

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

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

November 17, 2023

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SELECT ACRONYMS AND ABBREVIATIONS

<u>Abbreviation</u>	<u>Term</u>
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
CSB	Community Stakeholder Board
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
IRP	Integrated Resource Plan
ISO	International Organization for Standardization
IT	Information Technology

<u>Abbreviation</u>	<u>Term</u>
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	
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 LLC
PAL	Public Authorities Law
PSC	Public Service Commission
PSL	Public Service Law
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

AbbreviationTerm

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
Trustee	LIPA Board Member
TSA	Transition Services Agreement
UDSA	Utility Debt Securitization Authority

EXECUTIVE SUMMARY

In April 2022, New York established the Legislative Commission on the Future of the Long Island Power Authority (the “Commission”) to provide specific actions, legislation, and a timeline necessary to transform the Long Island Power Authority (“LIPA”) into a true publicly owned power authority.¹ 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 stakeholders and 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.

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

Prior to issuing the Draft Report the Commission sought public input at one virtual hearing and four in-person hearings across the Rockaways and Nassau and Suffolk Counties in December 2022 and January 2023. 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” or “PSEG LI”) who expressed differing viewpoints of the perceived efficacy of the third-party service provider approach;
- Representatives from the International Brotherhood of Electrical Workers, Local 1049 (“IBEW”), which represents many of the workers who have 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, as well as representatives of the Long Island Association (“LIA”) and its consultant, Lazard, which addressed the potential privatization of LIPA. In the Draft Report, the Commission 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.

The Commission provided the Draft Report to the Legislative leaders on April 17, 2023. The Office of the New York State Comptroller (“OSC”) submitted its comments and recommendations on May 11, 2023. Subsequently, the Commission held four public hearings in September 2023, in Suffolk County, Nassau County, the Rockaways, and the East End of Long Island. The Commission received comments from LIPA executives, PSEG LI, industry groups, community activists, small business owners, and members of the public. Following the hearings, the Advisory Committee met to discuss the public input received and to provide Commission members and its consultants with its views as to issues before the Commission. This Final Report provides the Commission’s determinations and recommendations to the Legislature on how best to transition LIPA to a fully public power model. Pursuant to the statute establishing the Commission, this Final Report includes proposed legislation required to implement the public power model.

This Final 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 as identified in the Draft Report (see pp. 34 – 47);

Part 4 – An overview of what distinguishes public power from investor-owned utilities (“IOUs”) (see pp. 47 – 54);

Part 5 – An analysis of what it means for LIPA to be a fully public power utility (see pp. 54 – 126);

Part 6 – A summary of the Commission’s decisions and required legislative changes to allow LIPA to become a true public utility (see pp. 126 – 135); and

Appendix A – Proposed legislation to implement the Commission’s decisions for the future of LIPA.

Appendix B – NewGen Strategies and Solutions LLC September 2023 Review of LIPA Public Power Model Savings and Customer Rate Impacts

Appendix C – Bond, Schoeneck & King, PLLC, Analysis of Labor Issues and Recommended Resolution

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 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 Final 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 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 Final 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, and \$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 of Trustees, all of whom must live within LIPA's service area. Trustees 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. Trustees 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. Currently, approximately 1,500 ServCo employees are represented by IBEW Local 1049 under two collective bargaining agreements in effect through November 13, 2027. 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 by LIPA’s Board. The Board can make a preliminary determination of inconsistency if a particular recommendation is inconsistent with LIPA’s sound fiscal operating practices, any existing contractual or operating obligations, or the provision of safe and adequate service. The Board is then required to hold a public hearing with respect to its preliminary determination of inconsistency. Thereafter, LIPA’s Board shall announce its final determination regarding inconsistency, which may be challenged in an applicable judicial proceeding. 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 determination of inconsistency, as described above.

Other agencies also have some degree of oversight over LIPA. The Public Authorities Control Board (“PACB”) 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 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. The Commission found 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, and the Commission considered various governance models including 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 Final Report, the Commission determined 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 Commission determined that an appointed board with thirteen (13) trustees will provide the most effective governance structure for LIPA. Specifically, the Governor will appoint two trustees, one of whom shall serve as chairperson of the Board. The Senate Majority Leader will appoint two trustees, after consultation with all State senator(s) representing LIPA’s entire Service Area. The Speaker of the Assembly will similarly appoint two trustees, after consultation with all State Assembly member(s) representing LIPA’s entire Service Area. The Nassau County Executive will appoint two trustees, with the consent of the Nassau County Legislature, and the Suffolk County Executive will appoint two trustees, with the consent of the Suffolk County Legislature. Lastly, one trustee will be appointed by the New York City Mayor upon the recommendation of the Queens Borough President. Additionally, the Chair of the LIPA Community Stakeholder Board and the Business Manager of LIPA’s unionized workforce, IBEW Local 1049, will serve as trustees. All appointed trustees will serve staggered five-year terms, except during the first term of appointments upon the effective date of the proposed legislation. All trustees must have relevant utility, corporate board or financial experience and must live in LIPA’s service area. This appointment structure ensures that the trustees will be appointed by a geographically diverse group of representatives and thus increase local accountability and engagement.

Improved transparency, accountability, and public involvement. Transition to a full public power model requires 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, trustees 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. The board will work to, among other things, align its strategic plan with its new operating model; publish regular performance metrics; communicate with customers quickly and effectively in cases of emergency or service disruption; and hold itself accountable by eliciting and responding to feedback from customers and the public on its performance and progress toward its long-term goals. The board will also work with a Community Stakeholder Board (“CSB”) to evaluate LIPA’s performance and issues of local concern. The CSB will be composed of ratepayers and made up of members from diverse sectors and backgrounds. The Senate majority leader and speaker of the assembly will designate the CSB members in consultation with representatives from Suffolk County, Nassau County, and the Rockaways.

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. Public authorities are eligible for grants for storm repairs and hazard mitigation and can finance large capital investments more cost effectively. 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 is the availability of financial assistance to utilities. LIPA, as a public utility, 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 low 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 the Draft Report and this Final 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 Final 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.

In preparation of this Final Report, NewGen Strategies and Solution ("NewGen") evaluated the analysis of financial implications. NewGen concluded that the methodology and conclusions that produced the Commission's projected financial savings associated with transitioning LIPA to a fully public power authority are reasonable, and that the impact will be to lower rates for LIPA's customers, assuming the Board of Trustees chooses to use the financial savings to lower rates. NewGen further concluded that the potential cost

savings is likely to be closer to the \$78 million identified in the LIPA Options Analysis, rather than the \$48 million identified as the Draft Report's conservative viewpoint.

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, additional cost efficiency and enhanced performance will occur.

While LIPA's Board has the final authority for rate all changes , 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 will not materially impact the methodologies and best practices that are currently utilized in the LIPA ratemaking process. The Commission recommends that DPS retain review and recommendation authority over proposed rate increases greater than 2.5%.

The oversight role of the DPS and the PSC over LIPA's operation. DPS and the 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 Commission determined there should be no changes to DPS and the PSC's current level of oversight over LIPA.

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 as recommended in this Final Report.

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. The IRP is submitted to DPS for consideration, and is subject to DPS’ review and recommend authority. LIPA is presently conducting the 2023 IRP (formerly referred to as 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, was initially expected to be complete during the first quarter of 2023, but the target publication date was pushed back to the third quarter of 2023. The 2023 IRP has yet to be published for public review and analysis.

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 2022/2023 IRP, both LIPA and PSEG LI hired third-party consultants and LIPA's staff also oversees the IRP progress. Multiple layers of oversight unnecessarily add to IRP development costs and can result in delays. Under the public power model, LIPA will be solely responsible for implementation of the goals identified in the 2022/2023 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 comply 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 board will effectively represent the needs of the Long Island community in relation to LIPA's increased reliance on renewable energy sources. Additionally, LIPA will leverage the expertise of NYPA as it plans for CLCPA compliance.

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 are important to ensure that a public power utility can more consistently satisfy ratepayer objectives, including in disadvantaged communities. LIPA’s new governance model will ensure that trustees represent all areas within LIPA’s service territory. Trustees 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. The Board appointment process outlined in this Final Report will increase local representation. Further, the legislative creation of a twenty-six member Community Stakeholder Board with specific eligibility criteria for members will facilitate additional public participation and community involvement.

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.

As explained in the Draft Report and in this Final Report, 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. For the reasons set forth below, the Commission selected the LLC Model as the preferable transition method. 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. Appendix A to this Final Report includes proposed legislation to effectuate LIPA's transition.

- 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 is required to seek contractual approval from the state comptroller for all contracts over \$50,000, including in emergencies and in executing short-term public power purchase agreements. In contrast, the New York Power Authority has a much higher \$1,000,000 threshold for when it must seek contractual approval from the state comptroller, and contracts for bona fide emergencies and power purchase agreements are excluded from the pre-approval requirement entirely. Continuing to impose a \$50,000 threshold on LIPA may, in some business circumstances, make it difficult for LIPA to operate efficiently. 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. However, it is important that some level of OSC oversight remain to ensure ratepayer accountability. Accordingly, legislative amendments are proposed in Appendix A to address this approval requirement. This bill would require the state comptroller, in consultation with

LIPA, to establish thresholds for triggering pre-approval for ordinary contracts, and guidelines and thresholds for defining both the scope and triggering amounts of contracts for emergency goods and services and short-term public power purchase agreements.

- Under a public power model, the day-to-day responsibilities of the LIPA Board of Trustees (“LIPA Board” or “Board”) will increase. The roles and functions 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. The Commission has proposed legislative changes in Appendix A to expand the Board’s authority. To achieve the objective of maintaining the ServCo workforce in the public power model, legislation is proposed to facilitate the transition of ServCo employees to LIPA through LIPA’s acquisition from PSEG LI of the membership interest in ServCo. Legislation will clarify the terms and conditions of LIPA subsidiary employees’ employment. The proposed legislation will provide that the current union relationships and agreements are maintained and 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. Section 1020-e of the Public Authorities Law will also be amended to ensure the ServCo retirement benefits are transitioned and secured.
- Proposed amendments to the Public Authorities Law to change revisions made in the LIPA Act and the LRA address provisions that currently contemplate a third-party service provider model. The proposed legislation retains references to the service provider to the extent necessary to fulfill obligations that will extend beyond the effective date of the legislation.

This Final Report is intended to fulfill the Commission’s directive under Section 83-N(12) of the New York State Legislative Law and provide the Legislature with a report outlining specific actions, proposed 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.² Originally, LILCO served portions of Suffolk County, but through acquisitions expanded its service area into Nassau County and portions of Queens County.³

In the mid-1960s, LILCO proposed the construction of the Shoreham Nuclear Plant ("Shoreham").⁴ Original plans envisioned a 540-megawatt facility to be constructed for approximately \$124 million⁵ in the Town of Brookhaven in Suffolk County.⁶ However, after modifications, Shoreham was constructed from 1973 to 1983 as an 809-megawatt nuclear power plant⁷ at a total cost of approximately \$4 billion.⁸

Opposition to Shoreham increased as the plant was being constructed.⁹ LILCO's significant investment in Shoreham impacted rates and its customers.¹⁰ 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.¹¹

The 1979 partial meltdown of a reactor at the Three Mile Island nuclear power plant near Harrisburg, Pennsylvania 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, 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 Shoreham 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 concern²⁷ 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 energy³⁰ 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 public⁴⁰ 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 Agreement⁴⁴ 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 OSC issued a critique of LIPA and National Grid's response to Hurricane Earl⁵⁸ 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 2011⁶⁹ 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

OSC required LIPA to rebid the service provider contract prior to its 2013 expiration. 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 LIPA 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 Draft 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 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 million⁹⁹ 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 report¹⁰² 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’s investigation *documented* PSEG LI’s active concealment of known, significant OMS performance issues 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 Final 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 Final Report.

5. Creation of the Commission

The Legislature enacted Legislative Law 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 Act¹⁴¹ 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 Final 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-member¹⁵¹ Board, all of whom must live within LIPA's service area.¹⁵² Trustees are appointed by the Governor (five seats), the Senate Majority Leader (two seats), and the Speaker of the Assembly (two seats). Trustees serve four-year terms.¹⁵³ The Board Chair is chosen by the Governor from among the Trustees. The LRA requires Trustees to have relevant utility, corporate board, or financial experience. Trustees 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 officers¹⁵⁴;
- 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 Trustees 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."¹⁶⁹ 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."¹⁷⁰ LIPA has approximately 50 employees in addition to the executive management team.¹⁷¹

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").¹⁷² 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.¹⁷³ In August 2021, the legislature raised 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.¹⁷⁴ 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.¹⁷⁵ The investor relations portion of UDSA's website section includes budgets, financial statements, disclosures, and bond information. UDSA also posts the UDSA Board meeting calendar, agendas, presentations, minutes, and resolutions on LIPA's website and streams the UDSA Board meetings for public viewing.¹⁷⁶

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."¹⁷⁷ The LRA requires LIPA to pay all costs and

expenses for DPS LI, which currently total approximately \$13 million annually.¹⁷⁸ 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.¹⁷⁹ 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.¹⁸⁰

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.¹⁸¹ The Public Authorities Law also requires the Board to implement, or cause PSEG LI to implement, certain DPS recommendations absent a finding of inconsistency.¹⁸²

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.¹⁸³ LIPA's oversight of PSEG LI, as authorized by the Second A&R OSA, is in addition to DPS' statutory oversight of PSEG LI.¹⁸⁴ 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.¹⁸⁵ 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, 2016.¹⁸⁶ On January 30, 2015, PSEG LI submitted to DPS and LIPA its three-year rate plan for 2016 through 2018.¹⁸⁷ 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%.¹⁸⁸ LIPA also has the option to submit any rate proposal to DPS for review, regardless of its effect on revenues.¹⁸⁹ As with the three-year rate plan, LIPA must implement DPS recommendations unless the Board makes a determination of inconsistency.¹⁹⁰ LIPA may implement rates and charges that exceed the 2.5% threshold on an interim basis, subject to prospective rate adjustment.¹⁹¹ Additionally, LIPA must hold public hearings prior to fixing rates and charges that are not subject to DPS review.¹⁹²

2. DPS Audits

The Public Authorities Law requires LIPA and PSEG LI to cooperate in the undertaking of DPS management and operations audits.¹⁹³ 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;¹⁹⁴ (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.¹⁹⁵

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.”¹⁹⁶ 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.¹⁹⁷ Within 30 days of

posting, and with sufficient notice, the Board must then hold a public hearing regarding the preliminary determination.¹⁹⁸ 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.¹⁹⁹ PSEG LI may also present its position during the public hearing.²⁰⁰ The Board must announce its final determination within 30 days after the public hearing.²⁰¹ The final determination is subject to applicable judicial review.²⁰²

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.²⁰³ 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”).²⁰⁴ 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.²⁰⁵

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, including power purchase agreements (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. As with any public authority of the State, 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.²⁰⁶ OSC is also authorized to supervise LIPA's accounts, including through the preparation of LIPA's annual third-party audit.²⁰⁷ LIPA, and PSEG LI through the Second A&R OSA, are required to provide OSC with twice-annual reports documenting contracts in excess of \$250,000.²⁰⁸ Written OSC approval is required for any private sale of LIPA's bonds or notes.²⁰⁹

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.²¹⁰ 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 OSA²¹¹ 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 one collective bargaining agreement in effect through November 13, 2027.²¹² This agreement replaced two collective bargaining agreements, which were set to expire on 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.²¹³

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.²¹⁴ 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."²¹⁵ 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.²¹⁶ 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, the Board adopted a Transparency Plan designed to implement the Board’s October 24, 2018 Resolution #1437, Values of Responsiveness and Integrity.²¹⁷ 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.²¹⁸

The Transparency Plan includes a list of activities that LIPA asserts demonstrate “its commitment to transparency.”²¹⁹ 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.²²⁰ 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.²²¹ Further, the Transparency Plan calls for increased Board accountability including regular review of Board policies for industry best practices.²²² 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.”²²³

Creation of the CAB was also designed to increase stakeholder participation and public transparency.²²⁴ 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.²²⁵ The Board also requested Project Implementation Plans for each adopted recommendation.²²⁶

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.²²⁷ 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.²²⁸

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, Advisory Committee meetings, and comments on the Draft Report.²²⁹ Comments from the public included a call not just for transparency, but for a seat at the table. While LIPA Trustees are required to live in the LIPA service territory, they are not appointed by local officials, but rather, by the Governor and leaders of the Legislature. There seems to be some public sentiment that LIPA Trustees are loyal first to Albany, and second to the customers within LIPA's service area.²³⁰

3. Legislation to Increase Transparency

In 2021, the legislature began to require LIPA to provide twice-annual reports about its lobbying and advertising activities, including the reasoning for the spending and the amount spent.²³¹ The reports are to be issued to the Governor and State Legislature.²³² In 2022, the legislature began to require state utilities and service providers, including LIPA and PSEG LI, that gross more than \$1 million annually to report executive pay.²³³

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, 2022²³⁴
(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

	Beginning balance	Accretion/ additions	Maturities	Repaid/ Refundings	Ending balance
General revenue bonds/notes:					
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	<u>4,996,159</u>	<u>397,271</u>	<u>69,735</u>	<u>365,474</u>	<u>4,958,221</u>
UDSA restructuring bonds:					
Series 2013T	114,641	—	41,981	—	72,660
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	<u>3,703,356</u>	<u>935,655</u>	<u>177,511</u>	<u>659,290</u>	<u>3,802,210</u>
	<u>8,699,515</u>	<u>1,332,926</u>	<u>247,246</u>	<u>1,024,764</u>	<u>8,760,431</u>
Plus: Net premium	688,546	122,356	75,518	36,890	698,494
Less: Current maturities	<u>(247,246)</u>				<u>(294,775)</u>
Total Long-term debt\$	<u>9,140,815</u>				<u>9,164,150</u>

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.²³⁵ LIPA also has general statutory power to fix rates and charges for the furnishing of electric power or any related service.²³⁶ 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.²³⁷ 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").²³⁸ As authorized by the LIPA Act, such State Pledge is set forth in LIPA's bond resolution.²³⁹

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.²⁴⁰

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."²⁴¹ 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.²⁴²

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.²⁴³ 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".²⁴⁴ 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.²⁴⁵ In 2021, LIPA paid a total of \$702 million in taxes, PILOTs and related fees.²⁴⁶ These costs comprise a sizable portion of LIPA's customers' bills; in 2021, 19% of customers' bills were attributable to taxes.²⁴⁷ The tax burden borne by LIPA's ratepayers is among the highest in the nation at roughly three times the national average.²⁴⁸ 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.²⁴⁹ 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.²⁵⁰

Unlike most PILOTs, LIPA's payments are calculated and paid like tax bills rather than as set forth in an agreement.²⁵¹ 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.²⁵² Between 2004 and 2014, LIPA's PILOT payments increased by an average of 6.6% per year.²⁵³

The LRA capped the amount by which municipalities and school districts could increase LIPA's annual PILOT payments at 2%.²⁵⁴ 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.²⁵⁵

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.²⁵⁶ 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.²⁵⁷

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.²⁵⁸ 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 2027.²⁵⁹

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.²⁶⁰

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.²⁶¹ These included:

- Full municipalization under LIPA management;
- 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
- 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.²⁶²

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.²⁶³

Municipalization

The full municipalization option considered the elimination, and incorporation under LIPA, of the majority of services then outsourced to National Grid.²⁶⁴ 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.²⁶⁵

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.²⁶⁶ Specifically, enlarging LIPA's staff of 100 employees to approximately 2,000 presented a clear challenge, and would require successful development of senior management.²⁶⁷ 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.²⁶⁸ This model would also require successful integration of new systems for operational and corporate management.²⁶⁹

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.²⁷⁰ The study found that LIPA's MSA arrangement suffered from two primary areas of deficiency: (1) limited control over the various National Grid resources,²⁷¹ and (2) opaque cost accounting for LIPA's fees.²⁷²

Although it also involved a contractual relationship with a service provider, the ServCo model differed from the MSA in two (2) critical ways.²⁷³ 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.²⁷⁴ Second, payments to the service provider under this model primarily consisted of pass-through costs and profits with performance-based incentive and penalty components.²⁷⁵

The study found the ServCo model offered several attractive features, most notably its option value.²⁷⁶ 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.²⁷⁷ The study also noted that ServCo was not an “all or nothing” proposition – it allowed LIPA to retain management of key strategic support functions²⁷⁸ and it provided LIPA with greater control to set policy, goals, and direct practices.²⁷⁹

Absent transition concerns, the Brattle Group study indicated that full municipalization may be preferable over the ServCo option.²⁸⁰ 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.²⁸¹ The cost difference between the ServCo and full municipalization options was deemed too narrow to make cost ranking the sole basis of selection.²⁸² 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.²⁸³

Privatization

Privatization would bring future rate-setting under the PSC’s rate process at the expense of losing tax-advantaged financing.²⁸⁴ 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.²⁸⁵ 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.²⁸⁶ The Brattle Group concluded that privatization would likely entail a 10% to 20% increase in electric rates,²⁸⁷ and this rate impact, combined with other identified risks, removed privatization from consideration.²⁸⁸

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.²⁸⁹ 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.²⁹⁰

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.²⁹¹

Lazard considered maintaining LIPA’s status quo to be an untenable 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%.²⁹² 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.²⁹³

Lazard’s view was that LIPA T&D System should be placed under PSC regulation and oversight through privatization.²⁹⁴ Lazard believed privatization would address the key objectives.²⁹⁵ 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.²⁹⁶ It recommended privatization via trade sale as the primary reorganization plan, and full outsourcing of management and operations as a contingency plan.²⁹⁷ 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.²⁹⁸

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.²⁹⁹

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.³⁰⁰ Lazard also noted that privatization entailed corporate income tax and debt defeasance/breakage costs.³⁰¹ Other considerations included potential complexities in execution and uncertainties related to state and local political support, among others.³⁰² Despite these risks, Lazard concluded the privatization model presented the best solution for structural reorganization.³⁰³

Lazard's study identified government ownership with fully outsourced management and operations as the contingency plan for LIPA's reorganization.³⁰⁴ This contemplated full privatization of operational responsibilities, with retained public ownership solely to maintain tax-exempt debt financing.³⁰⁵ 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.³⁰⁶ 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.³⁰⁷

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.³⁰⁸ In 2013, NYPA reported its findings and recommendations, and identified public ownership with outsourced private operation as its recommended approach.³⁰⁹

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.³¹⁰ 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.³¹¹

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,³¹² significant debt in relation to assets, lack of excess cash flow, and LIPA's responsibility for property tax and PILOT payments.³¹³ 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.³¹⁴

NYPA's analysis included a review of Moreland Commission findings, prior studies by LIPA consultants,³¹⁵ 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.³¹⁶ NYPA criticized Lazard's decision not to incorporate the analysis of other consultants in its study.³¹⁷ 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.³¹⁸ Unlike Lazard, NYPA found that LIPA's power supply practices were reasonable and prudent.³¹⁹

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.³²⁰ 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.³²¹ 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.³²²

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.³²³ 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.³²⁴ It also identified the potential to increase coordination with other state policies if the DPS review and recommendation element were incorporated.³²⁵

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.³²⁶ 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.³²⁷

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.³²⁸ 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.³²⁹

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.³³⁰ 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.³³¹

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.³³² 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.³³³ In its Reports, LIPA found that privatization would raise financing costs by roughly \$447 million per year.³³⁴ Privatization would also make LIPA ineligible for federal disaster recovery and storm hardening grants.³³⁵ 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.³³⁶

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.³³⁷ 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.³³⁸

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.³³⁹ 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.³⁴⁰

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.”³⁴¹ 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.³⁴² The Reports also highlighted an apparent lack of meaningful management resulting from shared services provided by PSEG's New Jersey-based management.³⁴³

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.³⁴⁴ Specifically, the Report identified eight core contractual reforms to be incorporated into any new service provider agreement with PSEG or another provider:

- Greater share of management compensation at risk based on performance;
- Expanded performance metrics with greater rigor covering all categories of service;
- Use of gating and default metrics to discourage singularly poor performance;
- Strengthen Long Island based management and accountability for Long Island operations;
- Require candor from service provider;
- Require compliance with Board recommendations to address known deficiencies;

- Strengthen oversight in long-term planning, project prioritization, and budget development;
- Partition Long Island IT systems and facilitate independent verification and validation.³⁴⁵

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.³⁴⁶ This option would begin with the issuance of a Request for Information outlining LIPA's requirements.³⁴⁷ After outreach by LIPA staff, the LIPA Board would then proceed with a Request for Proposal ("RFP").³⁴⁸ Because this option would result in a new operating agreement, LIPA could use the new core contractual framework identified in Option 2.³⁴⁹ 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.³⁵⁰

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.³⁵¹ 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.³⁵² Third, this option offered an opportunity for LIPA to explore "unbundling the service packages and separately awarding the elements to the most qualified providers."³⁵³ 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.³⁵⁴ 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.³⁵⁵

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.³⁵⁶ 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.³⁵⁷

Financial savings were anticipated by LIPA undertaking direct management.³⁵⁸ LIPA estimated that termination of the First A&R OSA would save \$75 million to \$80 million annually.³⁵⁹ 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 2025.³⁶⁰ 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.³⁶¹ These expenses contributed an additional \$15 million to \$20 million to PSEG LI's annual management costs, paid for by LIPA.³⁶²

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.³⁶³

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.³⁶⁴ 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.³⁶⁵ 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.³⁶⁶

Another risk was the uncertainty of obtaining the full support of elected officials, regulators, stakeholders, and customers for direct LIPA management.³⁶⁷ 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.³⁶⁸ 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."³⁶⁹ 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,³⁷⁰ 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.³⁷¹

Like Option 3, shifting to LIPA management would entail short-term business continuity risks and transition costs,³⁷² 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.”³⁷³

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 understand the impact of transitioning LIPA to a true public power model, the Commission 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.

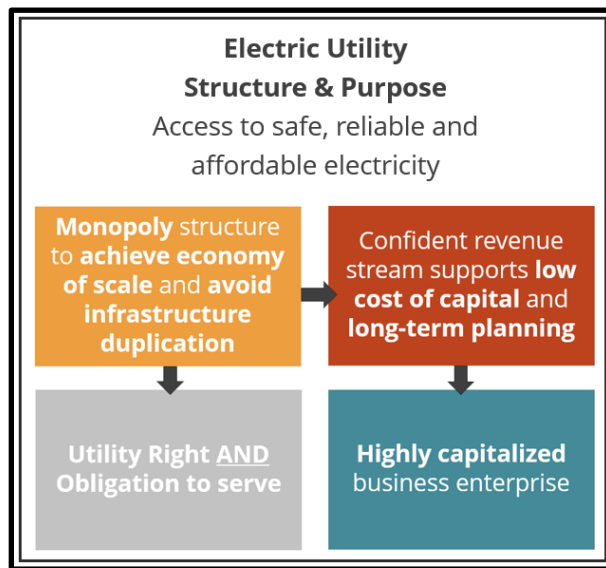
Territory – To provide service in an efficient manner, avoid duplication of expensive infrastructure, and to achieve economies of scale, utilities typically operate in a territorial monopoly. That territorial status does three things:

(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

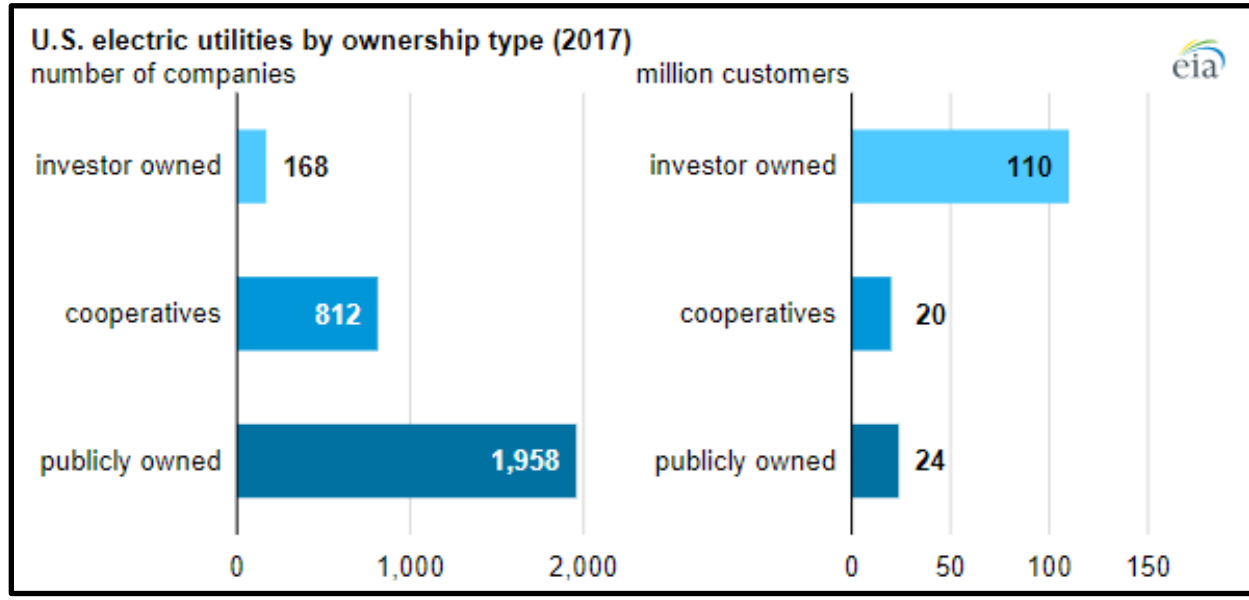


Figure 3 provides key differentiators between the three utility formations or structures.

