

**THE NEW YORK STATE LEGISLATIVE COMMISSION ON THE
FUTURE OF THE LONG ISLAND POWER AUTHORITY**

Testimony of the New York State Department of Public Service

September 12, 2023, and September 18, 2023

Good morning, Chair Thiele, Chair Thomas, Commissioners, Executive Director Lancman and other distinguished members of the advisory committee on the Legislative Commission on the future of the Long Island Power Authority (LIPA).

My name is Carrie Meek Gallagher. I am the Director of the Long Island Office of the Department of Public Service. I am joined by Nicholas Forst, counsel in the Long Island Office. We appreciate this opportunity to provide testimony on the current and future management and provision of electric service on Long Island, and the Draft Report recently issued by the Commission.

As we testified during the Commission's November 29, 2022, hearing, DPS is well-positioned to deliver on, and continues to deliver on, our core mission to meet the needs of utility customers. Many of the points made in our previous testimony ring true and I would ask the Commission to refer to that testimony as it finalizes its report.

The Commission's Draft Report speaks to several challenging issues LIPA, DPS, and PSEG LI identified in our respective testimony: Governance, Oversight, and Workforce Transition. Those challenges remain and are no less important than they were when we addressed this Commission in November of 2022.

Today's proceedings represent another step the Commission has taken to finalize its Report and ultimately provide its recommendations for legislative action. As such, it is incumbent upon the Department to address a few discrete topics raised in the Draft Report.

Utility customers are entitled to safe, adequate, reliable, and sustainable service. To that end, DPS' continued vigilance provides greater oversight, transparency, and stronger protections for customers. The first and foremost obligation of all parties involved in this process is to support and protect utility customers on Long Island and in the Rockaways.

Under the provisions of the LIPA Reform Act and the Second Amended and Restated Operations Services Agreement, DPS has comprehensive review and recommend responsibility for LIPA and PSEG LI's core utility operations. The LIPA Reform Act provides DPS with distinct and discrete responsibility in fifteen areas that cover rates, operations, capital expenditures, emergency response, customer service, net metering, and energy efficiency programs. Further, the Second Amended and Restated Operations Services Agreement provides DPS with review and recommend responsibility in sixteen areas including compensation, performance metrics, IT system separation, and system stress testing. Also, the Commission and the Department have statutory oversight authority concerning executive compensation, community choice aggregation and energy storage.

The DPS Long Island Office works collaboratively with the Department at large and vice-a-versa with the more than 400 staff members at the Department in Albany, Buffalo, and New York City, supporting state-wide matters such as rate cases, Article VII transmission facility siting cases, investigations and enforcement proceedings, consumer outreach and resolution of customer complaints concerning utilities like Con Edison, Altice, Liberty Utilities and National Grid.

The knowledge and expertise of the entire Department is brought to bear in our efforts. As part of its consumer assistance programs, the Department provides customers with comprehensive, clear educational materials and guidance to assist them in reducing their energy bills, preparing for winter and summer's extreme cold and heat, and learning and exercising their rights under New York's

nation-leading utility consumer protection laws, the Home Energy Fair Practices Act (HEFPA). Department staff also informs, educates, and empowers consumers through live outreach presentations statewide, rich consumer education resources, and timely social media consumer information campaigns. These are critical functions as LIPA is the first utility in the State of New York to transition to Time-of-Day pricing, a move the Department ultimately supports pending the efforts of LIPA and PSEG LI to develop its customer education and outreach plan.

In addition, on March 9, 2023, Governor Hochul announced as part of National Consumer Protection Week that the Department's Office of Consumer Services aided approximately 68,000 New Yorkers with utility complaints and returned \$4.2 million dollars to customers in 2022 alone. These are quantifiable and meaningful results that directly impact customers day-to-day lives.

CEO for the Department Rory M. Christian said, "The Commission and the Department are focused on resolving utility complaints for the State's consumers and ensuring utilities comply with consumer protection regulations. This focus enables us to promote our historic mission and activities on behalf of the public interest and helps ensure that utilities provide refunds to consumers when the utilities make a mistake." This is no less true of the Department of Public Service's Long Island Office and applies no less to LIPA and PSEG LI now as it should in the future. DPS Long Island's customer service operations' responsibility includes the resolution of customer complaints, which has resulted in the resolution of 15,000 consumer complaints with the return of approximately \$900,000 in credit adjustments to customers over its tenure.

The Draft Report continually references a potential savings of \$13 million dollars were the Legislative Commission to remove DPS Oversight of a new fully municipal LIPA. This misapprehension that removal of DPS' oversight could generate a savings fundamentally misunderstands the purpose of the general assessment and how it is structured to fund utility regulation.

The Draft Report derives this supposed savings by imputing an exemption for this new municipal entity from the general state-wide assessment represented in LIPA's Tariff as the New York State Assessment (NYSA) rider, or more colloquially known as the former Public Service Law (PSL) §18-a assessment. Section 18-a of the Public Service Law was originally created in 1934. As we know it today, the General Assessment was amended in 2009 to create a temporary assessment and a general assessment, removing the requirements of PSL §18-a (6) in 2017.

PSL §18-a requires the Department of Public Service to assess and bill utility companies the costs and expenses of the Department (General Assessment) by February 1 preceding the fiscal year. This assessment includes all utilities, electric, gas, water, steam, and telephone, including municipal entities of each utility type. Over 160 distinct utilities are subject to the assessment.

