

# The LIPA Board: Testimony Before Commission on the Future of LIPA

## Peter J. Gollon

### September 12, 2023

#### Overview:

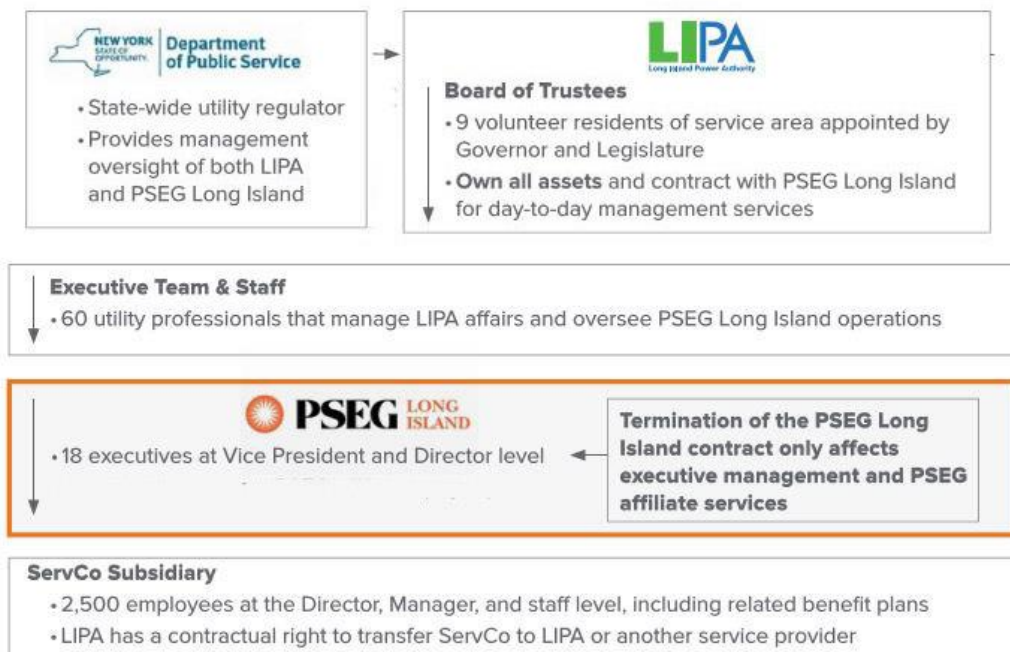
I would like to commend the Commission and its staff for a most complete report. From it I learned significant elements of LIPA’s history, and of various reports and audits of LIPA that I had not known of prior to, or been made aware of during my five year tenure as a LIPA Trustee.

I concur in the overall recommendation of the draft Report that LIPA be empowered to abandon the unique, expensive, and dysfunctional “public-private” partnership model with which it has been saddled for the past decades, and be transitioned to a fully municipal utility to join dozens of other large U.S. public power utilities that provide the best quality service to their customers.

I will allow others to comment on details of the draft Report, and focus my comments on the functions and needs of the LIPA Board of Trustees. *This Board’s functioning, openness and responsiveness to residents of its service area will be key to the success of a “new” LIPA in providing affordable and reliable electric service as it transitions to a renewable energy model.*

#### Current LIPA Board Responsibilities and Needs:

As you all know, LIPA operates under the 2013 LIPA Reform Act with the following structure showing LIPA’s primary relationship with PSEG LI <sup>1</sup>:



<sup>1</sup> Based on Figure 5, PHASE II REPORT - Options Analysis for the Management of LIPA Assets, April 28, 2021

LIPA has oversight authority over PSEG LI's operation of the LIPA-owned transmission and distribution grid, and over PSEG LI's other operational decisions. To properly exercise these functions the LIPA Board is required by the LIPA Reform Act to be composed of members with "relevant utility, corporate board, or financial experience." To my knowledge, LIPA Trustees have had significant experience in the latter two areas, but only one LIPA Trustee in the past decade has had "relevant *utility* experience." And at least one has had professional computer and communications experience, which was most helpful post Tropical Storm Isaias.