Figure 3

<u>Key Differentiators</u>	<u>Publicly Owned</u>	<u>Cooperatives</u>	<u>IOUs</u>
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

As described in detail above, 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 Final 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.

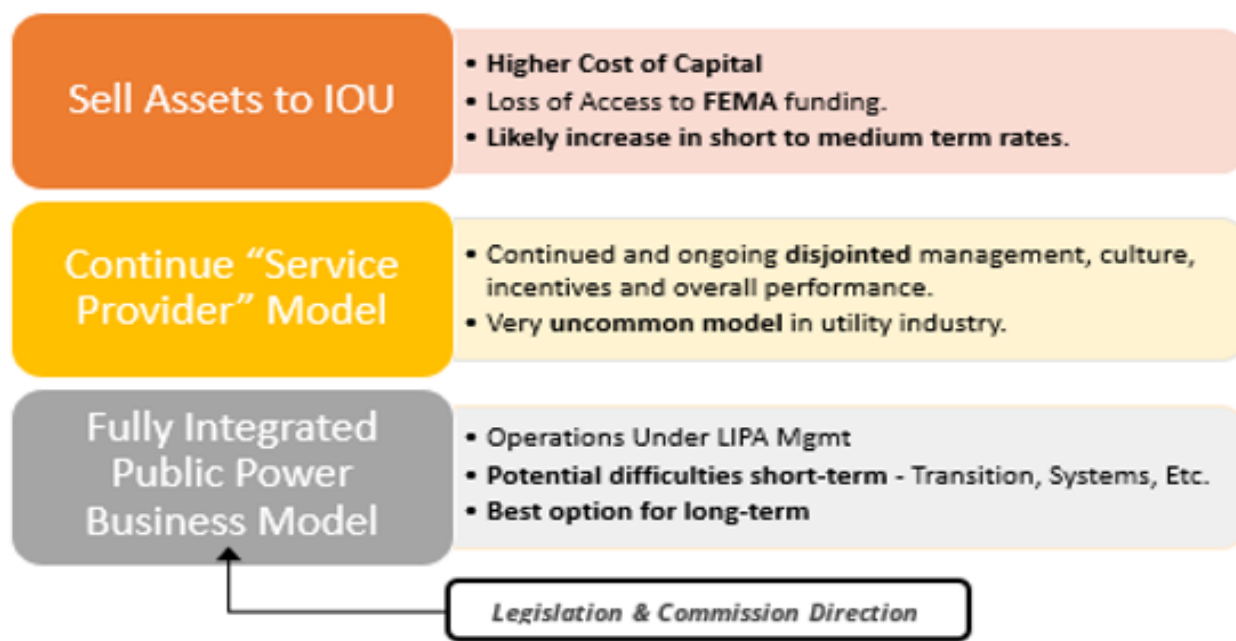
Continue the “Service Provider Model” – No other utility of LIPA’s size and scale operates with the current third-party service provider model. Leading and managing through a relatively short-term contractual arrangement creates incentive misalignment within a business model that requires a solid long-term 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 coastal 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.³⁷⁴

	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).³⁷⁵

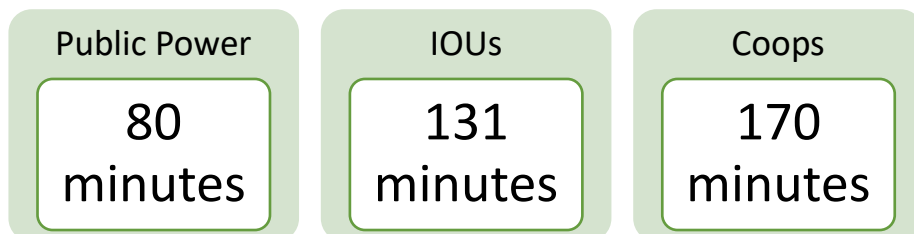


Figure 7

SAIDI (Without Major Events)³⁷⁶

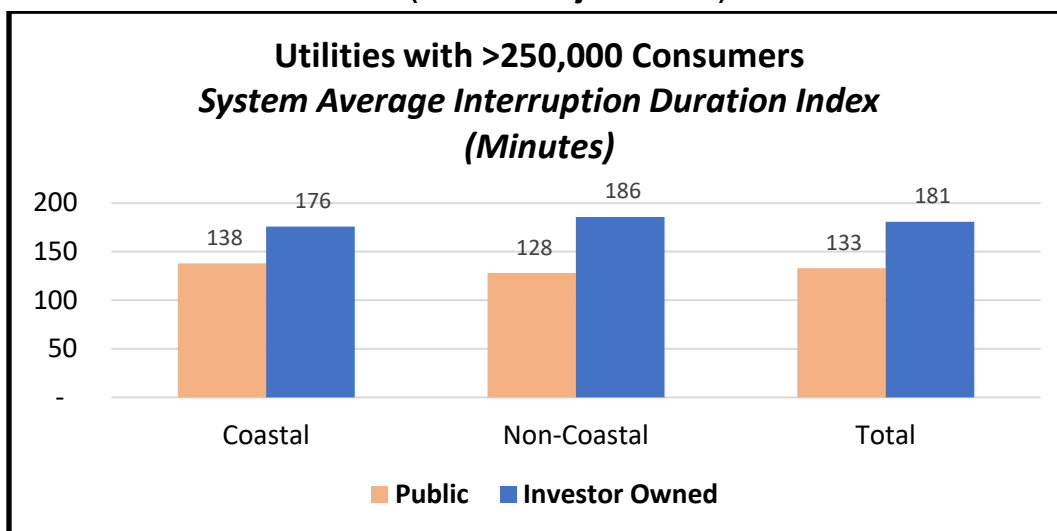
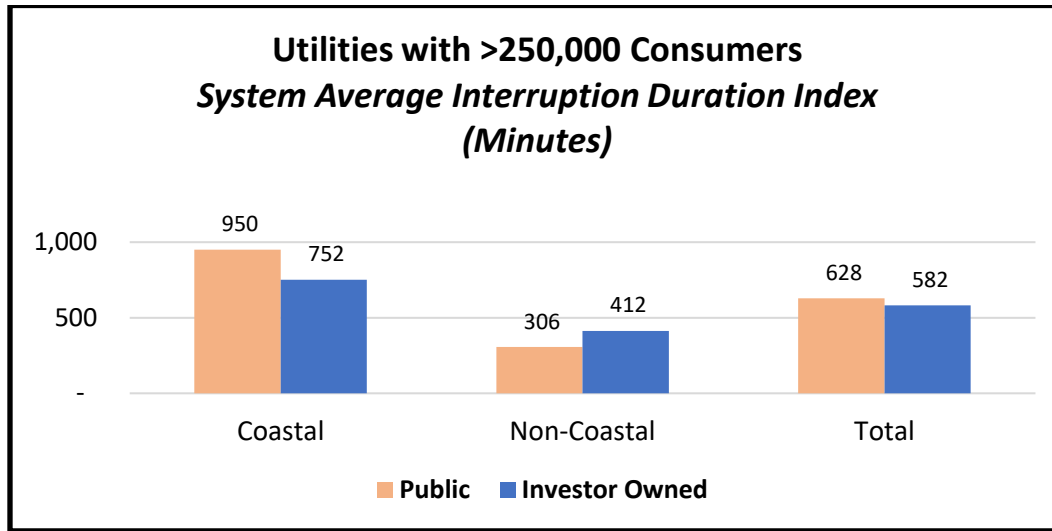


Figure 8

SAIDI (With Major Events)³⁷⁷



PART 5 - AN ANALYSIS OF THE COMMISSION'S DECISION MAKING PROCESS ON HOW TO CONVERT LIPA TO A TRUE PUBLIC UTILITY

The Commission considered how LIPA's transition to a true public power authority will affect stakeholders, operation of the grid, and Long Island's future energy needs. Accordingly, the Commission developed what it believes are the best steps and strategies moving forward. The Commission's decision-making process is summarized in this Part 5.

A. Cost Impacts

1. Ratepayers

LIPA 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 began with a review of LIPA's current costs and their sources.

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.³⁷⁸ 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

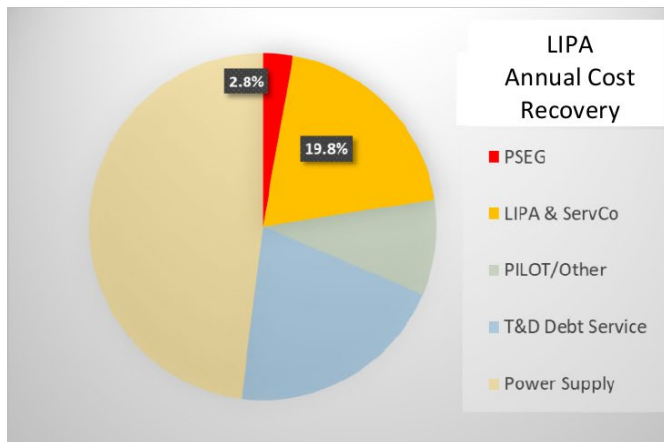
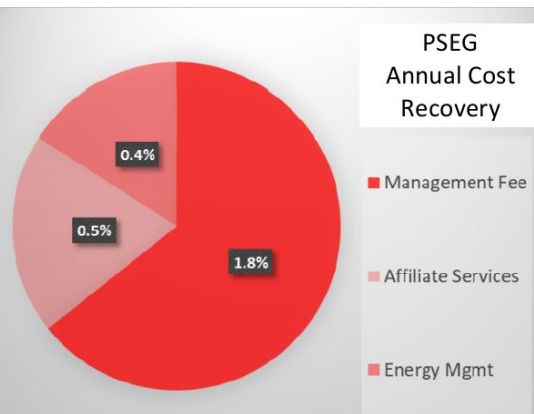


Figure 10



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 must 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, the Commission contrasted two future conditions against the current or base case to assess various future outcomes and better inform its decisions. The following analysis ascertains 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 fully 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 Proforma 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 will 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 ER&T, which is independent of the PSEG LI Second A&R OSA, 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 \$13³⁷⁹ 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, the Commission calculated 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 represents 1.1% of LIPA's total annual revenue requirement.³⁸⁰

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 Commission determined that the transition to a fully integrated

public power model will likely yield moderate changes in synergy and efficiencies which cannot be quantified in this Final 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 fully public power model will involve unavoidable transition costs. Accordingly, the Commission 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. Based on the time necessary to complete LIPA's transition to a fully public power model, the Commission recommends allowing the Second A&R OSA to expire at the end of 2025. Therefore, the Commission does not anticipate that termination fees will be realized.
- **Transition of Energy Management Services** – The Commission's 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 IT systems are transitioned to LIPA by the end of 2024, the transition of Energy Management function will be postponed to minimize the amount of short-term change. The transition of Energy Management Services is expected to take place during 2025 absent an extension of the PSM and FMA contracts with PSEG ER&T.

- ***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. LIPA and PSEG LI developed plans 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 IT transition plans were reviewed by DPS. The plans include personnel to support any and all of the 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*** – The Commission recommends including a significant cushion for potential continuity of PSEG LI's services, as in past transitions, 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 will be expensive to recruit and train new employees to replace the PSEG LI positions funded by the management fee. In addition, there will be 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 was 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 five times the projection of LIPA in its Phase II Option Analysis was 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 are 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 was budgeted for this effort.
- **Governance Model Construction** – Modifying LIPA's governance structure as an appointed board model as set forth in this Final Report may have one-time and potential long-term cost consequences. While these costs are not large enough to influence the decision-making process, they are real and must be budgeted and managed. 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 were 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 provides 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
<p>*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.</p> <p>**Transition of Energy Management Services are not necessary and significant annual savings are not anticipated if transitioning to another provider.</p> <p>***The model utilized to assure the protection of ServCo employees when transitioning will have one-time and ongoing cost implications.</p> <p>****Litigation costs will potentially be greater in the event of a transition prior to the end of the current OSA Term.</p>		

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 Final Report result 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 will not substantially alter its property tax or PILOT obligations. LIPA's transition to a full public power model will have minimal impact on local taxation and PILOTs.

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, the Commission considered three pathways for regulatory oversight of LIPA:

- **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.

4. NewGen Strategies & Solutions Review

In preparation of this Final Report, the Commission retained NewGen Strategies and Solutions, LLC (“NewGen”) to (1) conduct an independent review of the reasonableness of the projected financial savings identified by the Commission in the Draft Report; and (2) analyze the impact of LIPA’s transition to public power on ratepayers. See Appendix B.

NewGen completed a targeted review and evaluation of the estimated savings related to LIPA’s transition to a public power model. The review focused on ongoing savings estimates generated by operating as a public power utility. The review did not integrate the one-time transition related costs. NewGen concluded that the projected financial savings associated with transitioning LIPA to a fully public power authority are reasonable, and that the impact will be to lower rates for LIPA’s customers, assuming the Board of Trustees chooses to use the financial savings to lower rates. NewGen further concluded that the potential cost savings is likely to be closer to the \$78 million identified in the LIPA Options Analysis, rather than the \$48 million identified as the Draft Report’s conservative viewpoint. NewGen also explained that while LIPA may see a cost savings of \$48 to \$78 million, only approximately \$23.7 to \$49.9 million will be available for ratepayer bill reductions, while the remaining savings must be reinvested into LIPA’s infrastructure. NewGen calculated the potential cost savings to ratepayers and found residential customers may see a savings of approximately \$1.11 to \$2.22 per month.

NewGen considered two other areas during its review. First, NewGen considered DPS oversight. The level of oversight exercised by DPS is atypical for public power utilities. Limitation, modification, or removal of this annual oversight would result in annual savings up to \$13 million. Second, NewGen considered the ongoing transition of IT services from PSEG-LI to LIPA.

NewGen noted that any costs for the broader IT transition effort should be integrated with and adjust the cost savings calculations.

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.³⁸¹ 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.³⁸²

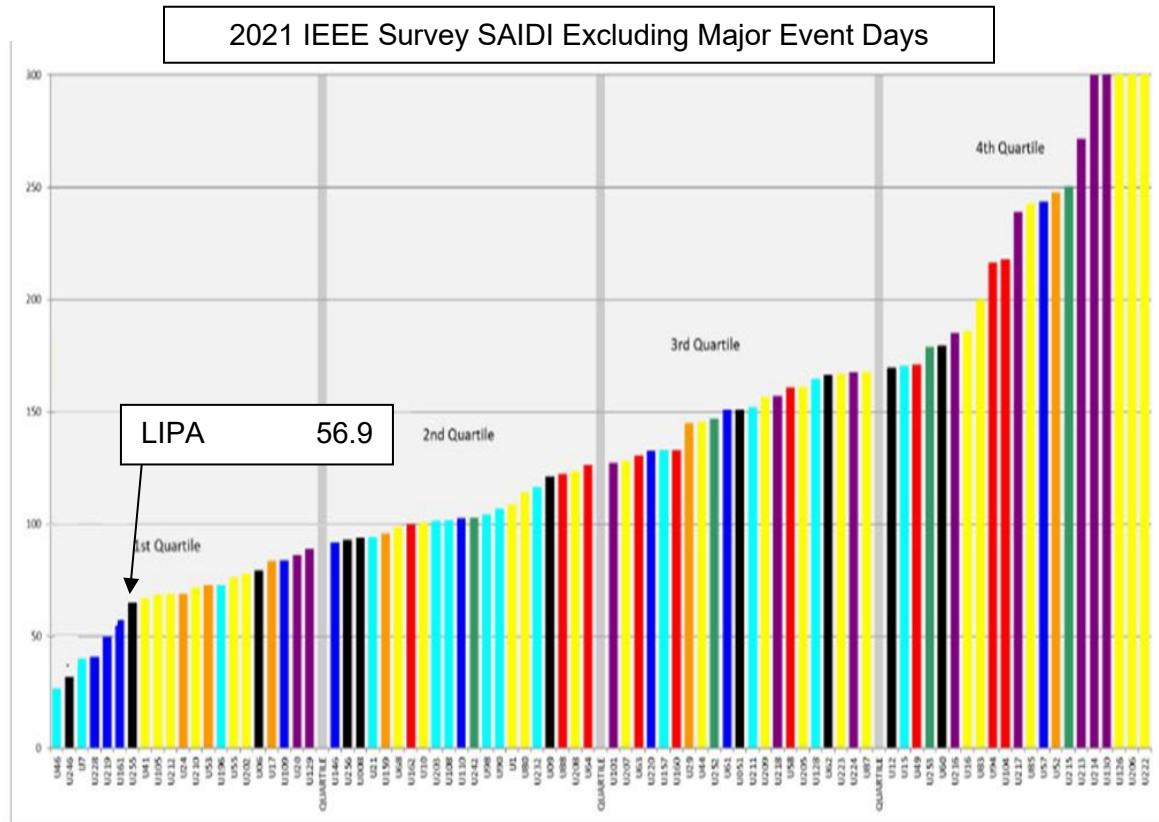
LIPA's T&D System has very good reliability, but Long Island has experienced many storm-related outages over the past two decades. The storm-related outages have understandably left customers and stakeholders of the electric utility grid questioning LIPA's ability to implement best practices and seeking 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.³⁸³ 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.³⁸⁴

Figure 11



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.³⁸⁵

Since Hurricane Sandy, LIPA has received \$705 million in grants for storm repairs and \$730 million in public assistance grants for additional hazard mitigation.³⁸⁶ 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 2022.³⁸⁷ 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.³⁸⁸

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 from 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.³⁸⁹

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.”³⁹⁰

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. New York 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 Climate Action Council 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.”³⁹¹ 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. Additionally, a fully public LIPA can leverage its relationship with NYPA to strategically meet CLCPA goals.

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. The Commission determined that 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.

LIPA intends to further evaluate the cost and risks of its options to in-source or out-source the power generation function. As 2025 approaches, LIPA would need to issue an RFP from qualified firms to perform this power management function. The cost effectiveness of out-sourcing this function will depend on the size of the utility and the scale of its power supply portfolio.

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. LIPA should consider working with NYPA to achieve CLCPA goals.

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

The Second A&R OSA currently provides that immediately upon its expiration, PSEG LI is obligated to transfer 100% of the membership interest 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 effect 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 for LIPA to conduct proper due diligence to ascertain what other assets, liabilities and obligations in fact exist, before LIPA acquires the membership interest in ServCo.

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. Of equal importance is the preservation of the relationship between ServCo employees and their bargaining representative, the International Brotherhood of Electrical Workers, Local 1049 ("IBEW Local 1049"). The Commission's proposed amendments to the LIPA Act are intended to satisfy both of these objectives while simultaneously allowing LIPA to reassert control of the electric utility operations in its service area.

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 future transition, retaining this skilled workforce will be of paramount importance.

The Commission evaluated three potential models to transition the ServCo employees away from PSEG LI and place them under LIPA control while preserving the relationship with IBEW Local

1049 and maintaining the employee employment status, wages, benefits and other terms of employment. These included:

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

The Commission concluded that the LLC Model best achieves the stated objectives. (Appendix C is a legal analysis of the underlying issues supplied by the Commission's outside counsel, Bond, Schoeneck & King, PLLC.) Under the LLC Model, LIPA would acquire the membership interest in ServCo and continue to operate ServCo as a wholly-owned subsidiary. This approach best serves the interests in allowing LIPA to assume direct control and to preserve the ServCo employees status as private sector employees, as well as the relationship with IBEW Local 1049, the existing collective bargaining agreements and terms of employment.³⁹²

The Commission evaluated several critical issues in reaching its conclusion regarding the future of ServCo. The first was 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 Commission maintains that the Legislature has previously authorized such an arrangement. The LIPA Act authorizes LIPA to "create or acquire one or more wholly owned subsidiaries"³⁹³ 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.³⁹⁴

While the current statute does not expressly reference a limited liability company,³⁹⁵ a legislative amendment to include such entities appears consistent with the pre-existing legislative intent of the LIPA Act.³⁹⁶ The proposed amendments make this authorization explicit by including reference to the limited liability company law in addition to the business corporation, not-for-profit corporation, and transportation corporations law.

The second issue was whether State policy would permit a public authority to directly operate a power utility through a wholly-owned private subsidiary. Again, the Commission concluded that the existing LIPA 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 Final Report and expressed in the 1986 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.

Given the statutory purpose of the LIPA Act, the proposed LLC model appears consistent with the public policy of New York State to assure the reliable, efficient, and economic provision of electricity.

The Legislature previously 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." 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. . . ." ³⁹⁷ Thus, not only did the Legislature authorize LIPA to operate business corporations, ³⁹⁸ 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 proposed legislation obligates LIPA to retain and employ ServCo employees, subject to terms and conditions of any then-existing labor contracts, in order to ensure that LIPA's relationship with IBEW Local 1049 is maintained. The statutory amendments provide clear authorization for

ServCo employees to continue to receive the same compensation and benefits under a LIPA-owned ServCo as provided in the labor contracts that exist at the time LIPA acquires the membership interest in ServCo. The proposed legislation also requires LIPA to recognize IBEW Local 1049 as the bargaining representative of ServCo employees pursuant to the National Labor Relations Act (“NLRA”).

A third critical issue that the Commission considered was how federal labor law could continue to control the relationship between ServCo and IBEW Local 1049, if ServCo were a wholly-owned subsidiary of LIPA.

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 will continue as the employer entity and the collective bargaining agreements will remain in place by operation of law. Contracts to which an LLC is party, including collective bargaining agreements, remain in place and are unaffected by a change in membership of the LLC.³⁹⁹

The proposed legislation enacting the LLC model strongly supports the conclusion that the NLRB would retain jurisdiction over a LIPA-owned ServCo.⁴⁰⁰ Currently, as an employer-union relationship in the private sector that affects interstate commerce, the NLRA applies and the NLRB has jurisdiction over any dispute between the parties. The NLRA, however, does not apply to state governments and their political subdivisions.⁴⁰¹ 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.⁴⁰²

The Commission concluded that under the LLC model, the NLRB would retain jurisdiction. The fact that ServCo is a large pre-existing private commercial entity engaged in interstate commerce that was not created by the State satisfies the first element of the jurisdictional standard and strongly supports NLRA jurisdiction. The existing LIPA Act already evidences the Legislature’s intent that, in the event LIPA were to acquire the T&D system, those employees would continue to be subject to the existing labor agreements with IBEW Local 1049.

With regard to the second factor, the NLRB will find an entity to be exempt from its 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.⁴⁰³ Thus, the structure of LIPA's governing board and the board's role in administering ServCo are significant factors in concluding that a LIPA-owned ServCo would remain an employer under the NLRA. The Commission has recommended a governance structure for LIPA that includes an appointed board to clearly support continued NLRA jurisdiction. The proposed legislation also includes a provision in section 1020-i(3) confirming the legislative intent to maintain ServCo within the jurisdiction of the NLRA. Further, this objective should be a relevant consideration for the LIPA Board and executive leadership in establishing their corporate structure and administrative control over ServCo.

The proposed legislative amendments explicitly outline the private sector nature of ServCo employees' employment following the acquisition by LIPA and clarify that such employees shall be subject to the NLRA rather than the Taylor Law and the jurisdiction of the New York State PERB. The proposed legislation also requires ServCo to recognize and "bargain in good faith with [IBEW Local 1049] the collective bargaining representative of such employees pursuant to the [NLRA]," which are the core requirements for an employer under the federal law.

To further confirm NLRA jurisdiction, the Commission recommends that, contemporaneous with the transfer of ServCo's membership interest from PSEG to LIPA, ServCo and IBEW Local 1049 enter into an agreement (i) confirming their understanding that the change in ServCo's ownership does not change, and is not intended to change, the private sector nature of the employment; and, (ii) establishing that the employer is voluntarily consenting to be treated as an employer as defined in the NLRA; and remains subject to the jurisdiction of the NLRB. Such an agreement could significantly reduce the likelihood of a future jurisdictional challenge, although the NLRB ultimately determines its jurisdiction. While not legally conclusive, these steps would be further persuasive evidence supporting the conclusion that the ServCo employees and ServCo's relationship with IBEW Local 1049 remain subject to the NLRA and NLRB jurisdiction.

Under the proposed legislation, there would be no risk to the collective bargaining agreements in existence at the time of the transfer of the membership interest to LIPA. Those agreements remain in full force and effect, even in the unlikely situation that the NLRB did not have jurisdiction.

NLRB jurisdiction issues will only arise if there were a claim that ServCo or IBEW Local 1049 acted in violation of the NLRA, and the other party pursued that claim before the NLRB.

The final area of concern that the Commission considered were those steps necessary, under the LLC model, to preserve the existing ServCo employee benefit plans, including its welfare plans (e.g., medical, dental, life insurance, etc.) and its retirement plans.

Currently, as plans maintained by a private commercial employer, the ServCo plans are regulated by the federal Employee Retirement Income Security Act (ERISA) and must be established and administered in accordance with ERISA and the corresponding relevant provisions of the Internal Revenue Code. Plans covered by ERISA are heavily regulated. ERISA imposes fiduciary obligations on plan administrators to act in the best interests of the plan participants. The federal law also requires reporting to the federal government, and disclosing to the plan participants, detailed information about the plan's terms and its financial status. Additional requirements apply to retirement plans that regulate participant eligibility, funding, benefit vesting, and the payment of benefits. Such plans are also subject to considerable Internal Revenue Code regulation because of the tax consequences associated with retirement plan funding, deferred taxation, and benefit payments.

When LIPA acquires the membership interest in ServCo, there is a concern that the ServCo retirement plans may be treated as governmental plans exempt from ERISA regulation.⁴⁰⁴

To preserve the status quo and continue ERISA protections, the proposed legislation includes the requirement that LIPA maintain ServCo's pension and other retirement benefits in plans that are operated and administered in compliance with ERISA and the Internal Revenue Code, to the fullest extent allowed by law.

The draft legislation establishes that the ServCo employees would not participate in the New York State Retirement System. The Commission's proposed amendments to section 1020-e state, in relevant part, "ServCo employees shall not be ... eligible to become members of the New York state and local employees' retirement system." Instead, their retirement benefits would continue to be provided through the ServCo benefit plans, including the retirement plans negotiated with the IBEW Local 1049 and incorporated into the collective bargaining agreements. This result is the same in all of the scenarios described above; it is independent of NLRA jurisdiction or ERISA coverage.

If ServCo were deemed to be a governmental entity after LIPA acquired control, there may be issues preserving employee 401(k) plans in their current form because, under the Internal Revenue Code, a governmental employer is not authorized to maintain 401(k) plans. However, there are other forms of defined contribution plans that ServCo could establish which are substantially similar to the 401(k) plans and could be established to mirror the same terms and conditions of the existing plans. ServCo could transition the employees from their participation in the ServCo 401(k) plans to the mirror image plans upon LIPA's acquisition of ServCo. This transition will be in coordination and negotiation with IBEW Local 1049.

The Commission also acknowledges that ServCo and IBEW Local 1049 may choose to add a requirement to their collective bargaining agreement 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. Such an approach would be consistent with legislative intent. The Commission advocates that ServCo and IBEW Local 1049 enter into an agreement (either as a stand-alone agreement at the time LIPA acquires the membership interest in ServCo, or as an amendment to the ServCo collective bargaining agreements) that the ServCo plans continue to meet the relevant ERISA standard.

In summary, to facilitate the transition of the current ServCo workforce and allow for preservation of the current union relationships and terms and condition of employment, legislative amendments are proposed to:

- Authorize LIPA to acquire the membership interest in ServCo;
- Require that ServCo employees not be New York State employees, be exempt from personnel and civil service law requirements (including the Taylor Law), and be excluded from the New York State and Local Employees Retirement System;
- Require that ServCo employees (a) continue to be treated as private sector employees subject to the NLRA; (b) be entitled to continue to receive the salary and benefits they receive as of the date of the authority's acquisition of such membership interest; (c) be entitled to all applicable provisions of any existing collective bargaining agreements; and (d) have their pension and other retirement benefits continued in plans that are operated

and administered in compliance with ERISA (except for Title IV of ERISA) to the full extent allowed by law; and

- Require ServCo to continue the existing collective bargaining agreements and maintain the obligation to bargain in good faith with the IBEW Local 1049 pursuant to the NLRA.