The General Assessment is based on a company's New York State intrastate operating revenue. The Department's General Assessment is calculated by dividing the Department's costs by total company revenues to develop a rate that is then multiplied by each company's assessable revenue to arrive at each company's proportionate Assessment. The maximum General Assessment on any company's revenues is capped at one percent, with the exception of telephone corporations for which one third of one percent is the maximum.

As part of the LIPA Reform Act the law was clarified to include acknowledgement of DPS' responsibilities pursuant to PSL §3-b, however, prior to 2013 LIPA was included in the temporary assessment and was subject to the provisions of PSL §18-a. In addition, Public Authorities Law (PAL) §1020-s specifically recognizes the applicability of PSL §18-a.

Thus, LIPA pays its proportional share for all of the Department's activities, including both its LIPA Reform Act or DPS jurisdictional work, and its Public Service Commission jurisdictional work, as well as other agency utility work.

For the record, since 2015 (reflecting the costs from 2014, the first year of the DPS Long Island Office) the NYSA for LIPA has averaged approximately \$11M, the lowest being \$9M in 2018. The previous 5-year average is \$11.2M. The cost for fiscal year '21-'22 was approximately \$11.8M. It should also be understood, that as LIPA's revenues increase so too does the assessment to reflect the expansion of each utilities' operations and proportional oversight exerted.

Furthermore, exemption from the assessment is not sufficiently considered or evaluated in the Draft Report, nor is there any consideration of the inequity and possibly discriminatory nature of such exemption.

The Draft Report also refers to credit ratings agencies and other credit market participants having historically cited potential Public Service Commission oversight of LIPA as a significant credit concern, adding that there should be no increase in DPS' level of regulation of LIPA as it transitions to a public power model. First, LIPA already operates under a public power model. Second, the Draft Report's claim that rating agencies have cited such concerns is itself uncited and does not comport with general acknowledgement from agencies like Moody's, S&P, and Fitch that oversight by the Department is credit positive and/or supportive.

In the August 11, 2022, Fitch Report concerning LIPA, Fitch stated: "Overall, Fitch views the DPS's review and recommendations to date as constructive. The DPS has positively endorsed several rate adjustment mechanisms to offset variability in some of LIPA's largest expense items, including debt service, storm damage, energy efficiency, PILOTs, and fuel and purchased power costs." S&P also acknowledged DPS' positive endorsements.

In 2013, LIPA's credit ratings were S&P: A- (Negative); Fitch: A- (Negative); and Moody's: Baa1 (Negative). In 2022, those ratings have improved to S&P: A (Stable); Fitch: A (Positive); and Moody's: A2 (Stable). Thus, ratings have continued to improve since the implementation of the LIPA Reform Act and additional regulatory oversight by the Department of Public Service.

Moreover, the terms of the LIPA Reform Act which enabled LIPA to engage Utility Debt Securitization refinancing, includes consultation with the Department. The Department remains supportive of the strong improvements in financial health the Authority has made in recent years. The continuity of a strong DPS and LIPA partnership is necessary to provide maximum value to customers.

The Draft Report also refers to DPS' November 13, 2020, letter by which we notified PSEG LI and LIPA of PSEG LI's significant failures during Tropical Storm Isaias, recommending 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" (*emphasis added*). While

accurate, the Department's recommendation stated there should be an evaluation. DPS also included seven other alternatives, one of which was the renegotiation of the contract that was ultimately pursued jointly by DPS and LIPA and accomplished successfully for LIPA's customers. The Department's 2020 letter should not be misinterpreted to have recommended outright that LIPA pursue municipalization no matter the cost.

The Draft Report acknowledges the need to address workforce migration and the need to obtain and retain qualified management talent. This challenge requires serious consideration, and the goal must be to hire and retain the most qualified individuals to manage and operate LIPA's electric system in a manner that ensures safe, reliable, affordable, and sustainable service for all ratepayers.

The Draft Report needs to address these issues and a Final Report should unassailably support the continuity of DPS oversight. Having DPS staff located on Long Island, who are familiar with the area, the people who live here and the utility companies that serve the Island, including LIPA and PSEG LI, ensures that Long Island residents receive the benefits they deserve.

I would like to point back to my previous testimony and the outcome of the 2015 LIPA/PSEG LI Rate Case which reduced rates by approximately \$100 million and set LIPA and PSEG LI on a more financially healthy path. The Draft Report should be enhanced to consider what impact DPS can have in future rate cases and how we can utilize this rigorous process to enhance utility service on Long Island.

In conclusion, more work remains, not just as part of this Commission, but on Long Island and in the Rockaways with LIPA and its customers. DPS remains vigilant and ready to continue its meaningful work which provides greater oversight, transparency, and stronger protections for consumers. We look forward to continuing to work with the members of this Commission and its Advisory Committee, stakeholders, and ratepayers to ensure fair and reasonable electric rates for ratepayers, while also safeguarding access to secure, resilient, reliable, and sustainable electric, gas, water, and telecommunications services in the region; and facilitating the region's transition to a clean energy future while ensuring that all communities can benefit from that transition.

Thank you for your time and attention, this concludes my remarks.