When necessary – as happened most significantly as a follow-on to PSEG LI's operating failures during Tropical Storm Isaias – the LIPA Board can and has voted resolutions making Recommendations to PSEG LI. This is done under the Board's responsibility to "monitor the risks and mitigation activities undertaken by [LIPA's] officers and PSEG LI to identify, assess, and manage risks to LIPA's performance."<sup>2</sup>

The February 24, 2021 "Status of Implementation Plans for Board Recommendations" report to the Board enumerates 130 such recommendations, with 80 being in response to Tropical Storm Isaias, and 25 concerning deficiencies in PSEG LI's management of inventory owned by LIPA.

In practice these Recommendations are made as a result of observations or findings made by LIPA staff or consultants hired by them. This is consistent with the role of LIPA's officers to "oversee and make recommendations to the Board of Trustees regarding the operations of and contractual relationship with the Service Provider",<sup>3</sup> currently PSEG Long Island.

These findings or observations were presented to the LIPA Board in memos of justification from LIPA CEO Thomas Falcone, accompanied by draft Recommendations to be discussed and voted on by the Board. These draft Recommendations are invariably passed by Board vote, almost always in the form presented to it, or occasionally with minor revisions.

**In summary, then, all monitoring by the LIPA Board of the performance of the Service Provider (PSEG LI) has been done via input to it from high level LIPA Staff.**

It is also the responsibility of the LIPA Board to "hire, evaluate and, when necessary, discharge the Board-elected officers," namely Chief Executive Officer, the Chief Financial Officer, and the General Counsel.

The evaluation of the LIPA CEO has most recently been based primarily on the efforts led by him to force PSEG LI to acknowledge, diagnose, and remediate the major failures in the customer communications systems and Outage Management System during Tropical Storm Isaias; to verify the repairs made to those systems; and to threaten the litigation that resulted in the current Amended and Restated Operations Services Agreement with PSEG LI.

All of the above responsibilities of the LIPA Board have been carried out *with a very limited time investment* by each Board member. The projected time allowance for all 2023 official LIPA Board

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<sup>2</sup> Board Policy #1322 [Purpose and Roles], September 21, 2016.

<sup>3</sup> *ibid.*

activities (excluding briefing calls and individual meeting preparation at home, etc.) is **under about forty hours per year, or less than one hour per week on average**<sup>4</sup>:

## SUMMARY OF PROPOSED 2023 LIPA MEETINGS

Board/Committee	Number of Meetings	Average Length	Total Time
Board	7	1 hour, 30 mins.	11 hours
F&A	7	1 hour, 15 mins.	8.75 hours
Oversight & Clean Energy	5	1 hour, 10 mins.	6.0 hours
Governance, Planning and Personnel	4	50 minutes	3.25 hours
<b>Total Number of Meetings</b>	<b>23</b>	<b>Total Time Spent*</b>	<b>29 hours</b>

**\*The proposed Board agendas for 2023 do not include:**

1. A time allowance for executive sessions or emerging issues, which are likely to increase the total time spent by the Board during the year by **4 or more hours**; or
2. **Board briefings, workshops, and training**, which are in addition to the Board's meeting schedule, and may include work with the Board's governance consultant

**It is thus obvious that the Board cannot properly and effectively exercise its responsibility to supervise and manage the risks to LIPA's performance without substantial input from top level LIPA staff, or significantly greater expenditures of time than seem to be made at present.**

### **Future LIPA Board Responsibilities and Needs:**

The "modified municipal structure" discussed by the Brattle Group and recommended in your report has minimal effect on the current experienced and dedicated ServCo workforce and incorporates ServCo into LIPA in a fashion yet to be determined.