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

Governance Models	Current LIPA	A	B	C	D	E
		Future – Fully Integrated Public Power Model				
Board Construct	Appointed	Locally Elected Board	Locally Elected Board with Advisory Committee	Locally Elected Board with DPS Regulatory Lite	Appointed Board	
External Stakeholder Representation	DPS Regulatory Lite				DPS Regulatory Lite	*Full DPS Regulatory Oversight

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 Participation Opportunities

Citizen Advisory Committees (“CAC”) and Community Stakeholder Boards (“CSB”) 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/CSBs 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/CSBs can be created as standing committees that advise on various topics, but many utility boards create ad hoc citizen advisory committees to consider only specific defined issues and challenges that may arise.

2. Public Power Governance Structure Performance

Given LIPA’s size and customer base, the Commission gathered data 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/CSB 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

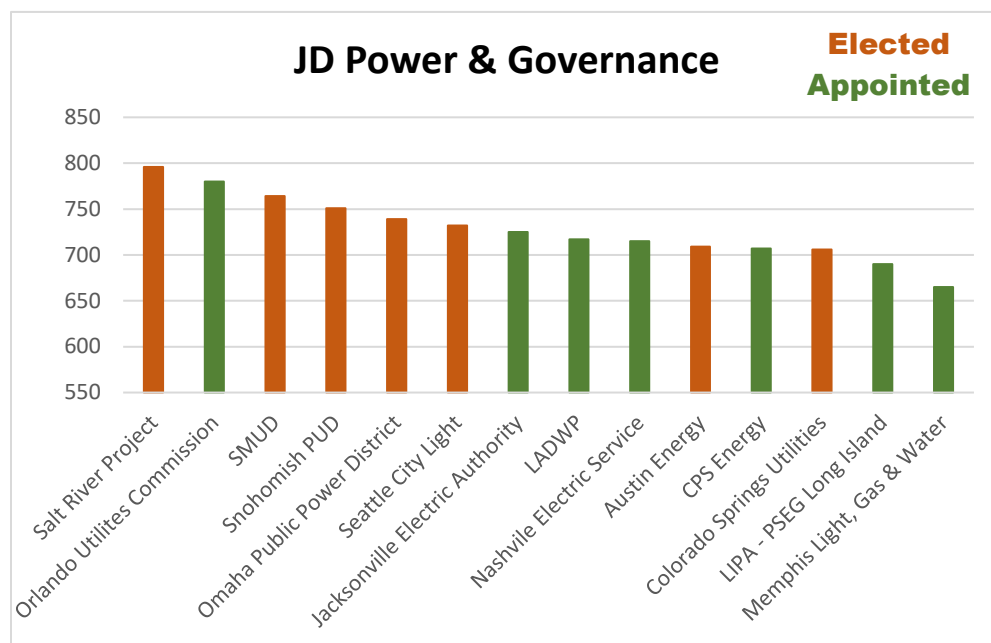
Customer satisfaction is determined from the published results of the 2022 J.D. Power Electric Utility Residential Customer Satisfaction Study. The J.D. Power Study is based on responses from interviews conducted between January 2022 and November 2022 of residential customers of the 145 largest electric 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



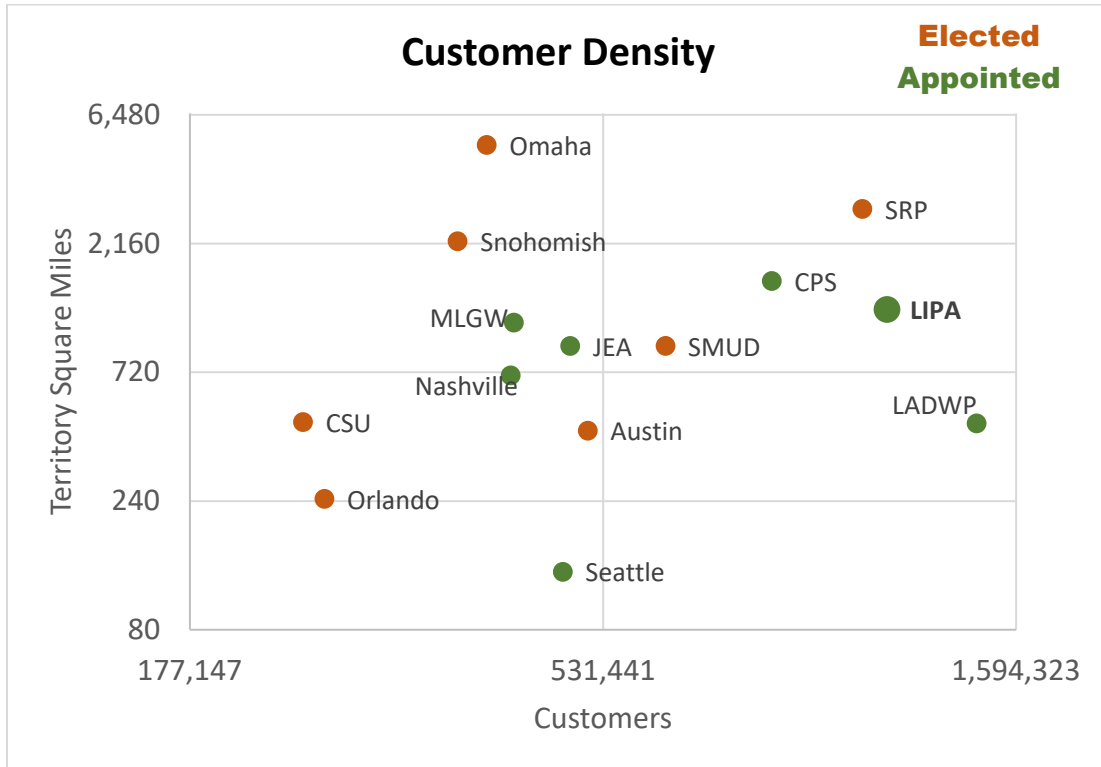
b. Reliability

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

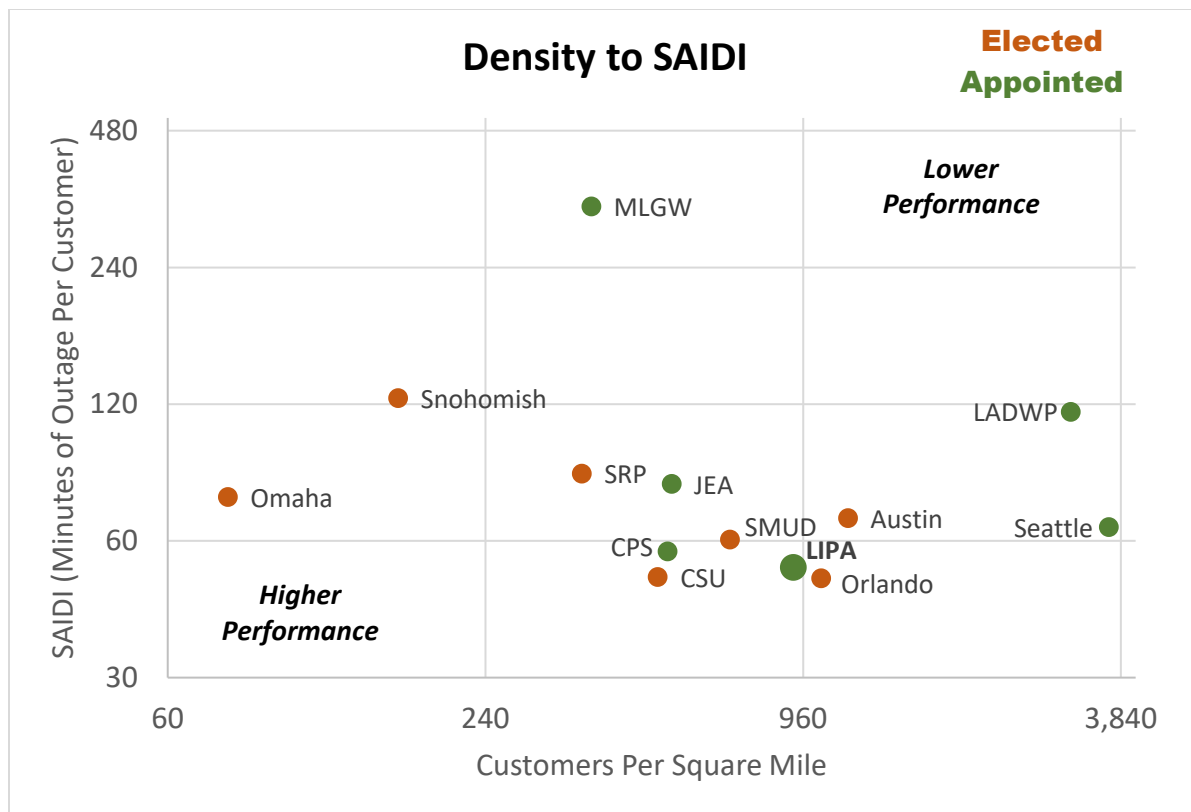
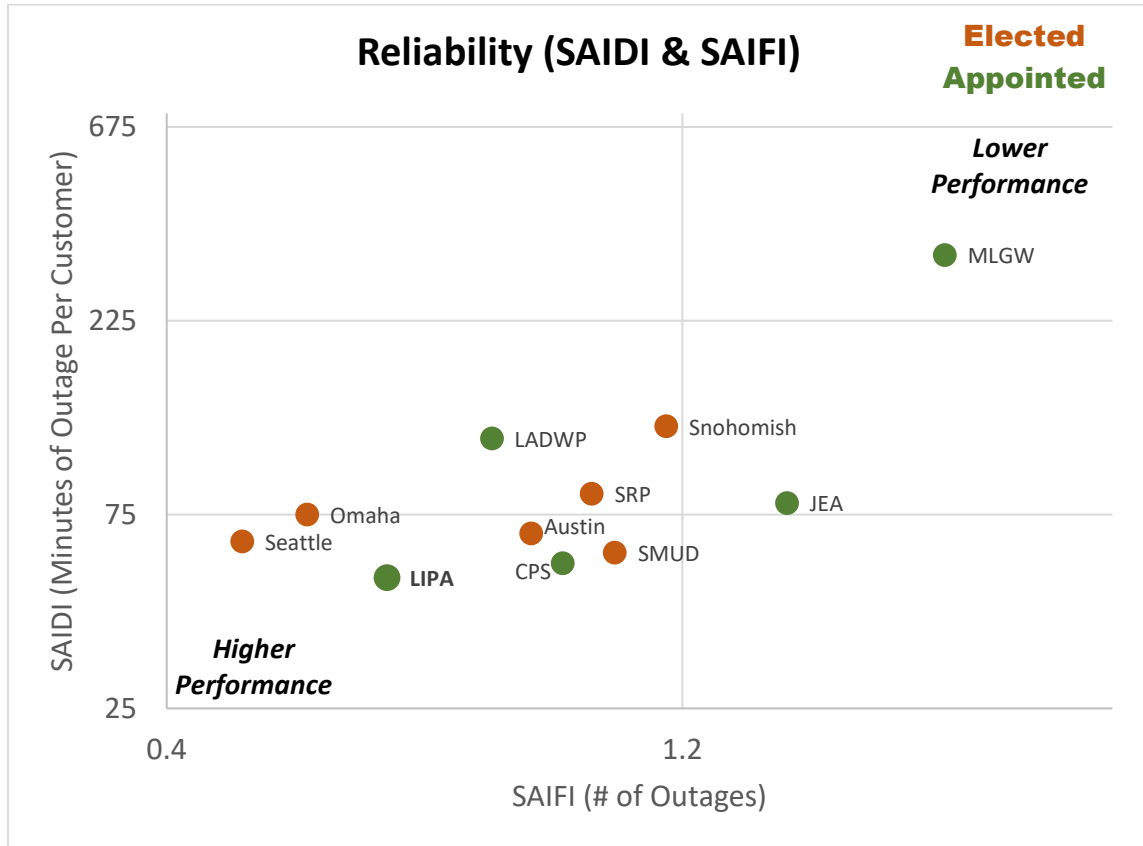


Figure 15 shows SAIDI plotted against SAIFI for utilities in the Comparison Group (for which data was available). The specific outage numbers are minutes are also shown in the table below the next graphic. These metrics are directly dependent upon one another.

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

Utility	Governance	Commission Regulation	Fitch	S&P	Moody's
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.⁴⁰⁵ 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 electricity⁴⁰⁶ 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”).⁴⁰⁷

NYPA’s T&D assets are maintained by NYPA employees.⁴⁰⁸ 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.⁴⁰⁹ NYPA employs almost 2,500 workers in a variety of disciplines.⁴¹⁰ NYPA also contracts with the IBEW for electricians, line workers, and other skilled craft employees.⁴¹¹

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.⁴¹² The NYPA Board selects the CEO and certain other officers and employees.⁴¹³ It also establishes the duties and determines the compensation for these officers and employees.⁴¹⁴ 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.⁴¹⁵ Additionally, the board reviews an annual capital expenditure plan, summarizing all present and proposed capital projects.⁴¹⁶

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.⁴¹⁷ This report must be certified by NYPA's executives⁴¹⁸ and submitted to the Governor and the Legislature.⁴¹⁹

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.⁴²⁰ NYPA's rates are governed by contract and not through PSC regulation or any public service law regulating rates.⁴²¹

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. **Los Angeles Department of Water & Power (LADWP)**

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: No.

Public Engagement: Every two years a stakeholder Advisory Group develops the utility's Power Strategic Long-Term Resource Plan. The Advisory Group is designed to reflect diverse perspectives and necessary expertise and includes neighborhood councils, industry leaders, key customers, academia, city government, and others.

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)⁴²²

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: The Seattle City Light Review Panel

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 terms)

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: The Utilities Policy Advisory Committee

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 Final 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.⁴²³ 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 doing so 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 between \$11 and \$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 with term limits 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 education⁴²⁴
- 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 specific consideration for staggered terms and whether a term limit will apply
- compensation (salary, per meeting pay, expense reimbursement, health benefits, etc.)
- determination of whether a CSB 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 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 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.”

A detailed plan for transition will be constructed and tailored to match the overall vision, guidance from the Commission, and other milestones necessary to facilitate transition to the public power model. That plan will address and include at least the following key topics:

Timeline – There are approximately 25 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 – 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 – The proposed legislation in Appendix A provides legislative authority to modify LIPA’s governance structure in order to facilitate transition to a public power model. 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 – Appendix A contains proposed legislation to facilitate LIPA’s transition to a public power model. Many qualitative factors and considerations are 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 its own internal capabilities to assure competence in this area. LIPA will need to pursue activities such as initiating community involvement, increasing awareness about the Community Stakeholder Board, 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.

The LIPA Options Analysis states that 1-2 years will be required to complete all required transition activities. The Commission determined that 2 years does not seem unrealistic, but completion in 1 year is likely not feasible given all that will be required. 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.

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

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 in Appendix A) and completion of required procedures (including passing of legislation within the current legislative session) needs to occur in early 2024. This is a critical path activity.

IT Systems and Affiliate Services Transition – As noted above, this transition has already begun. An additional 25 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 – A 12 to 18-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 provider 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. PSEG LI, in some circumstances, initiates suggestions necessary to enhance and maintain the T&D System. However, the majority of performance initiatives come from LIPA, which ultimately has 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). 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: 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.

In the event that transition reveals a contract is not held by LIPA or ServCo as principal, LIPA will need to evaluate if the contract should be assigned to LIPA or retained by PSEG LI.

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.⁴²⁵

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.

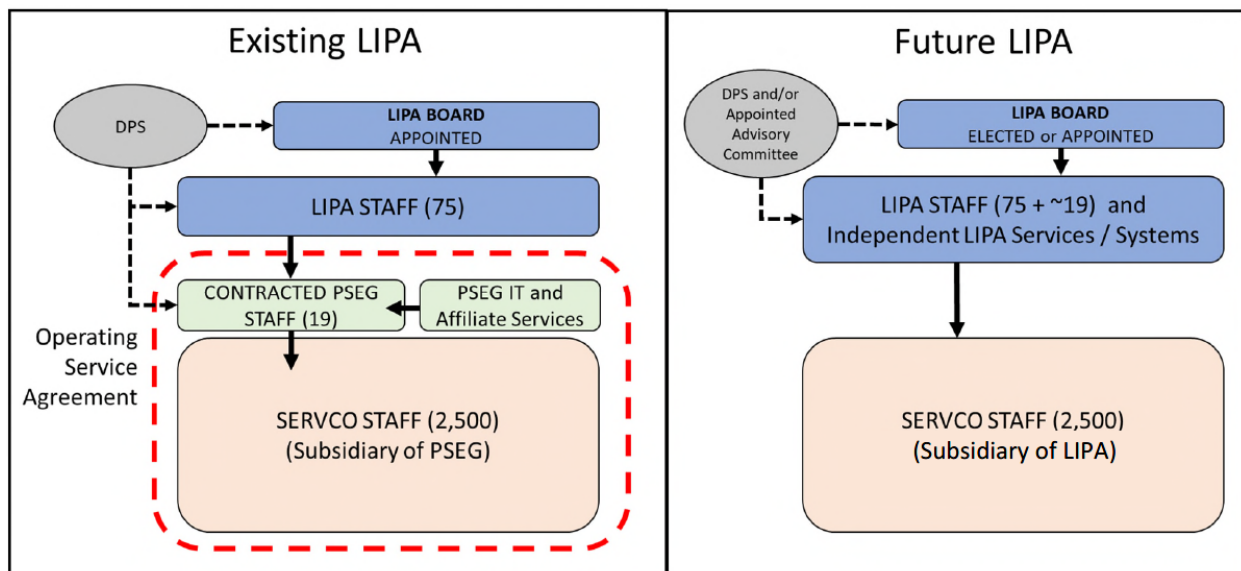
One approach to address this inefficiency would be to replace the senior leadership structure, that currently exists in PSEG LI, with LIPA management, to obtain direct managerial control over ServCo. This model would envision LIPA augmenting its management team, as needed, to replace the 19 PSEG LI directors 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 16 below describes the existing LIPA operational structure and a future LIPA operational structure after transitioning to a fully integrated public power model.

Figure 16



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 community stakeholder board would represent customer and stakeholder interests to that board. There are in effect, three potential governance paths:

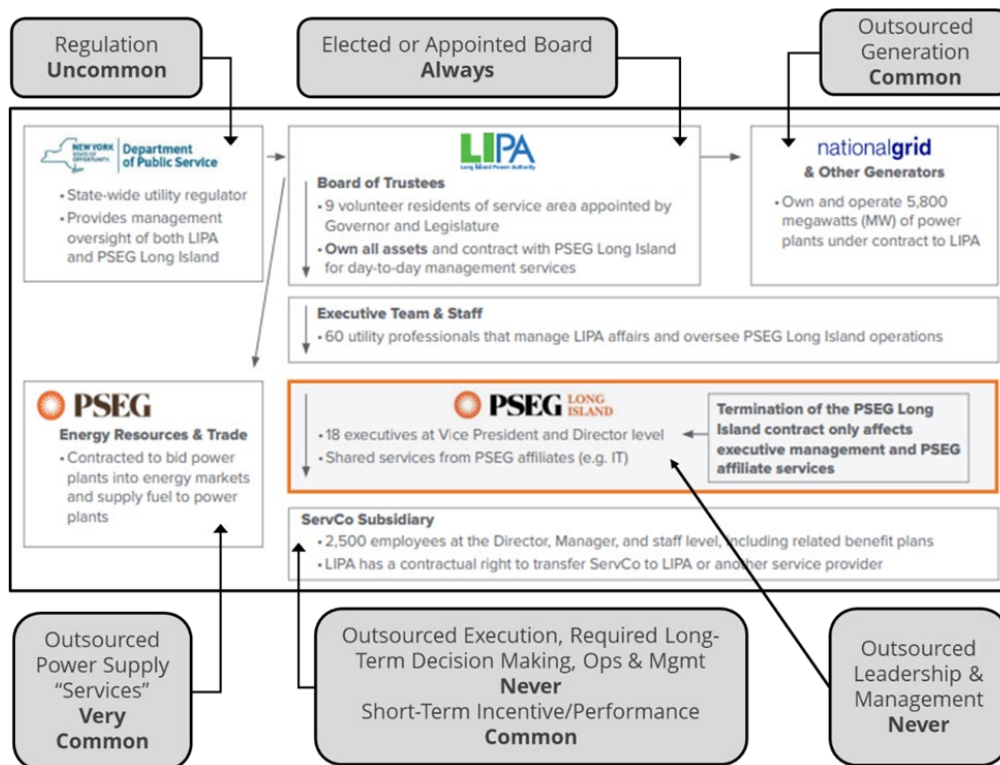
DPS Full Regulation – This is an unlikely outcome as adding further regulation and therefore rate-making authority would trigger bond and financing issues.

Middle Ground – Continuity of DPS review and recommendation oversight of LIPA operations and potentially additional customer advocacy from a CSB.

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

Figure 17 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 17



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.

b. 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 "envision[s] 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. LIPA will report quarterly to its Board on the progress of the IT Transition Plan compared to its milestones.

PART 6 - COMMISSION CONCLUSIONS ON GOVERNANCE, WORKFORCE STRUCTURE, AND LEGISLATIVE CHANGES NEEDED TO TRANSFORM LIPA TO A TRUE PUBLIC UTILITY

Through the research and analysis conducted in preparing the Draft Report and this Final Report, the Commission has identified specific steps that must be taken 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. This Part describes decisions the Commission made regarding LIPA's governance structure and workforce structure, and the legal and operational steps required to implement necessary changes.

A. Governance

LIPA's transition to a fully public power operational entity requires a more responsive, accountable, and transparent governance model. The Commission examined the performance of various large public power utilities in areas such as customer satisfaction, reliability, and credit rating, and found that there is no one governance model that consistently outperforms. After weighing all relevant factors, including maintaining the status quo as near as possible with ServCO, the Commission concluded that an appointed board is the best governance model for LIPA, its territory, and its customers. The Commission further determined that DPS must retain its existing "review and recommendation" authority over LIPA's new appointed board.

1. Board Model

Governance is focused on utility leadership, and the Commission's initial decision consisted of two main components: (i) whether LIPA's board should be elected, appointed, or involve a hybrid model (both appointed and elected), and (ii) what role a citizens' advisory committee or energy observatory should 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, the exercise of good leadership creates and drives effective execution of a well-developed strategic plan and maintains the status quo as near as possible with ServCo.

A key component in determination of LIPA's governance model was whether the governing board should be appointed or elected. Additional key determinations made by the Commission include (i) board size, (ii) trustee 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/CSB (or some other model – e.g., observatory) should be created, and if so, how it should be utilized; and (v) whether state public service regulatory involvement should continue, and if so, with what level of oversight. Further, because the Commission determined LIPA should be governed by an appointed board, the Commission was required to determine the following elements: (i) by whom appointments are made (local and/or state elected officials, etc.); (ii) selection criteria for prospective appointees (geographic, demographic, expertise, etc.); and (iii) whether any elected official(s) or others hold 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 LIPA 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, there must be a clear understanding of trustees' responsibilities and the duties of the board as a whole. The Commission kept these goals in mind as it determined board composition and the appointment process.

2. Board Composition

The Commission determined that an appointed board with thirteen (13) trustees will provide the most effective governance structure for LIPA. All of the trustees would be required to be residents of the service area. Specifically, the Governor will appoint two trustees, one of whom shall serve as chairperson of the board. The Senate Majority Leader, after consultation with all senators representing LIPA's entire Service Area, will appoint two trustees, and the Speaker of the Assembly, after consultation with all assembly members representing LIPA's entire Service Area, will appoint two trustees. The Nassau County Executive will appoint two trustees with the consent of the Nassau County legislature, and the Suffolk County Executive will appoint two trustees with the consent of the Suffolk County legislature. One trustee shall be appointed by the New York

City Mayor upon the recommendation of the Queens Borough President. Lastly, the Chair of the Community Stakeholder Board (discussed below) and the Business Manager of IBEW 1049 will serve as trustees. This method of appointment ensures trustees will be appointed by a geographically diverse group of representatives and thus increase local engagement. This method of appointment also ensures that LIPA employees, including transitioned ServCo employees, are represented on the board. All trustees will serve staggered five-year terms, except the CSB Chair and the Business Management of IBEW 1049, who will serve as long as they occupy their respective positions. All trustees must have relevant utility, engineering, energy, information technology, construction, law, human resources, procurement, customer service, management, corporate board or financial experience. Trustees will be compensated \$25,000 per year plus expenses in order to encourage well-qualified individuals to serve and invest the considerable amount of time that board membership requires. So-called “hold-over” appointments, where a Trustee remains in office at the end of his or her term without being formally reappointed, will be prevented by providing that a Trustee slot is vacant upon the expiration of the Trustee’s five-year term of office.

3. Community Stakeholder Board

The Commission recommends legislative establishment of a twenty-six-member Community Stakeholder Board to provide guidance and industry expertise to the LIPA Board, serving two-year terms: ten each from Suffolk and Nassau Counties, and six from the Rockaways. The CSB shall be composed of ratepayers from diverse sectors and backgrounds with proper geographic diversity and stakeholder representation including social justice, environmental, Indigenous Nations, business, faith-based, labor, local government, economic development, energy, low and fixed income, Disadvantaged Communities, consumer, civic, and school districts. The proposed legislation in Appendix A outlines the manner in which CSB members will be selected, selection criteria for CSB members, as well as CSB responsibilities. Specifically, CSB members will be appointed by the Senate Majority Leader and Speaker of the Assembly in consultation with all state senators and assembly members that represent LIPA’s entire Service Area. Under the proposed legislation, the CSB will provide LIPA and the Board of Trustees with analyses and recommendations on significant elements of the operational plans, including but not limited to financial policies, cost allocation, rate design, and operational efficiency, and will submit its recommendations to the authority. The CSB will also assist DPS with generating and analyzing performance metrics for LIPA. The CSB will increase overall accountability to ratepayers as its Chair will serve on the LIPA Board. To assist the CSB in performing its duties, the legislation in

Appendix A requires that there shall be two dedicated LIPA Staff members who shall provide the CSB with administrative, research and other support necessary for the CSB to fulfill its responsibilities. CSB members will be compensated \$250 per diem for meetings plus expenses, and like Trustees, “hold-over” appointments will be eliminated.

4. DPS Oversight

The PSC will retain review and recommendation authority over LIPA, as well as the duty to perform comprehensive management and operations audits. The Board will continue to work with DPS to implement changes as necessary based on audit conclusions. DPS will continue to review any proposed rate changes over 2.5% to protect ratepayers with regard to rate increases. The Commission determined retaining the current level of DPS oversight is important as it will complement LIPA’s new Board appointment process, allow for collaborating with the CBS, and foster increased accountability for LIPA ratepayers.

B. Workforce Structure

1. ServCo Employees

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 the Draft Report and this Final Report, the Commission considered 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:

- LIPA corporate subsidiary (the MTA Model)
- LIPA control of ServCo (the LLC Model)
- LIPA employee leasing (the PEO Model)

The Commission recommends implementation of the LLC Model. This model will allow current employees to retain their benefits without rendering them state employees. The LLC model also

allows maintenance of the relationship with IBEW Local 1049. Importantly, the LLC Model also retains NLRB jurisdiction.

Although the LLC Model is the recommended model, to provide the greatest flexibility possible the proposed legislation permits LIPA, in its discretion, to utilize the services of a professional employer organization to maintain the employment and working conditions of the ServCo employees.

2. Additional Contractors and Contract Transition

The Second A&R OSA contemplates that PSEG may subcontract for certain 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 LI'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.

At the time of this Final Report, it cannot be determined 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 the 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.

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.

In order to help facilitate the transition of contracts, as well as afford LIPA flexibility with future contracts, the Commission recommends that LIPA not be subject to all bidding and pre-audit requirements required for public authorities. Rather, LIPA will only be subject to these requirements whenever such contract exceeds an amount established by the OSC in consultation with the authority. In addition, should an emergency arise during or after the transition, LIPA will not be subject to such requirements for contracts entered into for procurement of emergency goods and services but must follow thresholds and guidelines established by the OSC.

