § 1020-i(1).
[399] We note that the initial legislation establishing LIPA pre-dated the NY Limited Liability Company Law. See, N.Y. Limit Liab. Co. Law (L. 1994, chap. 576).
[400] Outside of the LIPA context, there is limited legal authority addressing whether a municipality or public authority may "own" a private commercial entity through an LLC. In *Summers v. City of Rochester*, 60 A.D.3d 1271, 875 N.Y.S.2d 658 (4th Dep't 2009), the Appellate Division, in dicta, agreed with the trial court that the City lawfully created an LLC to purchase and operate a ferry on Lake Ontario, rejecting a citizen's challenges under the NYS Constitution. In that case, the LLC contracted with a private service provider to operate the ferry and did not directly employ the personnel responsible for its operation.
[401] PAL § 1020-a.
[402] PAL § 1020-e.
[403] *Id*.
[404] By definition, a business corporation is a private, for profit entity. See N.Y. Bus. Corp. Law § 102(a)(4).
[405] 29 U.S.C. § 152(2).
[406] See, *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604–605 (1971) (natural gas utility district, organized under state utility law with eminent domain powers, exemption from state, county, or municipal taxation, tax exempt bond income and officers who received nominal compensation and were appointed by a county judge, was political subdivision of a state and not an employer subject to the NLRA).
[407] Concordia Electric Cooperative, 315 NLRB 752 (1994).
[408] For example, section 1020-u of the LIPA Act, which currently exempts LIPA employees from the Taylor Law could be expanded to include the employees of LIPA subsidiaries.
[409] See N.Y. Lab. Law §§ 700, *et seq*.
[410] 29 U.S.C. § 414(d).
[411] One countervailing factor would be that, under the LLC model, ServCo's employees would not be treated in the same manner as state or local government employees (e.g., afforded civil service protections).
[412] Cheiron, *LIPA Business Model Study ServCo Pensions and Health Benefits* (Oct. 2022).
[413] *Id.*
[414] There may also be value in a legislative amendment to require the ServCo plans to continue to meet the relevant funding, disclosure and fiduciary standards of ERISA. We are not aware of any precedent for such a legislative option and it could also impact the cost accounting savings identified by Cheiron.
[415] 26 U.S.C. § 401(k)(4)(B)(ii).
[416] 26 U.S.C. § 457(b).
[417] ServCo also maintains a defined benefit pension plan which it can continue to maintain under the LLC model.
[418] N.Y. Lab. Law §§ 915 *et seq.* Despite the similarities in purpose, the regulation of PEOs distinguishes them from temporary staffing agencies.
[419] While the PEO model has worked in some contexts comparable to the LIPA/ServCo situation, it is primarily used by small or medium-sized employers that do not have the in-house capacity to manage the human resources functions effectively.
[420] See, https://www.adp.com/resources/articles-and-insights/articles/p/peo-what-is-the-cost-of-a-peo.aspx; https://www.businessnewsdaily.com/8117-best-professional-employer-organizations.html
[421] *See generally https://www.electric.coop/our-organization/nreca-member-directory*
[422] Press Release: *NYPA Announces New Five-Year Contract Agreement with International Brotherhood of Electrical Workers.* (December 15, 2022)

[423] NYPA Sustainability Plan 2021-25 https://nypa.gov/-/media/nypa/documents/document-library/esg-sustainability/nypa-sustainability-plan-2021-25.pdf
[424] https://www.nypa.gov/power/transmission/transmission-operations-and-maintenance
[425] *Id.*
[426] www.nypa.gov
[427] Press Release: *NYPA Announces New Five-Year Contract Agreement with International Brotherhood of Electrical Workers*. (December 15, 2022)
[428] PAL §2824 (2021)
[429] PAL §1004 (2021)
[430] *Id.*
[431] NYPA Approved 2022 Budget and 2022-2025 Financial Plan at 2.
[432] By-Laws of the Power Authority of the State of New York at 9-10.
[433] Pursuant to regulations implemented by the Office of the State Comptroller (NYCRR Tit. 2, §203 et seq.), NYPA makes these annual reports available to the public on its website, www.nypa.gov, and at a minimum of five convenient public places.
[434] By-Laws of the Power Authority of the State of New York at 10-11.
[435] *Id.* at 11.
[436] NYPA Annual Report (2021) https://www.nypa.gov/-/media/nypa/documents/document-library/annual-reports/2021-nypa-annual-report.pdf
[437] NY PUB §1005(g)
[438] The SRP Association Council has no governing responsibility for SRP's power operations, and only has authority to enact or amend bylaws.
[439] Education and advisement for utility boards and directors is in some cases and for certain topics widely available from various sources. Industry organizations such as American Public Power Association, Large Public Power Association, and the National Rural Electric Cooperative Association, provide seminars and tools for executives and board directors. Particularly for large public power, private entities and consultancies regularly provide advisement and consultation to boards and their directors on a wide array of topics.
[440] PAL § 1020-e