This revised structure would place LIPA's staff in *operational* roles rather than *supervisory* ones, with a somewhat expanded LIPA staff handling all the functions now handled by PSEG LI, as shown in the blue rectangle on the following page<sup>5</sup>. LIPA staff has been strengthened by upgrades in staffing in the past few years, and would be additionally augmented by a dozen or so additional experienced staff if it were fully municipalized. I believe the current LIPA staff – with additions mentioned – is up to handling a fully municipal structure. Many of them may be looking forward to it. Conversely, and this is just speculation on my part, the disappointment of a failure to municipalize could cause some key players to leave.

<sup>4</sup> Annual Board and Committee Agenda Planning for 2023, Proposed for Board Consideration December 14, 2022

<sup>5</sup> This is similar to Figure 17 on page 120 of the Commission's draft report.



While the DPS is shown in the above chart, its future role remains to be determined.

The Commission’s draft report, with page references, states [emphasis added]:

”Whether LIPA’s Board is elected or appointed, LIPA’s future governance model should ensure that board members represent all areas within LIPA’s service territory, including disadvantaged communities.” [p. xv]

**“Under a public power model, the day-to-day responsibilities of the LIPA Board of Trustees are expected to increase.** The roles and function of the Board must be revised to account for compliance with the roles and responsibilities of a board of a public authority in accordance with Article 9, Title 2 of the Public Authorities Law.” [p. xvi]

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, 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.<sup>6</sup> [p. 12]

**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. [p. 95]

In my opinion, and in agreement with the points quoted above, to effectively manage a reconfigured and operational LIPA, its Board must have:

- **Knowledge** of previous history, reports, audits, etc., as provided in the initial part of the Commission’s draft report;

<sup>6</sup> LIPA Phase II Report, pp. 28-29

- **Information** about the current state of the utility whose management it is supervising, which information should not come *exclusively* from the staff being supervised. *It would be a serious governance weakness for the Board to have to rely only on self-reporting by LIPA staff.*
- **Expertise in the electric utility field**, which the current LIPA Board lacks. This could be addressed by the availability, if needed, of independent consultants or staff that reports *directly* to Board or Committee chairs. This would be analogous to the current practice of LIPA's Finance and Audit Committee receiving input, without the presence of other LIPA staff, from the Independent External Auditor, and from the person heading LIPA's internal audit department.<sup>7</sup>
- **Board Members who have sufficient time** to exercise their roles in much greater depth than has been the practice of LIPA Boards under the current structure.

The current Board practice of even relatively low time requirements and workday meetings skews its membership to retirees and actively working people who are able to adjust their work hours around the limited demands that LIPA currently makes on their time. An increased workload and perhaps more frequent meetings could further limit Board membership. *Providing a reasonable daily stipend for Trustees might expand the number of qualified people who are willing to accept such an appointment.*

- **Confidence of the public as a result of greater transparency.** Experience has shown that significant hostility has resulted from inadequate understanding by both PSEG Long Island and LIPA of the impact on customers of changes in tariffs, and the location and details of new facilities, or even just taller and thicker poles.

A "new" LIPA would clearly benefit from earlier, greater, less formal and more open communication between LIPA Staff and Trustees on the one hand, and community members on the other hand. The more that such two-way communication occurs, the greater will be the confidence that the customer community has in the new LIPA structure and its overall leadership. This could be a more regular and open process than what Vice Chair Fischl now occasionally allows at Board meeting.

A new or revised process of Trustee selection, with selection of at least some Board members via public input could well facilitate building such confidence. This is discussed at greater length below.

- **Continuity** of a majority of experienced Board members when some existing members are cycled off as a result of their terms ending, etc. A Trustee serving the current three year term is really only effective after the first year, which is spent learning in the key knowledge areas ("relevant utility, corporate board, or

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<sup>7</sup> LIPA Policy on Audit Relationship, LIPA Board Resolution #1725, most recent amendment May 18, 2022

financial experience.”) in which he or she is not already conversant, and also about the inner workings of LIPA in particular.