C. Legislative Action Required

Legislative action will require amendment of the existing Public Authorities Law, Public Service Law, Executive Law, and State Finance Law, in relation to the powers and duties of DPS, OSC and LIPA. As further described below, the proposed legislation in Appendix A is crafted to facilitate the transition of LIPA into a full public power model through modification of its authority to manage, operate, and control utility operations in its service area as well as modify its statutory, fiduciary, financial and relation obligations, so that LIPA will be able to operate the electric grid in its service area without the added expense and lack of accountability that comes from contracting out the operation of LIPA's grid to a private, investor-owned utility. A summary of the proposed changes and additions in Appendix A are as follows:

- 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 (Title 1-A), 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 as a public power utility 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.
- The proposed legislation reconstitutes the board governance model, the board structure, and the process to appoint trustees. The proposed legislation specifies the number of trustees, term length, and appointment criteria. The appointment criteria of Section 1020-e has been modified to expand the areas of expertise required of employees and consultants of LIPA. The appointment criteria have also been expanded to allow for the CSB Chair and the Business Manager of IBEW 1049 to serve as trustees, .

- The proposed legislation also creates a CSB and specifies the CSB's size, authority and scope and selection process for members in order to allow for a board composed of people representative of the Service Area. The CSB will be established to review and make recommendations to LIPA and its Board related to LIPA's operational plans, engagement with ratepayers, adequacy of financial policies, and strategic plans. Two dedicated LIPA Staff members will provide administrative, research, and other support to the CSB.
- The proposed legislation removes references to LIPA's service provider where appropriate. Many provisions in the Public Authorities Law require LIPA to oversee actions performed by the service provider or coordinate with the service provider for performance of LIPA's duties. The proposed legislation revises the Public Authorities Law 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 have been removed or reassigned to LIPA (for example, the service provider's obligation to submit performance metrics data to DPS). However, references to the service provider must remain in certain provisions, including the provisions regarding ongoing DPS audits. DPS audits are based on historic data, which initially will encompass the time period where LIPA's T&D system was managed by a service provider.
- Under a fully integrated public power utility model, LIPA will have increased staffing needs to replace roles and functions currently handled by PSEG LI employees. So, limitations on staffing previously set by the LRA will be removed. The proposed legislation amends section 1020-f(c) of the Public Authorities Law to allow LIPA to employ necessary staff positions to successfully operate as a true public power utility.
- The proposed legislation included provisions necessary for the transition of ServCo employees to LIPA. Specifically, the proposed legislation clarifies the terms and conditions of LIPA subsidiary employees' employment. Additionally, the proposed legislation amends the Public Authorities Law 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. The proposed legislation also ensures ServCo retirement plans can 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 OAG and “pre-audit” approval 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. The proposed legislation amends the Public Authorities Law to allow LIPA flexibility to enter into contracts with values over an amount established by the comptroller in consultation with the authority. However, the proposed legislation clarifies that bidding requirements and pre-audit requirements do not apply to contracts entered into for emergency goods or services or short-term power purchase contracts. Such exempt contracts must still be entered into pursuant to guidelines and thresholds established by the OSC in consultation with LIPA and must be submitted to the OSC within 60 days after their execution.
- 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 bond 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.
- As a fully public power authority LIPA will continue to be subject to DPS’s review and recommendation authority. LIPA’s ratemaking can be accomplished through LIPA’s existing statutory authority, which includes DPS oversight. No legislative amendments are proposed to change the level of DPS oversight over LIPA.

D. Operational Work Required

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. 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.

In addition, as the Lazard study and Moreland Commission noted, NYPA is not equipped to run a transmission and distribution system and NYPA's management of a public power effort could divert attention away from its historical mission. The Commission recommends the board leverage NYPA's expertise to the extent it can aid in operations and to the extent it does not interfere with NYPA's own operations. The Commission further recommends that LIPA seek input from NYPA on how best to plan for CLCPA compliance.

LIPA will rebrand itself to the extent necessary 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.

E. 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.

As noted above, new legislation and governance structure execution are critical path activities for the transition. The Commission and its Staff worked with the Legislative Bill Drafting Commission

to draft proposed legislation and continue to work toward completion of required procedures (including passing of legislation in the upcoming legislative session) that need to occur in early 2024 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 18 months to complete.

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 six 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 25 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. The Second A&R OSA also requires PSEG LI to facilitate and assist in the transition even after the agreement expires on December 31, 2025.

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 N.Y. Legislative Law § 83-N.

² 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).

³ T. Reid, *Let There Be Light: The History of LILCO in Northport*, Teresa Reid (January 25, 2020).

⁴ *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>

⁵ *Citizens for an Orderly Energy Pol'y, Inc. v. Cuomo*, 78 N.Y.2d at 407.

⁶ 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 Env'tl. Report (Decommissioning), United States Nuclear Regulatory Comm'n Dkt. No. 50-322 at 1-3 (Dec. 1990).

⁷ Long Island Power Authority Shoreham Nuclear Power Station Supplement to Env'tl. Report (Decommissioning), United States Nuclear Regulatory Comm'n Dkt. No. 50-322 at 1-3 (Dec. 1990).

⁸ M. Wald, *LILCO AND SHOREHAM*, N.Y. Times (June 8, 1984), <https://www.nytimes.com/1984/06/08/nyregion/lilco-and-shoreham.html>

⁹ *Dismantling of the Shoreham Nuclear Plant is Completed*, N.Y. Times (Oct. 13, 1994).

¹⁰ *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).

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 Env'tl. 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 Env'tl. 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 D.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, Valerie Anderson Campbell, Reverend Alfred L. Cockfield, Sheldon L. Cohen, Laureen Harris, Dominick Macchia, and Mili Makhijani, Esq.,. See, <https://www.lipower.org/about-us/board-of-trustees/>.

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/2023/09/Board-Policies-9-2023.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. 2023, <https://www.lipower.org/wp-content/uploads/2023/09/Board-Policies-9-2023.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. 2023, <https://www.lipower.org/wp-content/uploads/2023/09/Board-Policies-9-2023.pdf>

¹⁶⁰ LIPA Organizational Chart, https://www.lipower.org/wp-content/uploads/2023/10/2023_LIPAOrgCharts_Senior.pdf

¹⁶¹ LIPA Executive Management Team, <https://www.lipower.org/leadership/>.

¹⁶² By-Laws and Charters, LIPA Board Resolution #1322, pp. 39-40, <https://www.lipower.org/wp-content/uploads/2023/09/Board-Policies-9-2023.pdf>.

¹⁶³ LIPA 2023 Annual Work Plan, p. 9, <https://www.flipsnack.com/lipower/2023-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 Community Advisory Board, <https://www.lipower.org/community-advisory-board/>.

¹⁷⁰ LIPA Reform Act.

¹⁷¹ LIPA Careers, <https://www.lipower.org/careers/>.

¹⁷² 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.”

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ USDA Operating and Governance Policies, <https://www.lipower.org/udsa/udsa-operating-and-governance-policies/>.

¹⁷⁶ USDA 2023 Board Meeting Calendar, <https://www.lipower.org/udsa/schedule/>.

¹⁷⁷ 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).

¹⁷⁸ During the September 2023 Commission’s hearings, DPS LI testified that its budget is \$11 million, not \$13 million as stated in the Interim Report.

¹⁷⁹ PSL § 3-b(3)(a)(i).

¹⁸⁰ PSL §§ 3-b(a)-(h).

¹⁸¹ Oversight of LIPA and PSEG Long Island, <https://www.flipsnack.com/lipower/fact-sheet-utility-oversight/full-view.html>.

¹⁸² 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).

¹⁸³ 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>.

¹⁸⁴ Note that if a full municipal model is chosen, all contractual oversight DPS has pursuant to the Second A&R OSA will be terminated.

¹⁸⁵ Second A&R OSA, Section 5.1(A)(3)(b).

¹⁸⁶ PAL § 1020-f(u).

¹⁸⁷ 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*.

¹⁸⁸ LIPA Reform Act; PSL § 3-b(u).

¹⁸⁹ *Id.*

¹⁹⁰ PAL § 1020-f(u)(4).

¹⁹¹ PAL § 1020-f(u)(2).

¹⁹² PAL § 1020-f(u)(3).

¹⁹³ PAL § 1020-f(bb); PSL § 3-b(d).

¹⁹⁴ 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>

¹⁹⁵ PAL § 1020-f(bb)(2).

¹⁹⁶ PAL § 1020-f(bb)(3).

¹⁹⁷ PAL § 1020-f(bb)(4).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ PAL § 1020-f(bb)(5).

²⁰⁴ PSL § 66(21).

²⁰⁵ LIPA Board Policies, Board Resolution #1683, p. 8, <https://www.lipower.org/wp-content/uploads/2023/09/Board-Policies-9-2023.pdf>

²⁰⁶ PAL § 1020-n.

²⁰⁷ PAL § 1020-w.

²⁰⁸ PAL § 1020-cc.

²⁰⁹ PAL § 1020-k(4).

²¹⁰ PAL § 1020-mm(1).

²¹¹ Second Amended OSA § 4.5.

²¹² PSEG Long Island, Local 1049 Reach Agreement on Contract (November 4, 2023) (<https://www.psegliny.com/en/Newsroom/2023/110423-Contract>)

²¹³ In addition to the active employees, ServCo provides benefits to approximately 420 retired union and nonunion employees.

²¹⁴ 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.

²¹⁵ NYPA Strategic Alternatives, p. 7, <https://www.lipower.org/wp-content/uploads/2022/03/NYPA-2013-Study-of-LIPAs-Strategic-Alternatives.pdf>

²¹⁶ 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>.

²¹⁷ 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/2023/09/Board-Policies-9-2023.pdf>.

²¹⁸ PAL § 1020-x.

²¹⁹ *Id.*

²²⁰ *Id.*

221 *Id.*
 222 *Id.*
 223 LIPA 2022 Annual Work Plan, p. 9, <https://www.flipsnack.com/lipower/2023-annual-work-plan-report/full-view.html> .
 224 <https://www.lipower.org/community-advisory-board/>.
 225 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>.
 226 *Id.*
 227 EthicsPoint is a third-party, confidential reporting tool. EthicsPoint, https://secure.ethicspoint.com/domain/en/default_reporter.asp
 228 LIPA Investor Relations, <https://www.lipower.org/investors/>.
 229 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.
 230 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/>.
 231 PAL § 1020-kk.
 232 *Id.*
 233 PSL § 111-a; L. 2021, c. 826, § 1 (eff. Mar. 31, 2022) (amended L. 2022, c. 121, § 1).
 234 Based on unaudited figures supplied by LIPA.
 235 Section 1020-k(6) of the LIPA Act.
 236 Section 1020-f(u) of the LIPA Act.
 237 Section 701 of the Electric System General Revenue Bond Resolution, adopted May 13, 1998 (the “General Bond Resolution”).
 238 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.”
 239 Section 708 of the General Bond Resolution.
 240 *Patterson v. Carey*, 41 NY2d 714 (1977).
 241 *Id.* at 720.
 242 *Id.*
 243 Section 1020-f(u) of the LIPA Act.
 244 *Id.*
 245 LIPA 2020 Property Tax Report at 9.
 246 LIPA 2023 Board Policy on Taxes and PILOTS at 3.
 247 *Id.*
 248 LIPA 2020 Property Tax Report at 9 (citing American Public Power Association, 2018); LIPA 2023 Board Policy on Taxes and PILOTS at 3.
 249 LIPA 2020 Property Tax Report at 21.
 250 PAL § 1020-p.
 251 Falcone Response to BSK Request for Documents at p.5; see LIPA 2021 Board Policy on Taxes and PILOTS at 21-22.
 252 LIPA 2020 Property Tax Report at 21.
 253 *Id.*
 254 PAL § 1020-q; 2013 N.Y.S. Assembly Bill A8073 at 13.
 255 LIPA 2023 Board Policy on Taxes and PILOTS at 3.
 256 LIPA 2020 Property Tax Report at 11, n.6.
 257 LIPA 2023 Board Policy on Taxes and PILOTS at 3-5; LIPA 2020 Property Tax Report at 11.
 258 LIPA 2020 Property Tax Report at 11.
 259 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.
 260 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.
 261 *Id.* at 6, l-2.
 262 *Id.* at 9, 11-12, l-6.
 263 *Id.* at 6, l-3.
 264 *Id.* at l-7.

265 *Id.* at I-7, I-8.
266 *Id.*
267 *Id.* at 24, V-2.
268 *Id.* at 24, 35, V-2
269 *Id.*
270 *See id.* at I-9, I-10.
271 Note that this issue is discussed in detail in LIPA's Phase II Report.
272 *Id.* at I-9.
273 *Id.* at I-10.
274 *Id.*
275 *Id.* at 11, 12, I-11.
276 *Id.* at 36.
277 *Id.*
278 *Id.*
279 *Id.* at 12.
280 *Id.* at 34.
281 *Id.* at 37.
282 *Id.* at VI-6.
283 *Id.*
284 *Id.* at 23.
285 *Id.*
286 *Id.*
287 *Id.* at 29.
288 *Id.* at 23, 31.
289 Lazard at 7 (Dec. 20, 2012).
290 *Id.*
291 *Id.* at 12.
292 *Id.* at 10.
293 *Id.* at 14.
294 *Id.* at 2.
295 *Id.* at 2.
296 *Id.*
297 *Id.* at 2, 13.
298 *Id.* at 21.
299 *Id.*
300 *Id.*
301 *Id.*
302 *Id.*
303 *Id.*
304 *Id.* at 17.
305 *Id.*
306 *Id.*
307 *Id.*
308 New York Power Authority, *Report on Strategic Alternatives for Long Island Power Authority*, 3 (2013).
309 *Id.* at 2.
310 *Id.* at 6.
311 *Id.* at 7.
312 *Id.* at 4-5.
313 *Id.*
314 *Id.*
315 These included the 2010 Brattle Report and a 2011 review performed by Navigant.
316 *See NYPA Report on Strategic Alternatives* at 15-16.
317 *Id.* at 15.
318 *Id.* at 16.
319 *Id.* at 16.
320 *Id.* at 17.
321 *Id.*
322 *Id.*
323 *Id.* at 18.
324 *Id.*
325 *Id.*
326 *Id.* at 19.

327 *Id.*
328 LIPA Phase I Report at 3.
329 LIPA Phase II Report at 6.
330 LIPA Phase I Report at 5.
331 LIPA Phase II Report at 8.
332 LIPA Phase I Report at 5; LIPA Phase II Report at 8.
333 LIPA Phase I Report at 7; LIPA Phase II Report at 10.
334 LIPA Phase I Report at 8; LIPA Phase II Report at 11.
335 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.*
336 LIPA Phase I Report at 10; LIPA Phase II Report at 13.
337 *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.*
338 *Id.*
339 LIPA Phase II Report at 14.
340 *Id.*
341 LIPA Phase I Report at 14; LIPA Phase II Report at 16.
342 LIPA Phase I Report at 13; LIPA Phase II Report at 16.
343 LIPA Phase I Report at 15; LIPA Phase II Report at 17-18.
344 LIPA Phase II Report at 18.
345 *Id.* at 18-19.
346 LIPA Phase II Report at 21.
347 *Id.*
348 *Id.*
349 *See id.* at 18-19, 21.
350 *Id.*
351 *Id.* at 22.
352 *Id.*
353 *Id.*
354 *Id.*
355 *Id.* at 23, 31.
356 *See* LIPA Phase II Report at 24.
357 *Id.*
358 *Id.* at 26-27.
359 *Id.* at 26.
360 *Id.*
361 *Id.*
362 *Id.*
363 *Id.* at 24.
364 *Id.* at 28
365 *Id.* at 28.
366 *Id.* at 28-29.
367 *Id.*
368 *Id.*
369 *Id.*
370 *Id.*
371 *Id.*
372 *Id.* at 29
373 *Id.*
374 2022 Public Power Statistical Report | American Public Power Association | PublicPower.org
375 2021 APPA Data
376 IEEE 2021 Reliability Reported Statistics
377 IEEE 2021 Reliability Reported Statistics
378 Data from LIPA's 2023 Approved Budgets.
379 During the Commission's hearings, DPS LI testified that its budget is \$11 million, not \$13 million as stated in the Draft Report.
380 As discussed in Part 5.A.4 of this Final Report, the Commission's consultant, NewGen, concluded that the projected financial savings associated with transitioning LIPA to a fully public power authority are reasonable, and that the impact will be to lower rates for LIPA's customers, assuming the Board of Trustees chooses to use the financial savings to lower rates. NewGen further concluded that the potential cost savings is likely to be closer to the \$78 million identified in the LIPA Options Analysis, rather than the \$48 million identified as the Draft Report's conservative viewpoint.

³⁸¹ *Public Power Pays Back, Payments and Contributions by Public Power Utilities to State and Local Governments in 2020*, American Public Power Association (May 2022).

³⁸² Advancing Reliability and Resilience of the Grid, by T.J. Galloway, Sr.

³⁸³ Second A&R OSA, p. 25.

³⁸⁴ *Id.* at 272.

³⁸⁵ Federal Disaster Assistance Response and Recovery Programs; Brief Summaries, Congressional Research Service RL31734.

³⁸⁶ Enhancing Resilience of the Nation's Electricity System: Leveraging Federal Assistance, Craig Zamuda NARUC November 19, 2019.

³⁸⁷ 2022 Proposed Budget: Clean, Reliable, Customer-First December 15, 2021 Tamela Monroe.

³⁸⁸ The Annual Disclosure Report for Long Island Power Authority (Fiscal Year 2021) was used to inform portions of this section.

³⁸⁹ LIPA CEO Thomas Falcone is a member of the Climate Action Council.

³⁹⁰ Scoping Plan, p. 226.

³⁹¹ *Id.* at p. 416.

³⁹² The Commission has not recommended either the MTA model or the PEO model because they do not meet the objectives for the future of LIPA. See Interim Report Part 5.E.2. Under the MTA model the ServCo employees would become public sector employees under the Taylor Law. This result was deemed unacceptable because the employees and their union representatives would have materially different rights and protections as compared to the rights that are currently available under the NLRA. Further, the Commission views the PEO model as having significant shortcomings, including: (i) a more complicated structure that would require identifying or establishing a certified PEO; (ii) carrying forward 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; (iii) 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; and (iv) the inclusion of the PEO also adds an additional layer of cost to the ongoing operation of LIPA. However, although there are identified shortcomings, the proposed legislation does permit LIPA, in its discretion, to utilize the services of a PEO in order to maintain the employment and working conditions of the ServCo employees.

³⁹³ PAL § 1020-f(o).

³⁹⁴ PAL § 1020-i(1).

³⁹⁵ 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).

³⁹⁶ 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.

³⁹⁷ By definition, a business corporation is a private, for profit entity. See N.Y. Bus. Corp. Law § 102(a)(4).

³⁹⁸ By definition, a business corporation is a private, for profit entity. See N.Y. Bus. Corp. Law § 102(a)(4).

³⁹⁹ See, *EPE, Inc. v. NLRB*, 845 F.2d 483, 487 (4th Cir 1988); *Hendricks-Miller Typographic Co.*, 240 NLRB 1082, 1083 fn. 4 (1979). Cf. *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272, 291 (1972).

⁴⁰⁰ While the NLRB has a procedure by which parties may request an advisory opinion on the issue of NLRB jurisdiction, such an opinion may only be sought in limited circumstances, when: (1) a proceeding is currently pending before the agency or court; (2) the petitioner is the agency or court itself; and (3) the relevant facts are undisputed or the agency or court already made the relevant factual findings. 29 C.F.R. § 101.39. As there is no pending proceeding and certain relevant facts remain to be resolved by the Legislature, we have not recommended that the Commission seek an advisory opinion from the NLRB regarding the NLRB's jurisdiction over a LIPA-owned ServCo.

⁴⁰¹ 29 U.S.C. § 152(2).

⁴⁰² See, *NLRB v. Natural Gas Utility District of Hawkins Cnty.*, 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).

⁴⁰³ *Concordia Electric Cooperative*, 315 NLRB 752 (1994).

⁴⁰⁴ A governmental plan is a plan established and maintained by the federal government, any state government, political subdivision, or any governmental agency or instrumentality. 29 U.S.C. § 1002(32).

⁴⁰⁵ See generally <https://www.electric.coop/our-organization/nreca-member-directory>

⁴⁰⁶ Press Release: NYPA Announces New Five-Year Contract Agreement with International Brotherhood of Electrical Workers. (December 15, 2022).

⁴⁰⁷ NYPA Sustainability Plan 2021-25 <https://nypa.gov/-/media/nypa/documents/document-library/esg-sustainability/nypa-sustainability-plan-2021-25.pdf>

⁴⁰⁸ <https://www.nypa.gov/power/transmission/transmission-operations-and-maintenance>
⁴⁰⁹ *Id.*
⁴¹⁰ www.nypa.gov
⁴¹¹ Press Release: *NYPA Announces New Five-Year Contract Agreement with International Brotherhood of Electrical Workers*. (December 15, 2022).
⁴¹² PAL §2824 (2021)
⁴¹³ PAL §1004 (2021)
⁴¹⁴ *Id.*
⁴¹⁵ NYPA Approved 2022 Budget and 2022-2025 Financial Plan at 2.
⁴¹⁶ By-Laws of the Power Authority of the State of New York at 9-10.
⁴¹⁷ 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.
⁴¹⁸ By-Laws of the Power Authority of the State of New York at 10-11.
⁴¹⁹ *Id.* at 11.
⁴²⁰ NYPA Annual Report (2021) <https://www.nypa.gov/-/media/nypa/documents/document-library/annual-reports/2021-nypa-annual-report.pdf>
⁴²¹ NY PUB §1005(g)
⁴²² The SRP Association Council has no governing responsibility for SRP's power operations, and only has authority to enact or amend bylaws.
⁴²³ During the Commission's hearings, DPS LI testified that its budget is \$11 million, not \$13 million as stated in the Draft Report.
⁴²⁴ 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.
⁴²⁵ PAL § 1020-e

Appendix

A

SPONSOR MEMO

TITLE OF BILL:

An act to amend the public authorities law, the executive law, the public service law, and the state finance law, in relation to powers and duties of the department of public service and the Long Island power authority.

Purpose:

This bill would facilitate the transition of the Long Island power authority (LIPA or the authority) into a full public power model through modification of its authority to manage, operate and control utility operations in its service area as well as to modify its statutory, fiduciary, financial and related obligations, so that LIPA would fully operate the electric grid in its service area without the added expense and lack of accountability that comes from contracting out the operations of LIPA's grid to a private, investor-owned utility.

Summary of Provisions:

Section 1 would name the act as the "Long Island power authority public power act".

Section 2 would establish the purpose of the act.

Section 3 would provide the justification of the amendments.

Section 4 would amend the legislative findings and declarations of Public Authorities Law (PAL) 1020-a.

Section 5 would remove and add definitions to PAL 1020-b.

Section 5-a would reconstitute LIPA's board of trustees composed of thirteen members with eleven members appointed by the governor, legislative leaders, Nassau and Suffolk County executives, and the mayor of New York City, and two members to include the chair of the Community Stakeholder Board and the business manager of the International Brotherhood of Electrical Workers 1049, amend eligibility criteria, and add a provision compensating trustees. This section would also add a new PAL 1020-d-1 that would establish a twenty-six-member Community Stakeholder Board appointed by the Senate majority leader and Speaker of the assembly in consultation with the state's entire legislative delegations representing LIPA's service area and appropriately staffed to review and make recommendations to LIPA and its board of trustees related to LIPA's operational plans,

engagement with ratepayers, adequacy of financial policies, and strategic plans.

Section 6 would (i) amend PAL 1020-e to define the areas of expertise required of employees and consultants of LIPA and (ii) amend PAL 1020-e to ensure that, during the transition to a fully public power model, employees of the authorities or any of its subsidiaries would be entitled to all existing pension or retirement benefits and would not be public employees eligible for the New York state and local employees' retirement system.

Section 7 would amend the general powers of LIPA (i) to allow appointment of officers, agents and employees, without regard to the New York State public employees fair employment act; (ii) to provide that contracts entered into by LIPA, other than for emergencies and public power purchases, would have to comply with bidding requirements under the General Municipal Law and obtain pre-audit approval from the Comptroller for contracts in excess of an amount to be determined by the Comptroller in consultation with LIPA; (iii) to provide an exemption, subject to guidelines and thresholds established by the Comptroller in consultation with LIPA, from pre-audit and bidding requirements for emergency contracts or short-term public power purchases ; (iv) to allow for the creation or acquisition of membership interests in subsidiaries; (v) to enter into agreements for operations of property or facilities owned by LIPA; (vi) to encompass powers previously held by the service provider; (vii) to recognize the New York State climate change and environmental goals as set forth in the climate leadership and community protection act enacted in chapter one hundred six of the laws of two thousand nineteen; and (viii) to allow for aid from the service provider for the period of time necessary to determine compliance with all performance metrics for purposes of calculating annual incentive compensation pursuant to any operations and service agreement of any former service provider.

Section 8 would (i) amend provisions related to LIPA acquiring, either directly or through a subsidiary the private entity known as the Long Island Electric Utility ServCo LLC (ServCo); and (ii) add provisions related to status of employees subsequent to being acquired either directly or through a subsidiary in order to allow for the employees to be treated as private sector employees subject to the national labor relations act and exempt from the New York state public employees fair employment act.

Section 9 would extend the requirements PAL 1020-p to any subsidiaries of LIPA.

Section 10 would amend PAL 1020-s to exempt LIPA from the provisions of section 94-c of the executive law and the jurisdiction of the office of renewable energy siting.

Section 11 would amend PAL 1020-u to exempt employees of LIPA's subsidiaries from the provisions of the public employees' fair employment act.

Section 12 would expand the applicability of PAL 1020-aa to subsidiaries of the authority.

Section 13 would amend PAL 1020-cc to require comptroller approval of contracts exceeding an amount established by the comptroller in consultation with the authority, except for contracts for emergency goods or services or short-term public power purchase agreements, which would not need such approval as long as they were entered into consistent with thresholds and guidelines established by the Comptroller in consultation with the authority.

Section 14 would amend PAL 1020-kk to remove references to the service provider.

Section 15 would replace "service provider" with "subsidiary" within PAL 1020-ll.

Section 16 would expand PAL 1020-mm to create an exemption for LIPA to allow it to enter into contracts for emergency goods or services or short-term public power purchase agreements without being subject to the bidding requirements or pre-audit requirements of the comptroller consistent with thresholds and guidelines established by the Comptroller in consultation with the authority.

Section 17 would replace "service provider" with "Long Island power authority" within subdivision 9 of section 24 of the executive law.

Section 18 would amend section 3-b of the public service law (PSL) to transition responsibility for implementation of department of public service recommendations from the service provider to the authority.

Section 19 would amend PSL 74-b(2)(c) to add the term "if applicable".

Section 20 would amend section 112 of the state finance law to require comptroller approval for contracts exceeding an amount established by the comptroller in consultation with the authority, except for contracts for emergency goods or services or short-term public power purchase agreements, pursuant to guidelines and thresholds established by the comptroller in consultation with the authority.

Section 21 would amend PAL 2827-a(1) to allow LIPA to organize a subsidiary corporation.

Section 22 would provide a severability clause.

Section 23 would make the bill effective on January 1, 2026.

Existing Law:

PSL § 3 established the powers of DPS, and PSL Article 1, § 3-b established the powers of the Long Island office of the DPS. PSL Article 4 establishes provisions related to regulation of price of gas and electricity. PAL Article 5, Title 1-a established the requirements and powers associated with LIPA. PAL Article 9, Title 4 established requirements for contracts of public authorities, and Chapter 56, Article VII established guidelines for accounts and audits subject to comptroller approval.

Justification:

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. Most recently, 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 owned by PSEG (ServCo). LIPA is the only electric utility in the United States using this type of third-party service provider management model. Numerous inefficiencies have been identified in this model and demands for change have been widespread.

New York Legislative Law section 83-n created the Commission on the Future of the Long Island Power Authority to provide the legislature with specific actions, legislation, and a timeline necessary to transform LIPA into a true publicly owned power authority. This bill would facilitate the transition of LIPA into a full public power model through modification of its authority to manage, operate and control utility operations in

its service area as well as to modify its statutory, fiduciary, financial and related obligations, so that LIPA would exclusively operate the electric grid in its service area without the added expense and lack of accountability that comes from contracting out the operations of LIPA's grid to a private, investor-owned utility.

Under a public power model, the day-to-day responsibilities of the LIPA board of trustees will increase. The roles and functions of the board must be revised to comply with the roles and responsibilities of a board of a public authority in accordance with Article 9, Title 2 of the Public Authorities Law.

Generally, the board size of public power utilities is varied to be large enough to represent the geographical footprint of the service area, but also small enough to allow for reasonable interaction and effective decision making. LIPA's board of trustees will be composed of thirteen members, including eleven members appointed by the governor, legislative leaders, Nassau County and Suffolk County executives, and the mayor of New York City, and two members representing labor and the twenty-six-member Community Stakeholder Board. LIPA board members will be compensated \$25,000 per year, and Community Stakeholder Board members will be compensated \$250 per meeting, to encourage well-qualified individuals to give the time and attention necessary to serve.

During the transition, LIPA will need to engage outside third parties to assist in building its own internal capabilities to assure competence in the service area. This bill creates a Community Stakeholder Board to supplement the expertise and experience of LIPA, to promote community involvement, and to ensure balanced representation from the broad service area. The Community Stakeholder Board, with a staff of at least full-time employees, will review and make recommendations to LIPA and its board of trustees related to the LIPA's operational plans, engagement with ratepayers, adequacy of financial policies, and strategic plans.

The ServCo workforce has unique expertise in managing and operating LIPA's electric grid. To achieve the objective of maintaining the ServCo workforce when LIPA becomes a full public power authority, legislation is proposed to facilitate the transition of ServCo employees to LIPA through LIPA's acquisition of the membership interest in ServCo. Legislation will clarify the terms and conditions of LIPA subsidiary

employees' employment. The proposed legislation will ensure that the current union relationships and agreements are maintained and that ServCo employees 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. The bill will further ensure that ServCo employees' retirement benefits are transitioned and secured. A public LIPA, supported by ServCo employees with years of experience, is well positioned to determine how best to improve reliability and resiliency of its transition and distribution system.

LIPA's general powers, as codified, are not sufficient to ensure that LIPA is well positioned to transition to a fully public model. While most of LIPA's general powers shall remain, several powers would be expanded to facilitate the transition. For example, LIPA's staffing authority is not sufficient because the LIPA Reform Act requires LIPA to function with staffing kept at levels only necessary to ensure it can meet its core obligations, including oversight of the service provider. This requirement is the reason LIPA has fewer than 100 employees, but the ability to hire and retain staff in roles currently filled by the service provider is vital to LIPA's future success as a fully public power utility. The bill would expand LIPA's general powers to allow appointment of officers, agents, and employees, without regard to the New York State public employees fair employment act.

During the transition to a fully public model, LIPA will assume responsibility for service obligations currently performed by the service provider. Thus, LIPA will require flexibility to fulfill obligations that will extend beyond the effective date of the legislation. Currently, LIPA is required to seek contractual approval from the state comptroller for all contracts over \$50,000, including in emergencies and in executing short-term public power purchase agreements. In contrast, the New York Power Authority has a much higher \$1,000,000 threshold for when it must seek contractual approval from the state comptroller, and contracts for bona fide emergencies and power purchase agreements are excluded from the pre-approval requirement entirely. Continuing to impose a \$50,000 threshold on LIPA may, in some business circumstances, make it difficult for LIPA to operate efficiently. This bill would require the comptroller, in consultation with LIPA, to establish thresholds for triggering pre-approval for ordinary contracts, and guidelines and thresholds for defining both the

scope and triggering amounts of contracts for emergency goods and services and short-term public power purchase agreements.

Under the current service provider model, the 2,500 employees who maintain LIPA's transmission and distribution system are employed by ServCo, a subsidiary of PSEG LI. To minimize disruptions to service and maintain efficiency of the transmission and distribution operations during any future transition, this bill will expand LIPA's power with respect to subsidiaries. The expanded powers will allow LIPA to acquire a membership interest in ServCo and continue to operate ServCo, as a subsidiary. This model will allow ServCo employees to remain private sector employees.

In two thousand nineteen, New York enacted the Climate Leadership and Community Protection Act (CLCPA), which is among the most aggressive climate laws in the nation. The CLCPA contains important requirements to ensure equity, electrical system reliability, and a just transition from a fossil fuel economy to a clean energy economy. LIPA is required to comply with CLCPA objectives, and it will be required to hire employees to assist with CLCPA compliance. This bill recognizes the CLCPA goals which will impact LIPA's authority to implement renewable energy and energy efficient programs.

Legislative History:

This is a new bill.

Budget Implications:

The transition to a fully integrated public power model is expected to save LIPA tens of millions of dollars a year by eliminating the need to hire a for-profit, investor-owned utility to operate LIPA's grid.

Effective Date:

The effective date of this bill is January 1, 2026.

DRAFT LBDC

AN ACT to amend the public authorities law, the executive law, the public service law and the state finance law, in relation to powers and duties of the department of public service and the Long Island power authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Long Island power authority public power act".

3 § 2. The purpose of this act is to facilitate transition of the Long
4 Island power authority ("LIPA") into a full public power model through
5 modifications of its authority to manage, operate and control utility
6 operations in its service area as well as to modify its statutory, fidu-
7 ciary, financial and related obligations, so that LIPA would fully oper-
8 ate the electric grid in its service area without the added expense and
9 lack of accountability that comes from contracting out the operations of
10 LIPA's grid to a private, investor-owned utility, and to give LIPA the
11 flexibility to use the PEO model as a secondary alternative to the LLC
12 model.

13 § 3. Title 2 of article 9 of the public authorities law governs the
14 roles and responsibilities of boards of public authorities. Through
15 adoption of the act and the amendments made by part A of chapter 173 of
16 the laws of 2013, the board's responsibilities were modified from those
17 afforded to the boards of other New York state public authorities. LIPA
18 is the only utility in the nation that is operated under a third-party
19 management model. This model has repeatedly failed its customers. There
20 has been a lack of transparency, oversight, and accountability. This
21 failure has been most dramatically evidenced in the unacceptable storm
22 response by LIPA and its third-party service contractors during Super-

1 storm Sandy in 2012 and Tropical Storm Isaias in 2020. In adopting
2 section 83-n of the legislative law, the legislature determined that a
3 better management alternative for LIPA must be implemented. The legisla-
4 ture proposed implementation of the original vision for LIPA intended by
5 chapter 517 of the laws of 1986, as a publicly owned power company.
6 Thus, amendment of title 1-A of article 9 of the public authorities law
7 is required to allow LIPA's board to function with full authority under
8 title 2 of article 9 of the public authorities law and as intended in
9 chapter 517 of the laws of 1986. LIPA's board must have the legislative
10 authority to effectively oversee LIPA's public power operations. Amend-
11 ment of the public authorities law, the public service law and the state
12 finance law are necessary to aid in the transition to a fully public
13 power model.

14 § 4. Section 1020-a of the public authorities law, as added by chapter
15 517 of the laws of 1986, is amended to read as follows:

16 § 1020-a. Declaration of legislative findings and declarations. The
17 legislature hereby finds and declares that:

18 [Constantly escalating and excessive costs of electricity in the coun-
19 ties of Suffolk and Nassau and that portion of the county of Queens
20 served by the Long Island lighting company (hereinafter referred to as
21 the "service area") pose a serious threat to the economic well-being,
22 health and safety of the residents of and the commerce and industry in
23 the service area.

24 There is a lack of confidence that the needs of the residents and of
25 commerce and industry in the service area for electricity can be
26 supplied in a reliable, efficient and economic manner by the Long Island
27 lighting company (hereinafter referred to as "LILCO").

1 Such excessive costs and lack of confidence have deterred commerce and
2 industry from locating in the service area and have caused existing
3 commerce and industry to consider seriously moving out of the service
4 area.

5 The decisions by LILCO to commence construction of the Shoreham nucle-
6 ar power plant and thereafter to continue such construction were impru-
7 dent.

8 The investment of LILCO in the Shoreham nuclear power plant has
9 created significant rate increases, straining the economic capabilities
10 of ratepayers in the service area, and likely will require further
11 substantial rate increases if such plant is placed in service.

12 It is uncertain whether the Shoreham nuclear plant ever will go into
13 commercial service, or if it does whether its reliability, cost of
14 construction, operation and maintenance will be such as to provide
15 sufficient, reliable and economic electric service to ratepayers in the
16 service area. The very substantial financial strain of the investment in
17 the Shoreham nuclear plant has required LILCO to suspend dividends on
18 its common and preferred stock, severely threatening the continued
19 economic viability of LILCO.

20 For all the above reasons, a situation threatening the economy, health
21 and safety exists in the service area.

22 Dealing with such a situation in an effective manner, assuring the
23 provision of an adequate supply of electricity in a reliable, efficient
24 and economic manner, and retaining existing commerce and industry in and
25 attracting new commerce and industry to the service area, in which a
26 substantial portion of the state's population resides and which encom-
27 passes a substantial portion of the state's commerce and industry, are
28 hereby expressly determined to be matters of state concern within the

1 meaning of paragraph three of subdivision (a) of section three of arti-
2 cle nine of the state constitution.

3 Such matters of state concern best can be dealt with by replacing such
4 investor owned utility with a publicly owned power authority. Such an
5 LIPA was created by the Long Island power authority act in nineteen
6 hundred eighty-six ("LIPA act") in response to growing dissatisfaction
7 with the Long Island lighting company ("LILCO"), an investor-owned gas
8 and electric utility that provided service to Long Island and the Rocka-
9 ways. Deteriorating confidence in LILCO's ability to provide affordable
10 and reliable rates and the controversial decision to build the Shoreham
11 Nuclear Power Plant created a situation that threatened the economy,
12 health, and safety in LILCO's service area. As a result, LIPA was grant-
13 ed broad powers to operate as a publicly owned power authority to
14 provide safe and adequate electrical service at rates that would benefit
15 ratepayers in the service area.

16 However, LIPA never established itself as a true "publicly owned power
17 authority" as originally envisioned by the legislature. Rather, since
18 nineteen hundred ninety-eight, LIPA has opted for a third-party manage-
19 ment model whereby LIPA contracts its responsibility to manage the util-
20 ity to a private, investor-owned utility company.

21 LIPA is the only utility in the nation that is operated under such a
22 third-party management model. The model's failures in efficiency, reli-
23 ability, transparency, oversight, and accountability have been well
24 documented over the years. In adopting section eighty-three-n of the
25 legislative law, establishing the commission on the future of LIPA and
26 charging it with the responsibility to present the legislature with "the
27 specific actions, legislation, and timeline necessary to restructure

1 LIPA into a true publicly owned power authority," the legislature deter-
2 mined that a better management alternative for LIPA must be implemented.

3 The legislature finds that a public power authority can best accom-
4 plish the purposes and objectives of this title by [implementing, if it
5 then appears appropriate, the results of negotiations between the state
6 and LILCO. In such circumstances, such an authority will provide]
7 providing safe and adequate service at rates which will be lower than
8 the rates which would otherwise result and will facilitate the shifting
9 of investment into more beneficial energy demand/energy supply manage-
10 ment alternatives, realizing savings for the ratepayers and taxpayers in
11 the service area and otherwise restoring the confidence and protecting
12 the interests of ratepayers and the economy in the service area. More-
13 over, [in such circumstances the replacement of such investor owned
14 utilities by such an authority will result in] a public power authority
15 will result in an improved system and reduction of future costs and a
16 safer, more efficient, reliable and economical supply of electric ener-
17 gy. The legislature further finds that such an authority shall utilize
18 to the fullest extent practicable, all economical means of conservation,
19 and technologies that rely on renewable energy resources, cogeneration
20 and improvements in energy efficiency which will benefit the interests
21 of the ratepayers of the service area.

22 § 5. Section 1020-b of the public authorities law, as added by chapter
23 517 of the laws of 1986, subdivision 11 as amended by chapter 381 of the
24 laws of 1987, subdivision 12-a as added by chapter 506 of the laws of
25 1995, and subdivisions 23 and 24 as added by section 3 of part A of
26 chapter 173 of the laws of 2013, is amended to read as follows:

27 § 1020-b. Definitions. As used or referred to in this title, unless a
28 different meaning clearly appears from the context:

1 1. "Acquire" means, with respect to any right, title or interest in or
2 to any property, the act of taking by the exercise of the power of
3 eminent domain, or acquisition by purchase or otherwise.

4 2. "Act" means the Long Island power authority act, being title one-A
5 of article five of the public authorities law, as added by [this title]
6 chapter five hundred seventeen of the laws of nineteen hundred eighty-
7 six, and as subsequently amended.

8 3. "Authority" means the Long Island power authority created by
9 section one thousand twenty-c of this title.

10 4. "Board" means the board of trustees of the authority.

11 5. "Bonds" or "notes" mean the bonds, notes or other obligations
12 issued by the authority pursuant to this title.

13 6. "Community stakeholder board" means a committee designed to supple-
14 ment the expertise and experience of the board to promote citizen
15 involvement and ensure balanced representation from its service area.

16 7. "Fair market value" means the value of property, real, personal or
17 mixed, which would be obtained in an arm's length transaction between an
18 informed and willing buyer under no compulsion to buy, and an informed
19 and willing seller under no compulsion to sell.

20 [7.] 8. "Federal government" means the United States of America and
21 any agency or instrumentality, corporate or otherwise, of the United
22 States of America.

23 [8.] 9. "Final determination" or "finally determined" means a judicial
24 decision (i) by the highest court of competent jurisdiction, or (ii) by
25 a court of competent jurisdiction from which no appeal has been taken
26 and the time within which to appeal has expired.

27 [9.] 10. "Governing body" means, with respect to any municipality, the
28 body having charge of the fiscal affairs of such municipality.

1 [10.] 11. "LILCO" means the Long Island lighting company, its subsid-
2 iaries and their successors and assigns, other than the authority.

3 [11.] 12. "Municipality" means any city, town, village, county, munic-
4 ipal corporation, district corporation, district or other political
5 subdivision of the state.

6 [12. "OCLD" means the original cost of assets, less depreciation.

7 12-a.] 13. "Project" means an action undertaken by the authority that:

8 (i) Causes the authority to issue bonds, notes or other obligations,
9 or shares in any subsidiary corporation, or

10 (ii) Significantly modifies the use of an asset valued at more than
11 one million dollars owned by the authority or involves the sale, lease
12 or other disposition of such an asset, or

13 (iii) Commits the authority to a contract or agreement with a total
14 consideration of greater than one million dollars and does not involve
15 the day to day operations of the authority.

16 [13.] 14. "Prudent utility practices" at a particular time means any
17 of the practices, methods, and acts, which, in the exercise of reason-
18 able judgment in light of the facts (including but not limited to the
19 practices, methods and acts engaged in or approved by a significant
20 portion of the gas or the electrical utility industry, as the case may
21 be, prior thereto) known at the time the decision was made, would have
22 been expected to accomplish the desired result at the lowest reasonable
23 cost consistent with reliability, safety and expedition. Prudent utility
24 practice is not intended to be limited to the optimum practice, method
25 or act, to the exclusion of all others, but rather to be a spectrum of
26 possible practices, methods or acts. In evaluating whether any matter
27 conforms to prudent utility practice, the parties shall take into

1 account the fact that the authority is a corporate municipality of the
2 state with the statutory duties and responsibilities thereof.

3 [14.] 15. "Real property" means lands, structures, franchises and
4 interests in land, including lands under water and riparian rights, and
5 any and all other things and rights usually included within such term,
6 and includes also any and all interests in such property less than full
7 title, such as easements, rights of way, uses, leases, licenses and all
8 other incorporeal hereditaments and every estate, interest or right,
9 legal or equitable, including terms for years and liens thereon by way
10 of judgments, mortgages or otherwise, and also all claims for damages
11 for such real estate.

12 [15. "RCNLD" means the reproduction cost of new assets, less depreci-
13 ation.]

14 16. "Security" means any note, stock (whether common or preferred),
15 bond, debenture, evidence of indebtedness, transferable share, voting-
16 trust certificate or, in general, any interest or instrument commonly
17 known as a "security", or any certificate of interest or participation
18 in, temporary or interim certificate for, receipt for, or warrant or
19 right to subscribe to or purchase any of the foregoing.

20 17. "Service area" means the counties of Suffolk and Nassau and that
21 portion of the county of Queens [constituting LILCO's franchise area]
22 known as the Rockaways served by the authority as of the effective date
23 of this title.

24 18. "ServCo" means the Long Island Electric Utility ServCo LLC and its
25 successors and assigns.

26 19. "Shoreham plant" means the nuclear powered facility designed to
27 generate electric power owned by LILCO and located in Shoreham, New
28 York.

1 [19.] 20. "State" means the state of New York.

2 [20.] 21. "State agency" means any board, authority, agency, depart-
3 ment, commission, public corporation, body politic or instrumentality of
4 the state.

5 [21.] 22. "Trustees" means the trustees of the authority appointed or
6 elected, as the case may be, pursuant to section one thousand twenty-d
7 of this title.

8 [22. "Valuation date" means (i) the effective date of this title, (ii)
9 the date of the taking of the stock or assets pursuant to this title or
10 (iii) such earlier or later date or, in the case of equity or debt secu-
11 rities, such period of trading days in the primary established market in
12 which such securities are traded, as may be determined to be necessary
13 to exclude from the determination of the market value thereof any
14 enhancement or depreciation in value arising from the announcement,
15 expectation or accomplishment of the taking by the exercise of the power
16 of eminent domain or otherwise, or speculative market activity intended
17 to cause or having the effect of causing an increase or decrease in such
18 market value.]

19 23. "Service provider" means [the] any entity under contract with the
20 authority to provide management and operation services associated with
21 the authority's electric transmission and distribution system and any
22 subsidiary of such entity that provides such services under contract
23 prior to an acquisition of ServCo by the authority.

24 24. "Operations services agreement" means an agreement and any amend-
25 ments thereto between [the Long Island lighting company dba LIPA or] the
26 authority or a subsidiary of the authority pursuant to subdivision one
27 of section one thousand twenty-i of this title and [the] a service

1 provider to provide management and operation services associated with
2 the authority's electric transmission and distribution system.

3 25. "Contracts for emergency goods or services" shall mean contracts
4 entered into for procurement of goods, services or both goods and
5 services made to meet emergencies arising from unforeseen causes or to
6 effect repairs to critical infrastructure that are necessary to avoid
7 delay in the delivery of critical services that could compromise the
8 public welfare.

9 26. "Short-term public power purchase agreement" shall mean contracts
10 for the purchase, sale, or delivery of power or energy, fuel, costs and
11 services ancillary thereto, or financial products related thereto, with
12 a term of less than five years.

13 § 5-a. Section 1020-d of the public authorities law, as amended by
14 section 4 of part A of chapter 173 of the laws of 2013, is amended and a
15 new section 1020-d-1 is added to read as follows:

16 § 1020-d. Board of trustees. 1. Starting on January first, two thou-
17 sand [fourteen] twenty-six, the board of the authority shall be consti-
18 tuted and consist of [nine] thirteen trustees all of whom shall be resi-
19 dents of the service area, [five] two of whom shall be appointed by the
20 governor (trustees one and two), one of whom the governor shall desig-
21 nate as chair, and serve at his or her pleasure, two of whom shall be
22 appointed by the temporary president of the senate after consultation
23 with the state senator or senators representing the LIPA service area
24 (trustees three and four), [and] two of whom shall be appointed by the
25 speaker of the assembly after consultation with the state assembly
26 member or members representing the LIPA service area (trustees five and
27 six), two of whom shall be appointed by the Nassau county executive with
28 the consent of the Nassau county legislature (trustees seven and eight),

1 two of whom shall be appointed by the Suffolk county executive with the
2 consent of the Suffolk county legislature (trustees nine and ten), one
3 of whom shall be appointed by the mayor of the city of New York upon the
4 recommendation of the Queens borough president (trustee eleven), one of
5 whom shall be the LIPA community stakeholder board chair (trustee
6 twelve), and one of whom shall be the business manager of the Interna-
7 tional Brotherhood of Electrical Workers 1049 representing the union
8 employees of LIPA (trustee thirteen). Trustees one through eleven shall
9 serve staggered five-year terms, except during the first term of
10 appointments upon the effective date of the chapter of the laws of two
11 thousand twenty-four which amended this section. Trustees three and five
12 shall be appointed for one year, trustees seven and ten shall be
13 appointed for two years, trustees one and nine shall be appointed for
14 three years, trustees six and eight shall be appointed for four years,
15 and trustees two, four, and eleven shall be appointed for five years.
16 This will allow for staggered appointments of at least two members each
17 year after the first year, thus ensuring a degree of continuity of
18 committee membership. [One of the governor's appointees shall serve an
19 initial term of two years; one of the governor's appointees shall serve
20 an initial term of three years; and three of the governor's appointees
21 shall serve an initial term of four years. One of the appointees of the
22 temporary president of the senate and one of the appointees of the
23 speaker of the assembly shall serve initial terms of two years; and one
24 appointee of the temporary president of the senate and one appointee of
25 the speaker of the assembly shall serve initial terms of three years.
26 Thereafter, all terms shall be for a period of four years. In the event
27 of a vacancy occurring in the office of trustee by death, resignation or
28 otherwise, the respective appointing officer shall appoint a successor

1 who shall hold office for the unexpired portion of the term.] An office
2 shall be deemed vacant upon the expiration of the term.

3 2. [No trustee shall receive a salary, but each shall be entitled to
4 reimbursement for reasonable expenses in the performance of duties
5 assigned hereunder.] Each member shall be entitled to receive a salary
6 of twenty-five thousand dollars per year plus the reimbursement of
7 reasonable expenses.

8 3. Notwithstanding the provisions of any other law, no trustee, offi-
9 cer or employee of the state, any state agency or municipality appointed
10 a trustee shall be deemed to have forfeited or shall forfeit his or her
11 office or employment by reason of his or her acceptance of a trusteeship
12 on the authority, his or her service thereon or his or her employment
13 therewith.

14 4. All trustees appointed under this section shall have relevant util-
15 ity, engineering, energy, information technology, construction, law,
16 human resources, procurement, customer service, management, corporate
17 board or financial experience.

18 § 1020-d-1. Community stakeholder board. 1. Starting on January first,
19 two thousand twenty-six, there shall be established a community stake-
20 holder board ("CSB").

21 2. The CSB shall be composed of twenty-six members, five of whom shall
22 reside in Nassau county and be appointed by the speaker of the assembly
23 in consultation with the Nassau county delegation, five of whom shall
24 reside in Suffolk county and be appointed by the speaker of the assembly
25 in consultation with the Suffolk county delegation, three of whom shall
26 reside in the Rockaways and be appointed by the speaker of the assembly
27 in consultation with the New York state legislative delegation repres-
28 enting the Rockaways, five of whom shall reside in Nassau county and be

1 appointed by the temporary president of the senate in consultation with
2 the Nassau county delegation, five of whom shall reside in Suffolk coun-
3 ty and be appointed by the temporary president of the senate in consul-
4 tation with the Suffolk county delegation, and three of whom shall
5 reside in the Rockaways and be appointed by the temporary president of
6 the senate in consultation with the New York state legislative deleg-
7 ation representing the Rockaways. The CSB shall be composed of ratepay-
8 ers and made up of members from diverse sectors and backgrounds with
9 proper geographic diversity and stakeholder representation including
10 social justice, environmental, indigenous nations, business, faith-
11 based, labor, local government, economic development, energy, low and
12 fixed income, members of disadvantaged communities, consumer, civic and
13 school districts.

14 3. a. The term of appointment of the members of the CSB shall, in
15 general, be two years. Members of the CSB may be appointed for more than
16 one term.

17 b. CSB member terms shall end on December thirty-first, two years
18 after the commencement of the term and each position shall be vacant
19 upon expiration.

20 c. Upon three consecutive unexcused absences, a CSB member shall be
21 dismissed and his or her seat shall be considered vacant by operation of
22 law.

23 d. CSB members shall be paid two hundred fifty dollars per diem for
24 meetings and shall be reimbursed for reasonable expenses for attending
25 meetings.

26 4. The community stakeholder board shall:

27 a. review and assess the authority's and board of trustees' opera-
28 tional plans and provide an opinion on the merits of the plan and future

1 revisions to it to the authority. The CSB anticipates that the opera-
2 tional plans will at a minimum consider long term strategies to rehabil-
3 itate and maintain the authority's infrastructure, provide for labor-
4 force continuity, maintain a portfolio of adequate resources to meet the
5 needs of its customers, and ensure continued regulatory compliance. The
6 CSB will advise the authority and board of trustees to include other
7 issues that should be part of the authority's planning framework;

8 b. consult DPS-LI to set appropriate metrics for monitoring LIPA;

9 c. assist the authority and board of trustees in engaging ratepayers
10 in discussions of the merits and implications of the operation plans and
11 revisions thereto;

12 d. provide an assessment to the authority and board of trustees of the
13 adequacy of financial policies to protect the financial integrity of the
14 utility and the sufficiency of the policies to support implementation of
15 the adopted strategic plan;

16 e. review changes to the authority's rates not already authorized by
17 this chapter and provide an opinion to the authority on the adequacy and
18 prudence of such rate changes in light of adopted planning assumptions
19 and financial policies;

20 f. after the adoption of each update to the strategic plan, work
21 closely with authority staff designated by the authority to propose, in
22 writing, a biennial work program to the authority, which may focus on
23 issues including, but not limited to, financial policies, cost allo-
24 cation, rate design, operational efficiency, issues requested by the
25 authority, and issues the CSB believes the authority should consider;
26 and

27 g. provide the authority and board of trustees with analyses and
28 recommendations on significant elements of the operational plans includ-

ing, but not limited to, financial policies, cost allocation, rate design, operational efficiency, and to submit its recommendations to the authority or, if a collective recommendation cannot be reached, a recommendation indicating the majority and minority positions and the rationales for those positions.

5. a. The CSB shall establish its own by-laws and rules for election of chairs and officers, quorum, meeting frequency, sub-committees, etc., except that the CSB shall meet at least four times in any twelve-month period. Meetings shall be subject to the open meetings law.

b. The minutes of CSB meetings and proceedings and CSB findings and recommendations shall be made public, subject to the freedom of information law.

c. There shall be two dedicated LIPA staff members hired with the consent of the CSB to provide the CSB with administrative, research, and other support necessary for the CSB to fulfill its responsibilities.

d. LIPA shall provide the CSB with information and data as requested within a reasonable amount of time.

§ 6. Section 1020-e of the public authorities law, as added by chapter 517 of the laws of 1986, is amended to read as follows:

§ 1020-e. Officers and employees; expenses. The board, or the [chairman] chairperson pursuant to authority duly delegated to him or her, from time to time shall hire, without regard to any personnel or civil service law, rule or regulation of the state [and in accordance with guidelines adopted by the authority], such employees and consultants, including without limitation those in the areas of engineering, marketing, finance, appraisal, accounting [and], law, construction, transmission and distribution, energy management, information technology, cyber security, power supply, human resources, procurement, treasury,

1 energy efficiency, customer service and any other area of utility oper-
2 ations, as it may require for the performance of its duties and shall
3 prescribe the duties and compensation of each officer and employee,
4 provided, however, that [if] any such employees [are] hired, leased, or
5 otherwise retained by the authority or any of its subsidiaries as a
6 consequence of an acquisition of all the [stock or assets of LILCO]
7 membership interests in, or assets of, ServCo, or any authority subsid-
8 iary [they] shall be hired subject to, and be entitled to, all applica-
9 ble provisions of (i) any existing contract or contracts with labor
10 unions representing ServCo employees, and (ii) all existing pension,
11 retirement, or other [retirement plans] benefits provided to ServCo
12 employees under any existing collective bargaining agreement. ServCo
13 employees shall not be public employees or eligible to become members of
14 the New York state and local employees' retirement system. [Notwith-
15 standing the provisions of any general, special or local law, the board
16 may determine that, if any pension or retirement plan becomes inapplica-
17 ble or is terminated, all or such class or classes of employees of the
18 authority as the board may determine may elect to become members of the
19 New York state employees' retirement system on the basis of compensation
20 payable to them by the authority.]