Increasing the length of a Trustee’s term from the current three years to five would make each Trustee more effective during the length of their term, and have a greater fraction of the whole Board functioning effectively at any one time.

Members of the present Board have been immersed in LIPA and PSEG operations for some years now, with an average Board tenure of 5½ years. Three individuals have served for at least ten years, perhaps going back to the appointment of a new Board under the LIPA Reform Act.

*Board continuity will be especially critical during the transition from LIPA’s current outsourced operations model to being a fully operational utility.* Transitioning from the present “hybrid” model of utility operations to a fully municipal one will require great care and supervision as LIPA begins to directly manage processes which for decades were managed for it by others. The Board in place at that time (January 1, 2026 at the expiration of the present OSA) will have the responsibility of supervising that transition.

- **Independence:** There is a belief by some members of the public that at least some of the Trustees appointed by the Governor take instructions on key matters from the Governor. I personally believe that this is not the case now, but was likely the case in the chaos that followed Superstorm Sandy. Having the Governor appoint less than a majority of the Board could address this fear. I cannot recall any close votes by the LIPA Board, so having one fewer Trustee “under the Governor’s control” would not have affected any Board action in recent years.

The Comptroller’s report<sup>8</sup> suggests having the Chair of the Public Service Commission (PSC) and the NYPA President on the Board. Since holders of these positions are either nominated or appointed by the Governor, adding them to the LIPA Board as voting members would unfortunately only strengthen the perception that the Board was under the Governor’s control. In addition, having the Chair of the PSC as a Trustee at the same time that the Department of Public Service – which is an arm of the PSC – has a supervisory function over LIPA creates a tangle between governance and supervision functions.

The Comptroller’s report states that because of the obvious and critical “need to ensure continuity of service and retain the experienced and skilled employees that have long-standing knowledge of and deep familiarity with the LIPA service territory, identifying the governance structure that would facilitate achieving this outcome should be a top priority.”<sup>9</sup> Including on the Board of Trustees a person appointed by the union (IBEW Local 1049) representing those employees should assure them that

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<sup>8</sup> Recommendations Regarding the Draft Report on the Establishment of a Public Power Model for the Operation of the Long Island Power Authority, Office of the State Comptroller, pp. 2,7

<sup>9</sup> *Ibid*, p. 5

their interests in pay, working conditions, and pension and other benefits would be considered at the highest level of LIPA.

Changing the membership of that Board (as distinct from changing how members are selected) at the same time that the structure changes to a directly managed municipal one is simply asking for trouble as an inexperienced Board would then have the responsibility of directly supervising the operation of the grid by LIPA staff, instead of the present method of indirectly supervising its operation by PSEG with LIPA staff as intermediary reporting agents.

**Both changes – in Board membership and utility operations - should not happen at the same time!**

### **Selection of LIPA Board Membership**

While I have no particular preference as to whether the *entire* LIPA Board should be elected, I do believe that election of at least a minority of the Board members would enhance the public's sense that LIPA is more transparent than some claim it is now, and would provide its customers with greater confidence that it is being managed in their own interest, especially as it rapidly transitions to a fossil-free future.

Such an election should be non-partisan, with all utility customers being eligible to vote on an equal basis. To simplify the election process and at least minimize the need for, and influence of campaign contributions, relevant materials prepared by each candidate should be distributed with monthly utility bills, and posted on LIPA's website. Customers' voting should be done electronically in the same manner that voting for corporate directors and resolutions occurs.

It may be that for various legal reasons, such as protection of bondholders' interests or labor law jurisdiction questions, such elected Trustees must be denied the right to vote on some or all issues brought before the Board. Even so, their presence on the Board would go a long way to enhancing public confidence in a utility that sorely needs such confidence.

I thank the Commission for seriously considering these observations and suggestions that reflect my five years experience of serving on the LIPA Board of Trustees.



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