21 § 7. Subdivisions (c), (h), (o), (s), (u), (bb), (cc), (dd), (ee),
22 (ff), (gg), (hh) and (ii) of section 1020-f of the public authorities
23 law, subdivisions (c) and (bb) as amended and subdivisions (u), (cc),
24 (dd), (ee), (ff), (gg) and (hh) as added by section 7 of part A of chap-
25 ter 173 of the laws of 2013, subdivisions (h), (o) and (s) as added by
26 chapter 517 of the laws of 1986, paragraph 2-a of subdivision (u) as
27 added by chapter 471 of the laws of 2014, paragraph 5 of subdivision
28 (bb) as added by chapter 358 of the laws of 2020, paragraph 1 of subdivi-

1 vision (cc) as separately amended by chapter 395 of the laws of 2022 and
2 chapter 38 of the laws of 2023, and subdivision (ii) as amended by chap-
3 ter 121 of the laws of 2022, are amended to read as follows:

4 (c) To appoint officers, agents and employees[,] of the authority or
5 any subsidiary without regard to any personnel or civil service law,
6 rule or regulation of the state, including but not limited to the New
7 York state public employees fair employment act, and in accordance with
8 guidelines adopted by the authority, prescribe their duties and quali-
9 fications and fix and pay their compensation[. By January first, two
10 thousand fourteen, the authority, through its governance committee,
11 shall amend such guidelines to require that staffing at the authority is
12 kept at levels only necessary to ensure that the authority is able to
13 meet obligations with respect to its bonds and notes and all applicable
14 statutes and contracts, and oversee the activities of the service
15 provider];

16 (h) To make and execute agreements, contracts and other instruments
17 necessary or convenient in the exercise of the powers and functions of
18 the authority under this title, including contracts with any person,
19 firm, corporation, municipality, state agency or other entity in accord-
20 ance with the provisions of section one hundred three of the general
21 municipal law, and all state agencies and all municipalities are hereby
22 authorized to enter into and do all things necessary to perform any such
23 agreement, contract or other instrument with the authority, except that
24 (i) the authority's contracts, other than as specified in paragraph (ii)
25 of this subdivision, shall only be subject to bidding requirements and
26 pre-audit requirements whenever such contract exceeds an amount estab-
27 lished by the comptroller in consultation with the authority, and (ii)
28 the authority's contracts entered into for categories described in para-

1 graphs (c) through (e) of subdivision three of section twenty-eight
2 hundred seventy nine-a of this chapter, shall not be subject to the
3 bidding requirements or pre-audit requirements of the comptroller pursu-
4 ant to section one thousand twenty-mm of this title, but must be entered
5 into pursuant to guidelines and thresholds established by the comp-
6 troller in consultation with the authority. Any such contracts must be
7 filed with the comptroller within sixty days after their execution;

8 (o) To create or acquire one or more wholly owned subsidiaries or
9 membership interests in subsidiaries in accordance with section one
10 thousand twenty-i of this title to carry out all or any part of the
11 purposes of this title;

12 (s) To enter into [management] agreements for the operation of all or
13 any of the property or facilities owned by the authority;

14 (u) Rate plans. Subject to subdivision six of section one thousand
15 twenty-k of this title to fix rates and charges for the furnishing or
16 rendition of gas or electric power or of any related service at the
17 lowest level consistent with sound fiscal and operating practices of the
18 authority and which provide for safe and adequate service. In implement-
19 ing this power:

20 1. [The authority and the service provider shall, on or before Febru-
21 ary first, two thousand fifteen, submit for review to the department of
22 public service a three-year rate proposal for rates and charges to take
23 effect on or after January first, two thousand sixteen.

24 2.] (i) The authority [and the service provider] shall [thereafter]
25 submit for review to the department of public service any rate proposal
26 that would increase the rates and charges and thus increase the aggre-
27 gate revenues of the authority by more than two and one-half percent to
28 be measured on an annual basis; provided, however, that the authority

1 may place such rates and charges into effect on an interim basis,
2 subject to prospective rate adjustment; provided, further, that a final
3 rate plan issued by the authority that would not so increase such rates
4 and charges shall not be subject to the requirements of paragraph [four]
5 three of this subdivision and shall be considered final for the purposes
6 of review under article seventy-eight of the civil practice law and
7 rules. The authority [and/or the service provider] may otherwise submit
8 for review to such department any rate proposal irrespective of its
9 effect on revenues.

10 [2-a.] (ii) The authority [and the service provider] shall not submit
11 any rate proposal that shall assess any fee, penalty or other charge of
12 any kind for the voluntary termination of electric service to any resi-
13 dential customer for the purpose of utilizing alternative sources of
14 electric generation in excess of that charged to customers who terminate
15 their electric service for any other reason.

16 [3.] 2. The authority shall not fix any final rates and charges
17 proposed that would not be subject to review by the department of public
18 service pursuant to [paragraphs] paragraph one [and two] of this subdi-
19 vision until after holding public hearings thereon upon reasonable
20 public notice, with at least one such hearing to be held each in the
21 county of Suffolk [and], the county of Nassau, and the county of Queens.

22 [4.] 3. Any recommendations associated with a rate proposal submitted
23 pursuant to [paragraphs] paragraph one [and two] of this subdivision
24 shall be provided by the department of public service to the board of
25 the authority immediately upon their finalization by the department.
26 Unless the board of the authority makes a preliminary determination in
27 its discretion that any particular recommendation is inconsistent with
28 the authority's sound fiscal operating practices, any existing contrac-

1 tual or operating obligations, or the provision of safe and adequate
2 service, the board shall implement such recommendations as part of its
3 final rate plan and such final determination shall be deemed to satisfy
4 the requirements of this subdivision and be considered final for the
5 purposes of review under article seventy-eight of the civil practice law
6 and rules. The board shall make any such preliminary determination of
7 inconsistency within thirty days of receipt of such recommendations,
8 with notice and the basis of such determination being provided to the
9 department of public service, and contemporaneously posted on the
10 [websites] website of the authority [and its service provider]. The
11 board shall thereafter, within thirty days of such posting and with due
12 advance notice to the public, hold a public hearing with respect to its
13 preliminary determination of inconsistency. At such hearing, the depart-
14 ment of public service shall present the basis for its recommenda-
15 tions[,] and the board shall present the basis for its determination of
16 inconsistency [and the service provider may present its position]. The
17 authority [and the service provider] may, during the time period before
18 such public hearing reach agreement with the department on disputed
19 issues. Within thirty days after such public hearing, the board of the
20 authority shall announce its final determination and planned implementa-
21 tion with respect to any such recommendations. The authority's final
22 determination of inconsistency shall be subject to any applicable judi-
23 cial review proceeding, including review available under article seven-
24 ty-eight of the civil practice law and rules.

25 (bb) Comprehensive and regular management and operations audits. 1.
26 The authority, and [the] if necessary, any service provider who provided
27 service during the period of time covered by the audit shall cooperate
28 in the undertaking and completion of a regular and comprehensive manage-

1 ment and operations audit conducted pursuant to the requirements of this
2 subdivision and paragraph (d) of subdivision three of section three-b of
3 the public service law. Such audit shall review and evaluate the overall
4 operations and management of the authority and service provider, includ-
5 ing such operations and management in the context of the authority's
6 duty to set rates at the lowest level consistent with standards and
7 procedures provided in subdivision (u) of this section, and include, but
8 not be limited to: (i) the authority's or the service provider's
9 construction and capital program planning in relation to the needs of
10 customers for reliable service; (ii) the overall efficiency of the
11 authority's and service provider's operations; (iii) the manner in which
12 the authority is meeting its debt service obligations; (iv) the authori-
13 ty's [Fuel and Purchased Power Cost Adjustment clause] Power Supply
14 Charge and recovery of costs associated with such clause; (v) the
15 authority's [and service provider's] annual budgeting procedures and
16 process; (vi) the application, if any, of [the] performance metrics
17 [designated in the operations services agreement] and the accuracy of
18 the data relied upon with respect to such application; and (vii) the
19 authority's compliance with debt covenants.

20 2. The department of public service shall notify the authority that
21 said department is in the process of initiating a comprehensive manage-
22 ment and operations audit as described in paragraph one of this subdivi-
23 sion in a manner that ensures the timeliness of such audit, and [in
24 accordance with the following timeframe: the first comprehensive manage-
25 ment and operations audit shall be initiated as of the effective date of
26 chapter eight of the laws of two thousand twelve and undertaken in a
27 manner and to an extent that is practicable in the context of the
28 authority's transition to a new management service structure; the second

1 comprehensive management and operations audit shall be initiated no
2 later than December fifteenth, two thousand sixteen; and all additional]
3 such comprehensive management and operations audits shall be initiated
4 at least once every five years [thereafter]. Within a reasonable time
5 after such notification to the authority, said department or the inde-
6 pendent auditor retained by the authority to undertake such audit shall
7 hold public statement hearings, with proper notice, in both Nassau and
8 Suffolk counties for the purpose of receiving both oral and written
9 comments from the public on matters related to such audit as described
10 in paragraph one of this subdivision.

11 3. Each such audit shall be completed within eighteen months of initi-
12 ation absent an extension for good cause shown by the department of
13 public service or the independent auditor under contract with the
14 authority with notice of such extension to the governor, the temporary
15 president of the senate, the speaker of the assembly, and the chairs of
16 the authority and the department of public service. Such audit shall be
17 provided to the board of the authority immediately upon its completion.
18 The department of public service shall provide notice of completion of
19 such audit to the governor, the temporary president of the senate, the
20 speaker of the assembly, and the minority leaders of the senate and
21 assembly, and the authority, upon receipt of such audit, shall post a
22 copy of such audit, including findings and recommendations, on its
23 website [and the website of the service provider]. Unless the board of
24 the authority makes a preliminary determination that any particular
25 finding or recommendation contained in such audit is inconsistent with
26 the authority's sound fiscal operating practices, any existing contrac-
27 tual or operating obligation, or the provision for safe and adequate
28 service, the board shall implement [or cause its service provider to

1 implement] such findings and recommendations in accordance with the
2 timeframe specified under such audit.

3 4. The board of the authority shall make any preliminary determination
4 of inconsistency with respect to any such finding or recommendation
5 within thirty days of receipt of the audit, with notice and the basis of
6 such determination being provided to the department of public service.
7 Such notice and basis shall be posted contemporaneously on the authori-
8 ty's website [and the website of the service provider] and the board
9 shall, within thirty days of such posting and with due advance notice to
10 the public, hold a public hearing with respect to its preliminary deter-
11 mination of inconsistency. At such hearing the department of public
12 service or the independent auditor responsible for undertaking such
13 audit shall present the basis for its findings and recommendations and
14 the board shall present the basis for its determination of inconsistency
15 [and the service provider may present its position]. The authority[,
16 service provider] and auditor may during the time period prior to such
17 public hearing reach agreement on disputed issues. Within thirty days
18 after such public hearing, the board of the authority shall announce its
19 final determination and planned implementations with respect to any such
20 findings and/or recommendations. The authority's final determination of
21 inconsistency shall be subject to any applicable judicial review
22 proceeding, including review available under article seventy-eight of
23 the civil practice law and rules.

24 5. Notwithstanding the foregoing, in the event that a comprehensive
25 and regular management and operations audit as conducted in accordance
26 with this subdivision indicates a finding of fraud, abuse or mismanage-
27 ment by a former service provider of the authority, and upon a finding
28 by the public service commission that reasonable cause exists for the

1 basis of such indication, the public service commission may order that
2 any recommendations contained in the regular management and operations
3 audit be implemented. The public service commission may also provide in
4 their order, the date in which the recommendations be fully implemented.
5 Failure to comply with any such order can result in the imposition of a
6 civil penalty by the public service commission against the former
7 service provider.

8 (cc) To prepare an emergency response plan pursuant to this subdivi-
9 sion. 1. The [service provider] authority shall[, in consultation with
10 the authority,] prepare and maintain an emergency response plan (i) to
11 assure the reasonably prompt restoration of service in the case of an
12 emergency event, defined for purposes of this subdivision as an event
13 where widespread outages have occurred in the authority's service terri-
14 tory due to a storm or other causes beyond the control of the authority
15 [and the service provider], (ii) consistent with the requirements of
16 paragraph (a) of subdivision twenty-one of section sixty-six of the
17 public service law and any regulations and orders adopted thereto, and
18 (iii) establishing the separate responsibilities of the authority [and
19 service provider]. Such emergency response plan shall include plans
20 setting forth how the communication and coordination of efforts between
21 the authority, [service provider,] authority employees, [service provid-
22 er employees,] authority company crews, [service provider company
23 crews,] mutual aid crews, other utilities, local governments and any
24 [service provider or] other entity performing services to assist the
25 authority shall occur. Such emergency response plan shall include iden-
26 tification of and outreach plans for customers who have documented their
27 need for essential electricity for medical needs, which shall include
28 but not be limited to, apnea monitors for infants, cuirass respirators,

1 hemodialysis machines, intravenous feeding machines, intravenous medical
2 infusion machines, oxygen concentrators, positive pressure respirators,
3 respirators/ventilators, rocking bed respirators, suction machines, and
4 tank type respirators.

5 2. [On or before February third, two thousand fourteen, the authority
6 and service provider shall submit an emergency response plan to the
7 department of public service for review. Contemporaneously with such
8 submission, the authority shall provide notice of such proposed plan to
9 the secretary of state for publication in the state register, the
10 authority and service provider each shall post such plan on their
11 websites and otherwise make such plan available for review in-person,
12 and afford members of the public an opportunity to submit written
13 comments and oral comments pursuant to at least one hearing to be held
14 each in the county of Suffolk and the county of Nassau. Such written
15 comments must be submitted by March fourteenth, two thousand fourteen.
16 The authority and service provider shall provide a copy of all written
17 comments they receive and a transcript of such public hearings to the
18 department of public service for its consideration in reviewing the
19 emergency response plan. The department shall provide any recommenda-
20 tions to the authority and service provider with respect to such plan on
21 or before April fifteenth, two thousand fourteen. Such plan must be made
22 final by June second, two thousand fourteen. For each year thereafter,
23 the service provider] The authority shall submit an annual emergency
24 response plan to the department of public service, and such department
25 shall provide its recommendations, in accordance with a schedule to be
26 established by such department and that is consistent with the schedule
27 associated with such department's review of similar such plans provided

1 by electric corporations pursuant to subdivision twenty-one of section
2 sixty-six of the public service law.

3 3. By [June second, two thousand fourteen, and by] June first annually
4 [thereafter], the authority [and service provider] shall [jointly]
5 certify to the department of homeland security and emergency services
6 that the emergency response plan ensures, to the greatest extent feasi-
7 ble, the timely and safe restoration of energy services after an emer-
8 gency consistent with the requirements of paragraph (a) of subdivision
9 twenty-one of section sixty-six of the public service law and the
10 department's recommendations. The filing of such emergency response plan
11 shall also include a copy of all written mutual assistance agreements
12 among utilities. The authority [and service provider] shall file with
13 the county executives of Nassau and Suffolk county and the mayor of the
14 city of New York the most recent version of the emergency response plan,
15 and make sure that such amended versions are timely filed.

16 4. [Starting in calendar year two thousand fourteen, the service
17 provider annually] The authority shall annually undertake at least one
18 drill to implement procedures to practice its emergency response plan.
19 The [service provider] authority shall notify and allow participation in
20 such drill of all appropriate municipal emergency responders and offi-
21 cials.

22 5. If, during an emergency event, electric service is not restored in
23 three days, the [service provider] authority shall within sixty days
24 from the date of full restoration file with the department a report
25 constituting a review of all aspects of the preparation and system
26 restoration performance during the event, and shall thereafter take into
27 consideration any recommendations made by the department associated with
28 such review.

1 (dd) [On or before January first, two thousand fifteen, and by] By
2 January first of each calendar year [thereafter], [to] the authority
3 shall submit for review to the department of public service a report
4 detailing the [service provider's] authority's planned capital expendi-
5 tures.

6 (ee) On or before July first[, two thousand fourteen, and annually
7 thereafter, to] of each calendar year the authority shall submit for
8 review to the department of public service any proposed plan related to
9 implementing energy efficiency measures, distributed generation or
10 advanced grid technology programs for the purpose provided pursuant to
11 paragraph (g) of subdivision three of section three-b of the public
12 service law.

13 (ff) To assist and cooperate with the department of public service
14 with respect to any review undertaken pursuant to section three-b of the
15 public service law, including providing the department with reasonable
16 access to all facilities and premises owned or operated by the authority
17 [or its service provider], allowing review of all books and records of
18 the authority [and its service provider], providing copies of requested
19 documents, allowing interviews of all appropriate personnel, and
20 responding in a reasonable and timely manner to any inquiries or report-
21 ing requests made by the department; provided, however, that the obli-
22 gations set forth in this subdivision shall not extend to affiliates of
23 the [service provider] authority.

24 (gg) Renewable generation and energy efficiency programs. 1. The
25 authority in coordination with [the service provider,] the power author-
26 ity of the state of New York and the New York state energy research and
27 development authority shall, to the extent the authority's rates are
28 sufficient to provide safe and adequate transmission and distribution

1 service, and the measures herein, undertake actions to design and admin-
2 ister renewable energy and energy efficiency measures in the service
3 area, with the goal of continuing and expanding such measures that cost-
4 effectively reduce system-wide peak demand, minimize long-term fuel
5 price risk to rate payers, lower emissions, improve environmental quali-
6 ty, and seek to meet New York state climate change and environmental
7 goals as set forth in the climate leadership and community protection
8 act enacted in chapter one hundred six of the laws of two thousand nine-
9 teen. Such actions shall also include implementation of any renewable
10 energy competitive procurement or feed-in-tariff programs that were
11 approved by the authority as of the effective date of the chapter of the
12 laws of two thousand thirteen which added this subdivision.

13 2. The [service provider] authority shall consider, consistent with
14 maintaining system reliability, renewable generation and energy effi-
15 ciency program results and options in establishing capital plans.

16 (hh) [Starting in calendar year two thousand fifteen] For the period
17 of time necessary to determine compliance with all performance metrics
18 for purposes of calculating annual incentive compensation pursuant to
19 any operation services agreement of any former service provider, the
20 authority and the service provider shall submit to the department of
21 public service for review, any and all data, information and reports
22 which set forth the service provider's actual performance related to the
23 metrics in the operations services agreement, including the authority's
24 evaluation thereof, no less than forty-five days prior to the authori-
25 ty's determination of the service provider's annual incentive compen-
26 sation.

27 (ii) [The] For the period of time necessary to determine compliance
28 with all performance metrics for purposes of calculating annual incen-

1 tive compensation pursuant to any operation services agreement of any
2 former service provider, the service provider shall assist and cooperate
3 with the department of public service with respect to providing any data
4 or information necessary for the department to post a compensation
5 statement for the service provider in accordance with subdivision three
6 of section one hundred eleven-a of the public service law.

7 § 8. Section 1020-i of the public authorities law, as added by chapter
8 517 of the laws of 1986, is amended to read as follows:

9 § 1020-i. Subsidiaries. 1. The authority shall have the right to exer-
10 cise and perform all or part of its powers and functions through one or
11 more wholly owned subsidiaries by operating as the sole member thereof,
12 acquiring the voting shares or membership interests thereof or by resol-
13 ution of the board directing any of its trustees, officers or employees
14 to organize a subsidiary [corporation] pursuant to the business corpo-
15 ration law, the not-for-profit corporation law, the limited liability
16 company law or the transportation corporations law. Such resolution
17 shall prescribe the purpose for which such subsidiary [corporation] is
18 to be formed.

19 2. The authority may transfer to any subsidiary [corporation] any
20 moneys, property (real, personal or mixed) or facilities in order to
21 carry out the purposes of this title. Each such subsidiary [corporation]
22 shall have all the privileges, immunities, tax exemptions and other
23 exemptions of the authority to the extent the same are not inconsistent
24 with the statute or statutes pursuant to which such subsidiary was
25 [incorporated] established provided, however, that in any event any such
26 subsidiary [corporation] shall be entitled to exemptions from the state
27 public service law and any regulation by, or the jurisdiction of, the
28 public service commission, and the state environmental quality review

1 act to the extent provided in subdivision two of section one thousand
2 twenty-s of this title.

3 3. When the authority acquires either directly or through a subsidiary
4 the private entity known as Long Island Electric Utility ServCo LLC, the
5 authority shall maintain the employment of the ServCo employees who are
6 subject to the terms of any existing contract or contracts with any
7 labor union, and shall assume such labor contracts. Upon acquisition of
8 ServCo by the authority, such employees shall: (a) continue to be
9 treated as private sector employees subject to the national labor
10 relations act and exempt from the New York state public employees fair
11 employment act; (b) not acquire civil service status; (c) be entitled to
12 continue to receive such salary and benefits as said employees receive
13 as provided in the existing labor union contracts as of the date of the
14 authority's acquisition of any membership interest in ServCo; (d) be
15 entitled to all provisions of any existing contract or contracts with
16 labor unions; and (e) have their pension and other benefits, including
17 retirement benefits, continued in plans that are operated and adminis-
18 tered in compliance with the employee retirement income security act of
19 1974, as amended (hereinafter "ERISA"), and the internal revenue code,
20 to the fullest extent allowed by law. After acquisition of ServCo by
21 the authority, the authority shall have an obligation to bargain in good
22 faith with the collective bargaining representative of such employees
23 pursuant to the national labor relations act. The authority may, in its
24 discretion, utilize the services of a professional employer organization
25 (PEO) as defined in section nine hundred sixteen of the labor law to
26 maintain the employment and working conditions of the ServCo employees
27 consistent with the requirements of this subdivision.

1 4. Notwithstanding any provision of law which may or could be deemed
2 to the contrary, such acquisition of ServCo by or for the authority
3 and/or authority subsidiary, and the rights, obligations and under-
4 takings of the authority in connection therewith as hereinabove set
5 forth, are hereby declared to be in furtherance of the authority's
6 proprietary, marketplace function of providing a safer, more efficient,
7 reliable, and economical supply of electrical energy within the service
8 area, which will realize savings for the ratepayers and taxpayers in the
9 service area and further protect the interests of ratepayers and the
10 economy in the service area.

11 § 9. Subdivision 2 of section 1020-p of the public authorities law, as
12 added by chapter 517 of the laws of 1986, is amended to read as follows:

13 2. The authority and all its subsidiaries shall be required to pay no
14 taxes nor assessments upon any of the property acquired or controlled by
15 it or upon its activities in the operation and maintenance thereof or
16 upon income derived therefrom, provided that nothing herein shall
17 prevent the authority from entering into agreements to make payments in
18 lieu of taxes with the governing bodies of municipalities, as provided
19 for in section one thousand twenty-q of this title.

20 § 10. Section 1020-s of the public authorities law, as amended by
21 chapter 388 of the laws of 2011, subdivision 1 as amended by chapter 681
22 of the laws of 2021 and subdivision 3 as added by chapter 358 of the
23 laws of 2020, is amended to read as follows:

24 § 1020-s. Public service law and section ninety-four-c of the execu-
25 tive law generally not applicable to authority; inconsistent provisions
26 in certain other acts superseded. 1. The rates, services and practices
27 relating to the electricity generated by facilities owned or operated by
28 the authority shall not be subject to the provisions of the public

1 service law or to regulation by, or the jurisdiction of, the public
2 service commission or the office of renewable energy siting, except to
3 the extent (a) article seven of the public service law applies to the
4 siting and operation of a major utility transmission facility as defined
5 therein, (b) [article ten of such law applies to the siting of a gener-
6 ating facility as defined therein, (c)] section eighteen-a of such law
7 provides for assessment for certain costs, property or operations, [(d)]
8 (c) to the extent that the department of public service reviews and
9 makes recommendations with respect to the operations and provision of
10 services of, and rates and budgets established by, the authority pursu-
11 ant to section three-b of such law, [(e)] (d) that section seventy-four
12 of the public service law applies to qualified energy storage systems
13 within the authority's jurisdiction, [and (f)] (e) that section seven-
14 ty-four-b of the public service law applies to Long Island community
15 choice aggregation programs, and (f) that section ninety-four-c of the
16 executive law applies to the siting of a major renewable energy facility
17 as defined therein.

18 2. [The issuance by the authority of its obligations to acquire the
19 securities or assets of LILCO shall be deemed not to be "state action"
20 within the meaning of the state environmental quality review act, and
21 such act shall not be applicable in any respect to such acquisition or
22 any action of the authority to effect such acquisition.

23 3.] In the event that a comprehensive and regular management and oper-
24 ations audit, as provided by subdivision (bb) of section one thousand
25 twenty-f of this [article] title, indicates a finding of fraud, abuse,
26 or mismanagement by a former service provider of the authority, and upon
27 a finding by the public service commission that reasonable cause exists
28 for the basis of such indication, the public service commission may

1 order that any recommendations contained in the regular management and
2 operations audit be implemented. The public service commission may also
3 provide in their order, the date in which any recommendation must be
4 fully implemented. Failure to comply with any such order can result in
5 the imposition of a civil penalty by the public service commission
6 against the former service provider or revocation of the service provid-
7 er's authority to operate within the state.

8 § 11. Section 1020-u of the public authorities law, as added by chap-
9 ter 517 of the laws of 1986, is amended to read as follows:

10 § 1020-u. Employees of the authority not subject to the public employ-
11 ees' fair employment act. All employees of the authority and/or any
12 subsidiaries shall be exempt from the provisions of the public employ-
13 ees' fair employment act as set forth in article fourteen of the civil
14 service law.

15 § 12. Section 1020-aa of the public authorities law, as added by chap-
16 ter 517 of the laws of 1986, is amended to read as follows:

17 § 1020-aa. Conflicts of interest. 1. If any member, officer or employ-
18 ee of the authority or its subsidiary entity shall have an interest,
19 either direct or indirect, in any contract to which the authority is, or
20 is to be, a party, such interest shall be disclosed to the authority in
21 writing and shall be set forth in the minutes of the authority. The
22 member, officer or employee having such interest shall not participate
23 in any action by the authority with respect to such contract.

24 2. No member, officer or employee shall be deemed to have such an
25 interest solely by reason of the ownership of two percent or less of the
26 securities of a [corporation] corporate entity which is, or is to be, a
27 party to a contract with the authority or its subsidiary entity, includ-
28 ing without limitation the holding company of any banking institution in

1 which the funds of the authority or its subsidiary entity are, or are to
2 be, deposited or which is, or is to be, acting as trustee or paying
3 agent under any bond or note resolution, trust indenture or similar
4 instrument to which the authority or its subsidiary entity is a party.

5 3. Nothing in this section shall be deemed or construed to limit the
6 right of any member, officer or employee of the authority to acquire an
7 interest in bonds or notes of the authority.

8 § 13. Section 1020-cc of the public authorities law, as amended by
9 section 11 of part A of chapter 173 of the laws of 2013, is amended to
10 read as follows:

11 § 1020-cc. Authority subject to certain provisions contained in the
12 state finance law, the public service law, the social services law and
13 the general municipal law. 1. (a) All contracts of the authority shall
14 be subject to the provisions of the state finance law relating to
15 contracts made by the state. The authority shall also establish rules
16 and regulations with respect to providing to its residential gas, elec-
17 tric and steam utility customers those rights and protections provided
18 in article two and sections one hundred seventeen and one hundred eigh-
19 teen of the public service law and section one hundred thirty-one-s of
20 the social services law. The authority shall conform to any safety stan-
21 dards regarding manual lockable disconnect switches for solar electric
22 generating equipment established by the public service commission pursu-
23 ant to subparagraph (ii) of paragraph (a) of subdivision five and
24 subparagraph (ii) of paragraph (a) of subdivision five-a of section
25 sixty-six-j of the public service law. The authority shall let contracts
26 for construction or purchase of supplies, materials, or equipment pursu-
27 ant to section one hundred three and paragraph (e) of subdivision four
28 of section one hundred twenty-w of the general municipal law.

1 (b) Notwithstanding paragraph (a) of this subdivision, before any
2 contract: (i) made for or by the authority shall be executed or become
3 effective, whenever such contract exceeds an amount established by the
4 comptroller in consultation with the authority, it shall first be
5 approved by the office of the comptroller and filed in his or her office
6 pursuant to section one hundred twelve of the state finance law, except
7 for categories described in paragraphs (c) through (e) of subdivision
8 three of section twenty-eight hundred seventy-nine-a of this chapter
9 which shall not be subject to the bidding requirements or pre-audit
10 requirements of the comptroller pursuant to section one thousand twen-
11 ty-mm of this title, but must be entered into pursuant to guidelines and
12 thresholds established by the comptroller in consultation with the
13 authority, and any collective bargaining agreements.

14 2. The authority [and service provider] shall provide to the state
15 comptroller on March thirty-first and September thirtieth of each year a
16 report documenting each contract in excess of two hundred fifty thousand
17 dollars per year entered into with a third party and related to manage-
18 ment and operation services associated with the authority's electric
19 transmission and distribution system, including the name of the third
20 party, the contract term and a description of services or goods to be
21 procured, and post such report on each of their websites. All contracts
22 necessary for conducting utility operations entered into between [the
23 service provider] ServCo and third parties are not subject to the
24 requirements of subdivision one of this section.

25 § 14. Subdivisions 1 and 3 of section 1020-kk of the public authori-
26 ties law, as amended by chapter 49 of the laws of 2022, are amended to
27 read as follows:

1 1. On or before March thirty-first, two thousand twenty-two and every
2 semi-annual period thereafter[: (a)] the authority shall report to the
3 governor, the temporary president of the senate and the speaker of the
4 assembly regarding advertising and lobbying on behalf of the authority
5 by the authority, the trustees of the authority, or any employee of the
6 authority[; and (b) any service provider of the authority shall report
7 to the governor, the temporary president of the senate and the speaker
8 of the assembly regarding advertising and lobbying on behalf of the
9 authority, or in connection with the service provider's provision of
10 management and operation services or the operation of the authority's
11 electric transmission and distribution system].

12 3. The authority [and its service providers] shall prepare [separate
13 reports] a lobbying report to include the following information:

14 (a) For lobbying, such report shall include, but not be limited to:
15 the name of the trustee, employee of the authority [or service provider]
16 engaging in lobbying; the name of the public official or public employee
17 that was lobbied; the date and time of the meeting or communication; the
18 subject matter of the lobbying, and any expenses incurred by the author-
19 ity [or its service provider] for travel, lodging, or meals in
20 connection with such lobbying.

21 (b) For advertising, such report shall include, but not be limited to,
22 itemization of any public funds spent on advertising and information
23 pertaining to the advertising marketing plan including measurable goals
24 and objectives for the advertising campaign.

25 § 15. Section 1020-11 of the public authorities law, as added by chap-
26 ter 375 of the laws of 2022, is amended to read as follows:

27 § 1020-11. Pilot thermal energy network projects. Within three months
28 of the effective date of this section, the authority and its [service

1 provider] subsidiary shall submit for review to the department of public
2 service at least one and as many as five proposed pilot thermal energy
3 network projects as defined in subdivision twenty-nine of section two of
4 the public service law. Within six months of the effective date of this
5 section, and upon recommendation by the department of public service,
6 the authority shall determine whether it is in the public interest to
7 approve or modify such pilot thermal energy network projects and shall
8 [direct the service provider to] implement such proposed or modified
9 pilot thermal energy network projects. The authority shall promulgate
10 rules and regulations consistent with the standards set forth in subdivi-
11 visions two and three of section sixty-six-t of the public service law.

12 § 16. Section 1020-mm of the public authorities law, as amended by
13 chapter 37 of the laws of 2023, is amended to read as follows:

14 § 1020-mm. Prioritization of emergency services. 1. Extraordinary
15 circumstances, including excessive costs, shortages of supply, and the
16 inflated price of fuel, may threaten the capacity to provide utility
17 service essential to the continued safety, health, prosperity, and well-
18 being of the people of Long Island, by reason of the interconnection and
19 interdependence of electric facilities, the reliability of such service
20 throughout the area require emergency action by LIPA. It is therefore
21 declared that:

22 (a) If, during a widespread prolonged outage that affects at least
23 twenty thousand customers in the service territory of the authority, and
24 the [service provider] authority is not able to restore electric power
25 services within twenty-four hours to any affected police department,
26 fire department, ambulance service or advanced life support first
27 response service facility that is prewired with an appropriate transfer
28 switch for using an alternate generated power source, [such service

1 provider] the authority shall notify the village, town or city in which
2 such facility is located.

3 [2.] (b) Towns, cities, and villages shall provide to counties, and
4 counties shall to the extent practicable, provide the [service provider]
5 authority and the division of homeland security and emergency services
6 with a list of such police departments, fire departments, ambulance
7 services and advanced life support first response services located with-
8 in such municipality's territorial boundaries within one year of the
9 effective date of this section, and periodically thereafter as necessary
10 to update such list.

11 [3.] (c) For the purposes of this section, "alternate generated power
12 source" shall mean electric generating equipment that is of the capacity
13 that is capable of providing adequate electricity to operate all life
14 safety systems and the basic operations of a police department, fire
15 department, ambulance service or advanced life support first response
16 service.

17 2. To the extent necessary, and pursuant to guidelines and thresholds
18 established by the comptroller in consultation with the authority, the
19 authority shall be entitled to enter into contracts for emergency goods
20 or services or short-term public power purchase agreements, without
21 being subject to the bidding requirements or pre-audit requirements of
22 the comptroller pursuant to subdivision three of section twenty-eight
23 hundred seventy-nine-a of this chapter in accordance with subdivision
24 (h) of section one thousand twenty-f of this title. This shall include
25 contracts entered into for the procurement of goods, services or both
26 goods and services made to meet emergencies arising from unforeseen
27 causes or to effect repairs to critical infrastructure that are neces-
28 sary to avoid a delay in the delivery of critical services that could

1 compromise the public welfare. Contracts entered into for emergency
2 goods or services or short-term public power purchase agreements shall
3 be pursuant to guidelines established by the comptroller and shall
4 require notice to the office of the state comptroller within forty-eight
5 hours.

6 § 17. Paragraph a of subdivision 9 of section 24 of the executive law,
7 as added by chapter 37 of the laws of 2023, is amended to read as
8 follows:

9 a. Whenever a local state of emergency is declared pursuant to this
10 section and upon receipt of notification by an electric corporation or
11 the [service provider] Long Island power authority, pursuant to section
12 seventy-three-a of the public service law or section one thousand twen-
13 ty-mm of the public authorities law, the chief executive shall coordi-
14 nate with affected police departments, fire departments, ambulance
15 services and advanced life support first response services prewired with
16 an appropriate transfer switch for using an alternate generated power
17 source for the emergency deployment of alternate generated power sourc-
18 es.

19 § 18. Section 3-b of the public service law, as added by section 1 of
20 part A of chapter 173 of the laws of 2013, paragraph (a) of subdivision
21 3 as amended by chapter 479 of the laws of 2017, is amended to read as
22 follows:

23 § 3-b. Long Island office of the department. 1. There is hereby estab-
24 lished in the department an office to review and make recommendations
25 with respect to the operations and terms and conditions of service of,
26 and rates and budgets established by, the Long Island power authority
27 [and/or its service provider].

28 2. Definitions. As used or referred to in this section:

1 (a) "Authority" means the Long Island power authority.

2 (b) "Service provider" means the entity formerly under contract with
3 the authority to provide management and operation services associated
4 with the authority's electric transmission and distribution system and
5 any subsidiary of such entity that provides such services under
6 contract. However, the service provider and any affiliate of the
7 service provider with whom the authority or service provider contracts
8 to provide services associated with the authority's electric trans-
9 mission and distribution system shall not be considered an electric
10 corporation under this chapter.

11 (c) "Operations services agreement" means an agreement and any amend-
12 ments thereto between the Long Island lighting company dba LIPA or the
13 Long Island power authority and the service provider to provide manage-
14 ment and operation services associated with the authority's electric
15 transmission and distribution system.

16 3. General powers. In undertaking the requirements of this section,
17 subject to subdivisions (u) and (bb) through (hh) of section one thou-
18 sand twenty-f of the public authorities law, the department shall be
19 empowered and authorized to:

20 (a) Review and make recommendations to the board of the Long Island
21 power authority with respect to the rates and charges, including charges
22 related to energy efficiency and renewable energy programs, to be estab-
23 lished by the authority and become applicable on or after January first,
24 two thousand sixteen pursuant to subdivision (u) of section one thousand
25 twenty-f of the public authorities law.

26 (i) The purpose of such review is to make recommendations designed to
27 ensure that the authority [and the service provider] provide safe and

1 adequate transmission and distribution service at rates set at the
2 lowest level consistent with sound fiscal operating practices.

3 (ii) The department's recommendations shall be designed to be consist-
4 ent with ensuring that the revenue requirements related to such rate
5 review are sufficient to satisfy the authority's obligations with
6 respect to its bonds, notes and all other contracts.

7 (iii) [In the context of such review, the department may make recom-
8 mendations with regard to the compensation or fee structure included
9 within the operations services agreement.

10 (iv)] In undertaking such review and in making recommendations related
11 to the proposed rates and charges, the department shall establish stand-
12 ards, policies and procedures that, at a minimum, provide for public
13 statement and evidentiary hearings and participation of intervenors and
14 other parties, and ensure that any final recommendations related to the
15 proposed rates and charges are provided to the authority within two
16 hundred forty days of the filing with the department of such plan.

17 [(v)] (iv) The parties to any such rate review proceeding shall
18 include, but not be limited to, department staff, the authority[, the
19 service provider] and, to the extent it deems necessary or appropriate,
20 the utility intervention unit.

21 (b) Review the annual capital expenditures [proposed by the service
22 provider] and recommend such improvement in the manufacture, conveying,
23 transportation, distribution or supply of electricity, or in the methods
24 employed by the [the service provider] authority as in the department's
25 judgment allows for safe and adequate service.

26 (c) Annually review the emergency response plan of the authority [and
27 the service provider] in accordance with the following requirements:

(i) Examine and determine whether the emergency response plan is consistent with the requirements of paragraph (a) of subdivision twenty-one of section sixty-six of this chapter and any regulations or orders promulgated thereto, and to recommend amendments of same; and

(ii) Review and make recommendations to the authority with respect to the performance of the service provider or the authority in restoring service or otherwise meeting the requirements of the emergency response plan during an emergency event, defined for purposes of this section as an event where widespread outages have occurred in the authority's service territory due to a storm or other causes beyond the control of the authority and its service provider, as the case may be, including making determinations with respect to whether the service provider, if applicable, or the authority is reasonably able to implement the emergency response plan, whether the length of any outages related to such emergency were materially longer than they would otherwise have been because the service provider, if applicable, or the authority failed to reasonably implement the emergency response plan, the reasonableness of costs associated with such emergency response, the costs, if any, that were unreasonably and imprudently incurred by the [service provider] authority or any service provider, and whether [the] any service provider would be liable for any such costs pursuant to the terms and conditions of [the] any then applicable operations services agreement.

(d) Upon notification to the Long Island power authority, undertake a comprehensive and regular management and operations audit of the authority and any then applicable service provider pursuant to subdivision (bb) of section one thousand twenty-f of the public authorities law. The department shall have discretion to have such an audit performed by its staff, or by an independent contractor. In every case in which an audit

1 is required pursuant to subdivision (bb) of section one thousand twen-
2 ty-f of the public authorities law performed by an independent auditor,
3 the department shall have the authority to select the auditor, and to
4 require the authority to enter into a contract with the auditor that is
5 consistent with the contracting-related requirements specified in subdi-
6 vision nineteen of section sixty-six of this chapter and the require-
7 ments of subdivision (bb) of section one thousand twenty-f of the public
8 authorities law. Such contract shall provide further that the auditor
9 shall work for and under the direction of the department according to
10 such terms as the department may determine are necessary and reasonable.

11 (e) Accept, investigate, mediate to resolve and make recommendations
12 to the Long Island power authority [and/or the service provider] regard-
13 ing the resolution of complaints from consumers in the authority's
14 service territory relating to, among other things, the provision of
15 electric service provided by [the service provider and/or] the authori-
16 ty.

17 (f) Review the net metering program implemented under subdivision (h)
18 of section one thousand twenty-g of the public authorities law and make
19 recommendations designed to ensure consistency with the requirements of
20 sections sixty-six-j and sixty-six-l of this chapter, and any regu-
21 lations and orders adopted thereto.

22 (g) Review and make recommendations with respect to any proposed plan
23 submitted by the Long Island power authority [and/or the service provid-
24 er] related to implementation of energy efficiency measures, distributed
25 generation or advanced grid technology programs having the purpose of
26 providing customers with tools to more efficiently and effectively
27 manage their energy usage and utility bills, and improving system reli-
28 ability and power quality.

1 [(h) Review the data, information and reports submitted pursuant to
2 subdivision (hh) of section one thousand twenty-f of the public authori-
3 ties law and other pertinent information related to the metrics in the
4 operations services agreement, the Long Island power authority's evalu-
5 ation of such data, information and reports, and make recommendations to
6 the authority with respect to the service provider's annual incentive-
7 based compensation within thirty days of receipt of such evaluation and
8 information.]

9 4. Review and inspection. To undertake the requirements of subdivision
10 [two] three of this section, the department shall be authorized to
11 inspect all premises and facilities owned or operated by the authority
12 and the service provider, review all books and records of the authority
13 and the service provider, interview all appropriate personnel, and
14 require annual reporting consistent with the requirements of subdivision
15 six of section sixty-six of this chapter and any regulations and orders
16 adopted thereto; provided, however, that this authority shall not extend
17 to affiliates of the service provider.

18 § 19. Paragraph (c) of subdivision 2 of section 74-b of the public
19 service law, as added by chapter 681 of the laws of 2021, is amended to
20 read as follows:

21 (c) the development of a data security agreement to be adopted by
22 participating eligible municipalities, energy service companies, the
23 Long Island power authority, and Long Island power authority service
24 providers, if applicable;

25 § 20. Paragraph (a) of subdivision 2 of section 112 of the state
26 finance law is amended by adding a new subparagraph (iii) to read as
27 follows:

1 (iii) Before the Long Island power authority enters into any contract
2 which exceeds an amount established by the comptroller in consultation
3 with such authority, it shall first be approved by the office of the
4 state comptroller and filed in his or her office, except that contracts
5 entered into for emergency goods and services or short-term public power
6 purchase contracts must comply with guidelines and thresholds estab-
7 lished by the comptroller in consultation with the Long Island power
8 authority. The Long Island power authority shall not be subject to the
9 fifty thousand dollar limitation set forth in clause one of subparagraph
10 (i) of this paragraph.

11 § 21. The opening paragraph of subdivision 1 of section 2827-a of the
12 public authorities law, as added by chapter 506 of the laws of 2009, is
13 amended to read as follows:

14 Notwithstanding any law to the contrary, no state authority shall
15 hereafter have the power to organize any subsidiary corporation unless
16 the legislature shall have enacted a law granting such state authority
17 such power for the organization of a specific corporation, provided,
18 however, that the Long Island power authority shall have the power to
19 organize a subsidiary corporation as authorized under title one-A of
20 article five of this chapter, and provided, further, that a state
21 authority may organize a subsidiary corporation pursuant to the follow-
22 ing requirements:

23 § 22. Severability. If any provisions of this act or the application
24 thereof shall for any reason be adjudged by any court of competent
25 jurisdiction to be invalid, such judgment shall not affect, impair or
26 invalidate the remainder of this act, but shall be confined in its oper-
27 ation to the provisions thereof directly involved in the controversy in
28 which the judgment shall have been rendered.

1 § 23. This act shall take effect January 1, 2026; provided however, if
2 chapter 728 of the laws of 2022 shall not have taken effect on or before
3 such date then sections sixteen and seventeen of this act shall take
4 effect on the same date and in the same manner as such chapter of the
5 laws of 2022, takes effect.

Appendix

B



225 Union Boulevard
Suite 450
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Phone: (720) 633-9514

September 8, 2023

via email

Senator Kevin Thomas, Co-Chair
Assembly Member Fred W. Thiele, Jr., Co-Chair
NYS Legislative Commission on the Future of LIPA
1979 Marcus Avenue, Suite 210
Lake Success, NY 11042

Subject: Review of LIPA Public Power Model Savings and Customer Rate Impacts

Dear Senator Thomas and Assembly Member Thiele:

NewGen Strategies and Solutions, LLC (NewGen) was retained by the New York State Legislative Commission on the Future of the Long Island Power Authority (Commission) to (1) conduct an independent review of the reasonableness of the projected financial savings identified by the Commission as associated with transitioning Long Island Power Authority (LIPA) to a “true publicly owned” power authority from its current structure utilizing a third-party service contractor, PSEG Long Island LLC (PSEG-LI), and (2) analyze the transition’s potential rate impact on LIPA’s customers.

Our analysis confirms that the projected financial savings associated with transitioning LIPA to a public power authority identified by the Commission are reasonable, and that the impact will be to lower rates for LIPA’s customers if LIPA’s Board of Trustees chooses to use the financial savings for that purpose.

The Commission’s objective is to provide more competitive and reliable service to LIPA’s customers by transitioning to a public power model that will improve operational and management efficiencies at LIPA, utilizing the existing workforce engaged directly in LIPA delivery and customer-related operations currently employed by the Long Island Electric Utility ServCo LLC (ServCo), a subsidiary of PSEG-LI. To support this effort, the Commission prepared the Draft Report on Establishment of a Public Power Model for the Operation of the Long Island Power Authority (Draft Report) dated April 17, 2023. The Draft Report provides an assessment of various aspects, benefits, and savings of establishing a public power model for LIPA. This public power model includes eliminating the third-party service contract of PSEG-LI and LIPA directly managing the ServCo and utility operations.

The Draft Report identifies, quantifies, and communicates the operational, financial, technical, and other aspects of the proposed transition for LIPA. The Draft Report contains two cost savings analyses: 1) LIPA Options Analysis developed by LIPA and 2) the “Conservative Viewpoint” developed by GDS Associates, Inc. (GDS), which was previously retained by the Commission to conduct such an independent analysis. The Draft Report identifies approximately \$48 million (Conservative Viewpoint) to \$78 million (LIPA Options Analysis) per year in cost savings from LIPA directly managing the operation of its electric system. The Commission recognizes that the application of any benefits from reductions in LIPA’s costs resulting from the changes in its operational contract will ultimately be decided by the LIPA Board of Trustees. This letter report by NewGen reviews the estimated savings, calculates expected rate impacts, and discusses other considerations or recommendations regarding the implementation of the public power model for LIPA.

Senator Thomas & Assembly Member Thiele

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After our review of the Draft Report and supporting documents, NewGen concludes that if LIPA transitions to a public power organizational structure, then:

- The total annual cost savings estimates of \$48 million (Conservative Viewpoint) to \$78 million (LIPA Options Analysis) are reasonable.
- The total annual cost savings are likely to be closer to the LIPA Options Analysis of \$78 million.
- These savings will allow LIPA's Board of Trustees to reduce electric bills for its customers and increase reinvestment in the utility system infrastructure.
 - Of the \$48.0 million to \$78.0 million in cost savings, approximately \$23.7 million to \$49.9 million will be available for customer bill reductions.
 - The remaining \$24.3 million to \$28.1 million will be available for increased reinvestment in the utility system infrastructure.

Review and Evaluation of LIPA and Draft Report Estimated Savings

NewGen completed a targeted review and evaluation of the estimated savings related to LIPA's transition to a public power model. This review focused on the ongoing savings estimates generated by operating as a public power utility and did not integrate the one-time transition-related costs. The transition costs are a one-time expense ranging from \$16 million (LIPA Option Analysis) to \$59 million (Conservative Viewpoint).¹ With one-time transition costs estimated by LIPA, LIPA customers will see cost savings in year 1 and larger cost savings in years 2 and beyond. With the one-time transition costs in the Conservative Viewpoint, customers may not see a decrease in year one, but will see costs decrease in years 2 and beyond.

NewGen reviewed and consulted the following documents supplied by the Commission, LIPA, the prior consultant's evaluations used in the Draft Report, and publicly available information. The source documents reviewed and consulted included:

- Second Amended and Restated Operations Service Agreement with PSEG-LI (Second A&R OSA)
- LIPA Financial Statements
- LIPA Bond Official Statements
- 2021-DPS-Management-and-Operations-Audit-Annual-Report-November-17-2021
- Draft Report to the Legislative Commission on the Future of LIPA, dated April 17, 2023 (Draft Report)
- GDS Associates, Inc. Microsoft Excel model supporting Draft Report results
- LIPA 2023 Operating Budget
- LIPA Cost of Service and Rate Models
- LIPA Fact Sheet on Public Power Model, 2023
- Lazard Report on Privatization and Public Power Models, February 2023

The reductions in costs identified with a transition to a public power model were associated with the elimination of the PSEG-LI service agreement or Second A&R OSA. PSEG-LI serves as the third-party

¹ Draft Report page 63, Table 2.

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management contractor for LIPA and manages the ServCo staff operating the utility system. PSEG-LI's Second A&R OSA is set to expire at the end of 2025 and defines three service areas or fees as shown below.

- **PSEG-LI Management Fee** (currently \$78 million): This cost includes the 19 contracted director-level staff to manage the operations of the ServCo and the profit, fee, and incentives which PSEG-LI receives as the third-party contractor.
- **IT/Affiliate** (currently \$24 million): These are pass-through costs of the broader PSEG corporation which provides information technology (IT), human resources, procurement, and other functional administrative support.
- **Energy Management Fee** (currently \$19 million): These are pass-through costs for the management of the power supply function such as bidding for all generation assets under contract to LIPA into the market, scheduling outages and tests of contract assets, and managing forward energy hedges and fuel commodity purchases.

PSEG-LI Management Fee

The primary source of savings identified by eliminating the PSEG-LI service contract was associated with the PSEG-LI Management Fee. Based on LIPA's Options Analysis evaluation of the savings, LIPA can provide similar services to the Management Fee for approximately \$5 million per year. Based on the prior consultant's evaluation (Conservative Viewpoint), LIPA can provide similar services to the Management Fee for approximately \$15 million per year. Whether the LIPA Options Analysis or Conservative Viewpoint cost estimate is utilized, this change will result in \$63 to \$73 million a year in cost savings as shown in Table 1.

These estimates of costs for LIPA to replace the staff, expertise, and responsibilities in the PSEG-LI Management Fee were based on LIPA's Options Analysis that between 6 and 12 new LIPA staff are required to replace the 19 contracted PSEG-LI positions. This estimate was based on LIPA's leadership identifying significant overlap of roles and responsibilities for eight of its existing employees with the PSEG-LI Management Fee directors and five existing ServCo managers performing the roles of the contracted directors. Thus, a minimum of six additional staff are required to perform the same tasks, roles, and responsibilities as the contracted 19 PSEG-LI staff included in the Management Fee.² To ensure the new staffing cost estimate is sufficient, a budget for up to 12 new staff was used in the LIPA Options Analysis. As a result, the \$5 million per year is labor-related costs to provide the equivalent management of the 19 contracted positions within PSEG-LI. Should LIPA become a public power utility, it will not recover additional fees, profits, or further incentive compensation that make up the majority of the \$78 million Management Fee from PSEG-LI.³

IT/Affiliate and Energy Management Fees

There were other adjustments in expected operating and management costs by transitioning to the public power model; however, these adjustments were minor compared to the elimination of the Management Fee. Other minor adjustments to the expected operating costs of the public power model by LIPA and the Draft Report included the pass-through costs from PSEG-LI. The purpose of a pass-through cost is to

² Draft Report, page 119.

³ Second Amended and Restated Operating and Service Agreement, Section 5.1 and Appendix 4.2 (D).

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recover the costs of the services and operations. Thus, LIPA did not expect these costs to change substantially as they were transitioned to LIPA direct costs and operations; these changes are listed below.

- IT/Affiliate Services Fee adjusted from \$24 million to \$23 million in the LIPA Options Analysis with a Conservative Viewpoint estimated at \$33 million.
- Energy Management Fee adjusted from \$19 million to \$15 million in the LIPA Options Analysis with a Conservative Viewpoint estimated at \$25 million.

As the IT/Affiliate and Energy Management costs are simply pass-through costs of PSEG-LI operations, it is expected that LIPA will have similar costs when these operations are fully transitioned in-house. LIPA's Options Analysis estimated a \$1 million savings as the IT costs are transitioned in-house. The effort is already underway as of September 2022 and will bring the existing IT services from PSEG-LI in New Jersey to LIPA.

While the IT/Affiliate and Energy Management costs could remain stable as projected by LIPA, the Draft Report identified a Conservative Viewpoint related to risks in transitioning to the standalone structure, and IT systems implementation efforts often face schedule delays and unforeseen costs. Based on these concerns, a cost increase of \$9 million was included in the Conservative Viewpoint.

Similar to this approach with the IT/Affiliate Services, LIPA expects the Energy Management costs to remain relatively stable in the public power model; however, the LIPA Options Analysis estimated a savings of \$4 million from the current \$19 million per year for the pass-through services. NewGen did not have access to backup data supporting the \$4 million reduction in costs in the public power model; however, the LIPA Options Analysis assumed that there would be improved efficiencies and potential cost reductions with likely overlap with existing LIPA staff and bringing operations in-house. The Draft Report identified a Conservative Viewpoint related to risks in transitioning the Energy Management operations in-house and potential loss of economies of scale that PSEG likely experiences with a larger utility operation. Based on this concern, a cost increase of \$6 million was included in the Conservative Viewpoint.

The Current Costs, LIPA Options Analysis estimated costs, and Conservative Viewpoint costs are summarized in Table 1 and taken directly from the Draft Report.⁴

⁴ https://nylipa.gov/storage/20230417_draft_report.pdf Table 1, page 57.

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Table 1
LIPA Pro Forma Cost Components – Potential for Change

PSEG-LI Fee Item	Current Costs (\$000)	LIPA Options Analysis (\$000)	Conservative Scenario (\$000)
PSEG-LI Management Fee – Operating Expense	\$48,000	\$3,100	\$9,300
PSEG-LI Management Fee – Capitalized Expense ⁽¹⁾	\$30,000	\$1,900	\$5,700
PSEG-LI Management Fee Subtotal	\$78,000	\$5,000	\$15,000
PSEG-LI IT/Affiliate Services Fee	\$24,000	\$23,000	\$33,000
PSEG-LI Energy Management Fee	\$19,000	\$15,000	\$25,000
Total Annual Costs	\$121,000	\$43,000	\$73,000
Savings compared to Current Costs		(\$78,000)	(\$48,000)

(1) The capitalized portion of labor does not show up as an expense as suggested within this table.

Reasonableness of Estimated Savings

NewGen also reviewed the cost savings estimates made in the Draft Report (Table 1) to assess if they meet a “reasonable” standard in the industry. For this effort, NewGen performed a high-level evaluation of the methodology and approach to estimating the cost savings from the proposed operational changes. In reviewing the largest source of cost savings, the Management Fee, it is reasonable to eliminate the majority of the costs PSEG-LI currently recovers for the fee from LIPA customers.

The Management Fee primarily represents the profit, performance incentives, and fees that a for-profit company and investor-owned utility would recover for its services. Transitioning to a public power model eliminates most, if not all, of these profit-related and incentive costs. The costs that remain for the public power model would be the remaining labor costs in the Management Fee related to the roles and responsibilities of the 19 budgeted management staff and directors. The LIPA Options Analysis estimate for new staff at LIPA to ensure the existing roles and responsibilities are properly included in-house at LIPA is reasonable and likely conservative. The Conservative Viewpoint increased the number of staff from LIPA’s Options Analysis, resulting in a cost estimate of \$15 million annually to perform the same functions as the PSEG-LI 19 director positions. In reviewing the LIPA Options Analysis, the labor costs assumed are already conservative to provide the level of service LIPA is currently paying in the Management Fee. The Conservative Scenario seems overly conservative; therefore, we believe that the LIPA Options Analysis estimate is more than adequate and the more likely outcome.

Please note that the PSEG-LI Management Fee is separated into operating and capitalized expenses based on information in the Draft Report and from LIPA staff. Currently, some of the PSEG-LI Management Fee and staff time is associated with and allocated to capital projects and management. This split between operating and capital expenses is important when the savings are translated into LIPA customer billing impacts.

The remaining cost reductions or changes estimated in the LIPA Options Analysis are minor and related to the pass-through operational costs for IT, administrative, and energy management services at PSEG-LI on behalf of LIPA. As these appear to simply pass through direct costs, it is reasonable to expect similar costs for the LIPA public power model as they will perform the same activities as PSEG-LI currently

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provides. The LIPA Options Analysis and Conservative Viewpoint costs for the PSEG-LI fees are summarized in Table 1 and were taken directly from the Draft Report.

In our opinion, the LIPA Options Analysis costs appear reasonable, and the Conservative Viewpoint costs appear to be overly conservative. LIPA's total annual costs should decrease by at least \$48 million and up to \$78 million per year based on the information contained in the Draft Report. It is important to note that our review focused on the reasonableness of the aggregate savings and methodology. We do not opine on the accuracy of more detailed calculations in the supporting LIPA or GDS financial models, and we do not make any warranties or guarantees of the savings projected and used in the prior LIPA Options Analysis.

Operating Expenses and Capitalization of Expenses

While the total cost savings are projected to be \$78 million in the LIPA Options Analysis for the transition to a public power model, those amounts do not directly translate dollar for dollar into LIPA customer bill reductions. It is important to note that the cost reductions will be split between operational savings and capital savings. The reduction in the operating expense portion of the Management Fee (from \$48 million to \$3.1 million), not the capitalized expense reduction (from \$30 million to \$1.9 million), will directly reduce customer bills.

Operating expenses are recovered on a "one to one" basis each year in the rates from customers. The capitalized expense reduction (\$30 million to \$1.9 million) can be used for additional support of high priority capital needs such as additional storm hardening. Table 2 summarizes the annual customer savings of operating and capitalized expense savings from Table 1.

Table 2
Projected Annual Cost Savings for LIPA

PSEG-LI Fee Item	LIPA Options Analysis Savings per Year (\$000)	Conservative Viewpoint Savings per Year (\$000)
PSEG-LI Management Fee – Operating Expense	\$44,900	\$38,700
PSEG-LI IT/Affiliate Services Fee	\$1,000	(\$9,000)
PSEG-LI Energy Management Fee	\$4,000	(\$6,000)
Total Cost Savings on Customer Bills	\$49,900	\$23,700
Total Cost Savings to Invest in Infrastructure	\$28,100	\$24,300
Total Annual Cost Savings	\$78,000	\$48,000

This treatment of the PSEG-LI Management Fee in our analysis differs from that in the Draft Report, which was offered for illustrative purposes. In the Draft Report, it appears the total capitalized expense savings (\$28.1 million for LIPA Options Analysis or \$24.3 million Conservative Viewpoint) were subtracted from the annual debt service expense to estimate a total annual LIPA operating cost reduction and eventual reduction in customer's bills.

Potential Rate Impacts from Estimated Savings

In addition to our review of the Draft Report and supporting financial model, NewGen conducted an analysis of the potential retail rate impacts from the estimated cost savings to LIPA residential customers. To accomplish this task, the Commission provided NewGen with a copy of LIPA's functional cost-of-service

Senator Thomas & Assembly Member Thiele

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and rate models as well as staff resources at LIPA for any questions or clarifications regarding the rate making process and strategy for the utility. LIPA's rates primarily include two components: the Power Supply Charge and the Delivery Charge.

Based on a review of the cost of service model and discussions with LIPA staff, NewGen determined the PSEG-LI costs from the Management Fee and IT/Affiliate Fee are included in the Delivery Charge portion of LIPA's rates. Thus, the majority of the savings generated from transitioning to a public power model will eventually reduce the Delivery Charges in LIPA's tariffs. Furthermore, the Energy Management Fee is recovered in the Power Supply Charge. Thus, the changes in costs for transitioning costs from PSEG-LI to the public power model would affect both the Delivery and Power Supply Charges for LIPA customers. LIPA's 2023 total revenue projections and breakdown by charge type are included in Table 3.

Table 3
2023 Projected Revenues

Description	2023 Revenue (\$000s)	Portion
Delivery Charge	\$1,873,619	45%
Merchant Function Charge	\$26,193	1%
Power Supply Charge	\$2,072,186	49%
Energy Efficiency and Renewable Energy (DER)	\$79,800	2%
Taxes, PILOTs, Miscellaneous Revenues	\$151,336	4%
Total Revenues	\$4,203,134	100%

Based on the 2023 projected revenues in Table 3, the Delivery Charge represents 45% of the total revenue or \$1.9 billion and the Power Supply Charge represents 49% or \$2.1 billion. As shown in Table 2, the projected annualized savings for LIPA from transitioning to a public power model range from \$23.7 to \$49.9 million based on the LIPA Options Analysis and the Conservative Viewpoint in the Draft Report. The impacts of the projected savings to the Delivery Charge, Power Supply Charge, and Total Bills are included in Table 4.

Table 4
Public Power Savings Impacts to Bills

Description	Current Rate Revenues (\$000)	LIPA Options Analysis (\$000)	As a Percent of Current Rate	Conservative Viewpoint (\$000)	As a Percent of Current Rate
Delivery Charge	\$1,873,619	(\$45,900)	(2.4%)	(\$29,700)	(1.6%)
Power Supply Charge	\$2,072,186	(\$4,000)	(0.2%)	\$6,000	0.3%
All other charges, taxes	\$257,329	\$-	0.0%	\$-	0.0%
Total	\$4,203,134	(\$49,900)	(1.2%)	(\$23,700)	(0.6%)

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The LIPA Options Analysis forecasted costs result in decreases in rates including a 2.4% reduction to the Delivery Charge, a 0.2% reduction to the Power Supply Charge, and an overall decrease of 1.2% to the total retail rates. The Conservative Viewpoint results in a 1.6% decrease to the Delivery Charge, a 0.3% increase to the Power Supply Charge, and an overall decrease of 0.6% to the total retail rates, including taxes.

LIPA historically follows a rate making policy of equal rate changes for all classes and related charges within each customer class. For example, if LIPA implemented a 2.5% rate increase, all classes' rates would increase at 2.5% and each charge (e.g., Customer Service and Delivery) would increase at that same rate. Based on this rate making policy, NewGen recreated an average residential customer's monthly bill using the LIPA Options Analysis and Conservative Viewpoint savings results. Table 5 summarizes an average residential customer's monthly bill after applying the Conservative Viewpoint and the LIPA Options Analysis savings.

Table 5
Residential Customer Bill Impacts⁽¹⁾

Description	Current Bill	LIPA Options Analysis Bill	Change From Current	Conservative Viewpoint Bill	Change From Current
Delivery Charge Total	\$84.51	\$82.44	(2.4%)	\$83.17	(1.6%)
Power Supply Charge Total	\$79.53	\$79.38	(0.2%)	\$79.76	0.3%
Total	\$164.04	\$161.81	(1.4%)	\$162.93	(0.7%)
Change in Bill		(\$2.22)		(\$1.11)	

(1) Bill impact analysis assumes an average monthly usage of 723 kilowatt hours (kWh) at a Power Supply Charge of \$0.11 per kWh. Does not include Revenue Decoupling Charge or Other Charges/Taxes.

As Table 5 shows, the reduction in an average residential bill could range from about \$1 to \$2 per month. It is important to note that this approach to applying the estimated savings generated by moving to a public power model used the historical LIPA rate strategy, not a cost of service model.

Other Considerations and Evaluations for the Transition to a Public Power Model

In addition to our review of the savings estimates provided, NewGen identified two other areas for consideration and potential further evaluation. As mentioned in the Draft Report, LIPA costs currently include \$13 million per year in expenses for a dedicated department and staff at the New York Department of Public Service (DPS) for oversight of the utility. This oversight includes "review and recommendation" authority which is oversight of operations and terms and conditions of service, rates, and budgets established by LIPA and its service provider. This also includes DPS's review of, and essentially the authority to approve, any rate changes greater than 2.5%.

This level of annual oversight by a state DPS is atypical for public power utilities and options were discussed in the Draft Report for alternatives in the role and level of involvement of DPS with LIPA as a full public power utility. While it appears that legislation is required to limit, modify, or remove the requirement of annual DPS oversight of LIPA, if that were to happen and LIPA's operations align with other public power models, LIPA could save \$13 million annually. This \$13 million in annual cost savings would be in addition to the identified savings in the LIPA Options Analysis and Conservative Viewpoint.

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The transition currently underway to bring IT services from PSEG-LI in-house to LIPA should also be monitored as it progresses. This process began in September 2022 and is expected to last through the end of 2024 or 2025 with the expiration of the current service agreement with PSEG-LI. Based on discussions with LIPA management, the critical IT infrastructure has already been transitioned to standalone systems and the remaining IT systems transition is in progress. The remaining IT systems transition efforts will be focused on more administrative types of IT systems, not utility operational or reliability-related systems. If there are additional costs for the broader IT transition effort, they should be integrated with and adjust the cost savings calculations included in this evaluation.

Summary and Conclusions

After our review of the Draft Report and supporting documents, NewGen concludes that should LIPA move to a public power organization structure, then:


- The total cost savings estimates of \$48 million (Conservative Viewpoint) to \$78 million (LIPA Options Analysis) are reasonable.
- The total cost savings are likely to be closer to the LIPA Options Analysis of \$78 million.
- The largest driver of the cost savings is the elimination of the PSEG-LI Management Fee. The Management Fee is directly related to and almost solely driven by PSEG-LI profit and fees for managing LIPA. As a public power utility, these profit and fee-related costs will be eliminated.
- The second largest driver of the cost savings is the projected reduction in the number of staff LIPA would hire to replace the PSEG-LI staff.
- These savings would be realized by LIPA customers with reduced electric bills and increased reinvestment in the utility system infrastructure.
 - Of the \$48 million to \$78 million in cost savings, approximately \$23.7 million to \$49.9 million would translate to customer bill reductions.
 - The remaining \$24.3 million to \$28.1 million would translate to increased reinvestment in the utility system infrastructure.

We recognize that the LIPA Board of Trustees will have the ultimate responsibility in determining how any reduction in costs would be applied to LIPA's financial situation, including future rate revenues. With this said, if LIPA follows its historical rate making practices of applying level rate changes to all customer classes, these reductions in costs will result in a typical residential customer's bill decreasing by \$1 to almost \$2 per month, or 0.7% and 1.4%, respectively.

Sincerely,

NewGen Strategies and Solutions, LLC

DocuSigned by:



654E055C66394D8...

Jill Schuepbach

Principal

CC: The Honorable Rory Lancman, Executive Director

Appendix C

THOMAS G. ERON, ESQ.
eront@bsk.com
P: 315.218.8647

October 9, 2023

VIA ELECTRONIC MAIL

Hon. Rory Lancman, Executive Director
NYS Legislative Commission on the Future of LIPA
1979 Marcus Avenue, Suite 210
Lake Success, New York 11042

Re: *Proposed Amendments to the Long Island Power Authority Act
Relating to ServCo*

Dear Rory:

The following letter outlines the purpose and justification for the New York State Commission on the Future of LIPA's (the "Commission's") proposed amendments to the Long Island Power Authority Act ("LIPA Act") relating to the acquisition of ServCo and preserving the employment status of ServCo employees, including the relationship with IBEW Local 1049 and the existing collective bargaining agreements and employee benefit plans. A copy of the proposed legislative provisions addressing these issues is enclosed.

By way of a brief background summary, the Long Island Power Authority ("LIPA") owns the electric grid in Nassau County and Suffolk County on Long Island and the portion of Queens County known as the Rockaways. LIPA presently contracts with PSEG Long Island LLC ("PSEG LI"), an investor-owned utility, to manage the electric grid in these areas. The majority of individuals working on LIPA operations are employed by Long Island Electric Utility ServCo LLC ("ServCo"), a separate subsidiary entity owned by PSEG LI, under a service provider agreement between LIPA and PSEG LI. Due to numerous and widely known inefficiencies, lack of accountability, and poor service, the Commission was created to provide the New York State Legislature with specific actions, proposed legislation, and a timeline to transform LIPA into a publicly-owned power authority.

The Commission considers it critically important that any transition to a future public power version of LIPA preserve the current ServCo workforce upon the same terms and conditions as currently exist. Of equal importance is the preservation of the relationship between ServCo employees and their bargaining representative, the International Brotherhood of Electrical Workers, Local 1049 ("IBEW Local 1049"). The Commission's proposed amendments to the LIPA Act are intended to satisfy both of these objectives while simultaneously allowing LIPA to reassert control of the electric utility operations in its service area.

Under the current service provider model, the 2,500 employees who maintain LIPA's transmission and distribution ("T&D") system are employed by ServCo. ServCo unionized employees and 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 to maintain the efficiency of the T&D operations during any future transition, the retention of this skilled workforce is crucial.

The Commission carefully considered three potential models to transition ServCo employees from the control of PSEG LI to LIPA while preserving the employees' representation by IBEW Local 1049 and maintaining the existing labor agreements and the employees' employment status, wages, benefits, and other terms of employment. After careful consideration, the enclosed draft legislation sets forth the relevant provisions of the Commission's proposed amendments to the LIPA Act. Under the model outlined in the proposed amendments – the "LLC Model" – LIPA would acquire the membership interest in ServCo and continue to operate ServCo as a wholly-owned subsidiary. This approach best serves the interest in allowing LIPA to assume direct control and to preserve the ServCo employees' status as private sector employees, as well as the relationship with IBEW Local 1049, the existing collective bargaining agreements and terms of employment.

To bring this model to fruition, the Commission evaluated several critical issues. The first issue was 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. We maintain that the Legislature has previously authorized such an arrangement. Today, prior to any proposed amendment, the LIPA Act authorizes LIPA to "create or acquire one or more wholly owned subsidiaries" and empowers LIPA with broad authority to act through such subsidiaries. N.Y. PUB. AUTH. LAW § 1020-f(o). 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.

N.Y. PUB. AUTH. LAW § 1020-i.

While the current statute, as set forth above, does not expressly reference a limited liability company, a legislative amendment to include such entities appears consistent with the pre-existing legislative intent of the LIPA Act. The proposed amendments make this

authorization explicit, by including reference to the limited liability company law in addition to the business corporation, not-for-profit corporation, and transportation corporations laws. See Proposed Amendments, Section 4.

The second issue that the Commission considered is whether New York State policy permits a public authority to directly operate a power utility through a wholly-owned private subsidiary. As with the first issue, the existing LIPA Act contemplated an arrangement of this nature, particularly given the unique circumstances presented here. As 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.

N.Y. PUB. AUTH. LAW § 1020-a. Given the statutory purpose of the LIPA Act, the proposed LLC Model appears consistent with the public policy of New York State to assure the reliable, efficient, and economic provision of electricity.

The Legislature previously granted LIPA broad authority to carry out its mission, including through corporate subsidiaries. See *id.*; N.Y. PUB. AUTH. LAW § 1020-i. As related to employment,¹ the Legislature expressly authorized the hiring of employees "without regard to any personnel or civil service law, rule or regulation of the state." N.Y. PUB. AUTH. LAW §§ 1020-e, 1020-f. Furthermore, consistent with the nature of the previous transition from the Long Island Lighting Company ("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.

N.Y. PUB. AUTH. LAW § 1020-e. Thus, in addition to authorizing LIPA to operate business corporations, the Legislature had specifically authorized LIPA to acquire the stock of

¹ This transition issue is limited to employment concerns because LIPA already owns the physical assets utilized in the transmission and distribution operations.

LILCO. Such an arrangement is consistent with the LLC Model proposed by the Commission – *i.e.*, LIPA's acquisition of the membership interest in ServCo.²

As a reaffirmance of this legislative intent authorizing LIPA to acquire and operate ServCo, the proposed legislation includes the following provision at Section 4:

Notwithstanding any provision of law which may or could be deemed to the contrary, such acquisition of ServCo by or for the authority and/or authority subsidiary, and the rights, obligations and undertakings of the authority in connection therewith as hereinabove set forth, are hereby declared to be in furtherance of the authority's proprietary, marketplace function of providing a safer, more efficient, reliable, and economical supply of electrical energy within the service area, which will realize savings for the ratepayers and taxpayers in the service area and otherwise protect the interests of ratepayers and the economy in the service area.

To retain the current workforce and ensure that its relationship with IBEW Local 1049 is maintained, the proposed legislation additionally obligates LIPA to retain and employ ServCo employees, subject to the terms and conditions of any then-existing labor contracts. See Proposed Amendments, Sections 2 and 4.

Specifically, the proposed legislation provides:

Section 2 [Section 1020-e of the Public Authorities Law]

The board, or the chairperson pursuant to authority duly delegated to him or her, from time to time shall hire, without regard to any personnel or civil service law, rule or regulation of the state such employees . . . as it may require for the performance of its duties and shall prescribe the duties and compensation of each officer and employee, provided, however, that any such employees hired, leased, or otherwise retained by the authority or any of its subsidiaries as a consequence of an acquisition of all the membership interests in, or assets of, ServCo, or any authority subsidiary shall be hired subject to, and be entitled to, all applicable provisions of (i) any existing contract or contracts with labor unions representing ServCo employees, and (ii) all existing pension, retirement, or other benefits provided to ServCo employees under any existing collective bargaining agreement. ServCo employees shall not be public employees or eligible to become members of the New York state and local employees' retirement system.

² The current operation services agreement between LIPA and PSEG expressly states that, upon the expiration of the agreement, PSEG is obligated to transfer 100% of the membership interest 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.

and

Section 4 [Section 1020-i of the Public Authorities Law]

3. When the authority acquires either directly or through a subsidiary the private entity known as Long Island Electric Utility ServCo LLC, the authority shall maintain the employment of the ServCo employees who are subject to the terms of any existing contract or contracts with any labor union, and shall assume such labor contracts. Upon acquisition of ServCo by the authority, such employees shall:

(a) continue to be treated as private sector employees subject to the national labor relations act and exempt from the New York state public employees fair employment act;

(b) not acquire civil service status;

(c) be entitled to continue to receive such salary and benefits as said employees receive as provided in the existing labor union contracts as of the date of the authority's acquisition of any membership interest in ServCo;

(d) be entitled to all provisions of any existing contract or contracts with labor unions; and

(e) have their pension and other benefits, including retirement benefits, continued in plans that are operated and administered in compliance with the employee retirement income security act of 1974, as amended (hereinafter "ERISA"), and the internal revenue code, to the fullest extent allowed by law.

After acquisition of ServCo by the authority, the authority shall have an obligation to bargain in good faith with the collective bargaining representative of such employees pursuant to the national labor relations act. . . .

These statutory amendments provide clear authorization for ServCo employees to continue to receive the same compensation and benefits under a LIPA-owned ServCo as provided in the labor contracts that exist at the time LIPA acquires the membership interest in ServCo. In short, LIPA would be obligated to assume existing labor contracts in their entirety and recognize IBEW Local 1049 as the bargaining representative of ServCo employees pursuant to the National Labor Relations Act ("NLRA").

Ensuring that federal labor law, and not the New York Civil Service Law or New York State Labor Relations Law, continues to control the relationship between a LIPA-owned ServCo and IBEW Local 1049 was a third crucial issue considered by the Commission in drafting the proposed amendments. 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 will have no direct impact on those

agreements. As proposed, ServCo will continue as the employer entity and the collective bargaining agreements will remain in place by operation of law. Contracts to which an LLC is party, including collective bargaining agreements, remain in place and are unaffected by a change in the membership of the LLC.³

Currently, ServCo and IBEW Local 1049 have a private-sector employer-union relationship. ServCo engages in interstate commerce and, as such, the NLRA applies, and the National Labor Relations Board (“NLRB”) has jurisdiction over any potential dispute between the parties.⁴ The NLRA, however, does not apply to state governments and their political subdivisions. 29 U.S.C. § 152(2). The NLRB evaluates multiple 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. *Hyde Leadership Charter Sch.–Brooklyn*, 364 NLRB 1137, 1139 (2016) (citing *NLRB v. Nat. Gas Util. Dist. of Hawkins Cnty., Tenn.*, 402 U.S. 600, 604-605 (1971)).

The proposed legislation enacting the LLC Model strongly supports the conclusion that the NLRB would retain jurisdiction over a LIPA-owned ServCo.⁵ The fact that ServCo is a large pre-existing private commercial entity engaged in interstate commerce that was not created by the State, and the decades-long history of a collective bargaining relationship subject to NLRB jurisdiction, weigh heavily in favor of continued NLRA coverage. The existing LIPA Act already evidences the Legislature’s intent that, in the event LIPA were to acquire the T&D system, those employees would continue to be subject to the existing labor agreements with IBEW Local 1049.

The proposed legislation includes additional provisions that further clarify and emphasize the legislative intent to preserve the private sector status of the ServCo

³ See, *EPE, Inc. v. NLRB*, 845 F.2d 483, 487 (4th Cir 1988); *Hendricks-Miller Typographic Co.*, 240 NLRB 1082, 1083 fn. 4 (1979). Cf. *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272, 291 (1972).

⁴ The NLRA extends the NLRB’s jurisdiction to enterprises whose operations “affect[] commerce.” 29 U.S.C. § 160. The NLRB’s commerce related jurisdictional standards are such that ServCo would clearly satisfy them (i.e., the amount of goods sold, or services provided by the employer out of state or purchased by the employer from out of state is in excess of \$50,000 annually). See *Cervetto Bldg. Maint. Co.*, 303 NLRB No. 99 (N.L.R.B. July 5, 1991); *Int’l Bhd. of Elec. Workers, Loc. 48*, 332 NLRB 1492, 1497 n.31 (N.L.R.B. 2000).

⁵ While the NLRB has a procedure by which parties may request an advisory opinion on the issue of NLRB jurisdiction, such an opinion may only be sought in limited circumstances, when: (1) a proceeding is currently pending before the agency or court; (2) the petitioner is the agency or court itself; and (3) the relevant facts are undisputed or the agency or court already made the relevant factual findings. 29 C.F.R. § 101.39. As there is no pending proceeding and certain relevant facts remain to be resolved by the Legislature, we have not recommended that the Commission seek an advisory opinion from the NLRB regarding the NLRB’s jurisdiction over a LIPA-owned ServCo.

employees, including the specific intent to maintain ServCo within the jurisdiction of the NLRB. The proposed amendments explicitly outline the private sector nature of ServCo employees' employment following acquisition by LIPA, and clarify that such employees shall be subject to the NLRA rather than the New York State Public Employees Fair Employment Act (*i.e.*, the Taylor Law) and the jurisdiction of the New York State Public Employment Relations Board. The proposed legislation also expressly requires ServCo to recognize and "bargain in good faith with [IBEW Local 1049] the collective bargaining representative of such employees pursuant to the [NLRA]," which are the core requirements for an employer under the federal law. The NLRB has found such evidence of legislative intent to be a critical factor in asserting jurisdiction. See *St. Paul Ramsey Medical Center*, 291 NLRB 755, 757-58 (1988) (statutory provisions establishing the legislative intent to privatize a medical center controlled over countervailing factors indicating municipal status).

In assessing whether an entity is covered under the NLRA, the NLRB also examines the structure of the governing board and management to assess the extent of public control. For example, if the governing board were directly elected by a voting class that was comparable to the electorate for general public elections, such a fact would weigh against NLRA coverage. Compare, *Concordia Elec. Co-Op., Inc.*, 315 NLRB 752, 754 (1994) (electorate that included corporate entities not comparable to general public electorate). With an appointed board, the inquiry shifts to the extent of control by public officials. For example, where an entity's board of directors is appointed, and subject to removal, by elected officials, those factors weigh against NLRA coverage. *Hyde*, 364 NLRB at 1142, fn. 16. In other cases, including, where public officials did not exercise complete or continuing control, their involvement did not exempt the entity from NLRA jurisdiction. See, *St. Paul Ramsey Medical Center*, 291 NLRB at 757; *Enrichment Servs. Program, Inc.*, 325 NLRB 818, 819 (1998). In addition, if board membership is determined by the entity's organizational documents (as opposed to established by law), that arrangement also supports NLRA jurisdiction.

Regarding ServCo's management,⁶ the proposed legislation does not impose any restrictions on LIPA's broad authority to operate ServCo. Thus, LIPA would have discretion to operate, manage, and structure ServCo and configure the LLC operating agreement, or other corporate structure. In exercising that discretion, LIPA should be mindful of these principles under the NLRA. That is, for example, LIPA could, through ServCo's governance structure, create some separation between oversight of ServCo's labor relations and LIPA officers who are responsible to public officials.

Given the size of ServCo's commercial operations, and its extensive history of private unionized labor relations, when combined with the statutory language in the

⁶ Currently, as an LLC, ServCo is managed pursuant to an operating agreement and does not have a governing board.

proposed amendments and the underlying legislative intent, there is strong support for the conclusion that, after LIPA acquires ServCo, it would remain subject to the NLRA.

To further confirm NLRA jurisdiction, we recommend that, contemporaneous with the transfer of ServCo's membership interest from PSEG to LIPA, ServCo and IBEW Local 1049 enter into an agreement (i) confirming their understanding that the change in ServCo's ownership does not change, and is not intended to change, the private sector nature of the employment; and, (ii) establishing that the employer is voluntarily consenting to be treated as an employer as defined in the NLRA; and remains subject to the jurisdiction of the NLRB. Such an agreement could significantly reduce the likelihood of a future jurisdictional challenge, although the NLRB ultimately determines its jurisdiction. While not legally conclusive, these steps would be further persuasive evidence supporting the conclusion that the ServCo employees and ServCo's relationship with IBEW Local 1049 remain subject to the NLRA and NLRB jurisdiction.⁷

Significantly, under the proposed legislation, there would be no risk to the collective bargaining agreements in existence at the time of the transfer of the membership interest to LIPA. Those agreements remain in full force and effect, even in the unlikely situation that the NLRB did not have jurisdiction. The NLRB jurisdiction issue would only arise if there were a claim that ServCo or IBEW Local 1049 acted in violation of the NLRA, and the other party pursued that claim before the NLRB.⁸

The final relevant area of concern relates to ServCo's existing employee benefit plans, including its welfare plans (e.g., medical, dental, life insurance, etc.) and its retirement plans.⁹

Currently, as plans maintained by a private commercial employer, the ServCo plans are regulated by the federal Employee Retirement Income Security Act (ERISA) and must be established and administered in accordance with ERISA and the corresponding relevant provisions of the Internal Revenue Code. Plans covered by ERISA are heavily regulated. ERISA imposes fiduciary obligations on plan administrators to act in the best interests of the plan participants. The federal law also requires reporting to the federal government, and disclosing to the plan participants, detailed information

⁷ As an alternative to the LLC model, the proposed legislation also authorizes LIPA, in its discretion, to utilize the services of a professional employer organization (PEO), as defined under New York Labor Law, to maintain the employment and working conditions of the ServCo employees consistent with the legislative intent described above. The PEO model has several drawbacks, as outlined in the Commission's Draft Report, but it presents an option that unequivocally maintains NLRB jurisdiction and continuation of ServCo's collective bargaining agreements and employee benefit plans.

⁸ The proposed legislation establishes that the Civil Service Law, including the Taylor Law, would not apply to ServCo employees. So, in the unlikely event that there were a determination that the NLRA was no longer applicable to ServCo, the New York State Labor Relations Act would control, and the collective bargaining agreements would remain in full force and effect. See, N.Y. Lab. Law §§ 700, *et seq.*

⁹ ServCo maintains multiple retirement plans including defined benefit pension plans, and 401(k) plans.

about the plan's terms and its financial status. Additional requirements apply to retirement plans that regulate participant eligibility, funding, benefit vesting, and the payment of benefits. Such plans are also subject to considerable Internal Revenue Code regulation because of the tax consequences associated with retirement plan funding, deferred taxation, and benefit payments.

When LIPA acquires the membership interest in ServCo, there is a concern that the ServCo plans would be treated as "governmental plans" which are exempt from the requirements of ERISA. To preserve the status quo and continue ERISA protections, the proposed legislation includes the requirement that LIPA maintain ServCo's welfare and retirement benefits in plans that are operated and administered in compliance with ERISA and the Internal Revenue Code, to the fullest extent allowed by law. See Proposed Legislation, Section 4 (proposed amendment to N.Y. Pub. Auth. Law § 1020-i(3)(e)). This provision incorporates into state law an enforceable requirement on LIPA and ServCo to continue to adhere to the relevant ERISA standards in the administration of the ServCo benefit plans.

We also recommend that the Commission advocate that ServCo and IBEW Local 1049 enter into an agreement (either as a stand-alone agreement at the time LIPA acquires the membership interest in ServCo, or as an amendment to the ServCo collective bargaining agreements) 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 without the proposed legislative changes, otherwise cause the plans to fall outside of ERISA coverage as governmental plans. Such an approach would be consistent with the legislative intent as described above.

One additional point deserves emphasis. The draft legislation clearly establishes that the ServCo employees would not participate in the New York State Retirement System. The Commission's proposed amendments to Section 1020-e state, in relevant part, "ServCo employees shall not be . . . eligible to become members of the New York state and local employees' retirement system." Instead, their retirement benefits would continue to be provided through the ServCo benefit plans, including the retirement plans negotiated with the IBEW Local 1049 and incorporated into the collective bargaining agreements. This result is the same in all of the scenarios described above; it is independent of NLRA jurisdiction or ERISA coverage.

The employee benefit plan transition can be accomplished under the proposed legislation, but there are likely to be certain operational hurdles to overcome. For example, ServCo sponsors two 401(k) plans. If ServCo were deemed to be a governmental entity¹⁰ after LIPA acquired control, those plans could not be maintained in

¹⁰ See Determination of Governmental Plan Status, Proposed Rule, 76 FR 69172 (Nov. 8, 2011); Rev. Rul. 57-128; Rev. Rul. 89-49.

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October 9, 2023
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their current form because, under the Internal Revenue Code, a governmental employer is not authorized to maintain a 401(k) plan.¹¹ However, even in that circumstance, there are other forms of defined contribution plans that ServCo could establish (e.g., §457(b) plans) which are substantially similar to 401(k) plans and could be established to mirror the same terms and conditions of the existing ServCo 401(k) plans.¹² ServCo could transition the employees from their participation in the ServCo 401(k) plans to the mirror image plans upon LIPA's acquisition of ServCo – all in coordination and negotiation with IBEW Local 1049. As such, there would not be material changes to the benefits provided to ServCo employees.

In summary, we submit that the proposed legislation effectively authorizes the transition of the current ServCo workforce within the public power model, preserves the current relationships with IBEW Local 1049, and protects the employees' terms and conditions of employment.

After you have reviewed this correspondence, please contact me with any additional questions you may have. Thank you.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

s/Thomas G. Eron

Thomas G. Eron

Enclosure

¹¹ See Code Section 401(k)(4)(B)(ii); Treas. Reg. 1.401(k)-1(e)(4).

¹² If ServCo is determined not to be a governmental entity for benefit purposes under ERISA, the retirement plans would be unaffected by the transfer of the membership interest and would continue in their current form and status.