

**LEGISLATIVE COMMISSION ON THE FUTURE OF THE
LONG ISLAND POWER AUTHORITY**

**VIRTUAL HEARING
NOVEMBER 29, 2022**

WRITTEN COMMENTS OF JOHN COYLE

Senator Thomas, Member Thiele, Members of the Commission and Members of the Advisory Committee:

Thank you for the opportunity to provide these comments. I am John Coyle, a partner in the Washington, D.C.-based law firm Duncan & Allen LLP. I have practiced as an attorney in the Energy field for the past 35 years, and have been recognized for my advisory role in the formation of new public power utilities. My professional biography accompanies these comments, which I must advise reflect my personal views and not necessarily the views of Duncan & Allen LLP or any of the firm's clients. You are welcome to read about the firm on our website – www.duncanallen.com. For a more extended version of my personal views on the topic of municipalization, my September 2022 podcast/interview with the Institute for Local Self-Reliance's John Farrell can be found at [Public Power Pt. 3: Ingredients For Success — Episode 166 of Local Energy Rules – Institute for Local Self-Reliance \(ilsr.org\)](https://www.ilsr.org/podcast/public-power-pt-3-ingredients-for-success-episode-166-of-local-energy-rules), which I believe is how Mike Menser tracked me down for this session.

These comments concern: (1) the viability and potential advantages of a full public ownership model; and (2) some best practices in consumer-owned utility governance and management.

BACKGROUND:

In September 1932, Franklin D. Roosevelt gave a speech in Portland, Oregon in which he said:

I therefore lay down the following principle: That where a community – a city or county or a district – is not satisfied with the service rendered or the rates charged by the private utility, it has the undeniable basic right, as one of its functions of Government, one of its functions of home rule, to set up, after a fair referendum to its voters has been had, its own governmentally owned and operated service.

That right has been recognized in a good many of the States of the Union. Its general recognition by every State will hasten the day of better service and lower rates. It is perfectly clear to me, and to

every thinking citizen, that no community which is sure that it is now being served well, and at reasonable rates by a private utility company, will seek to build or operate its own plant. But on the other hand, the very fact that a community can, by vote of the electorate, create a yardstick of its own, will, in most cases, guarantee good service and low rates to its population. I might call the right of the people to own and operate their own utility something like this: a 'birch rod' in the cupboard to be taken out and used only when the 'child' gets beyond the point where a mere scolding does no good.

The State did this in part with the 1998 Utility Debt Securitization Authority ("UDSA") financing of the buyout of the transmission and distribution assets of LILCO. But LIPA – uniquely among all governmentally owned utilities in the continental United States – operates on a hybrid model, contracting operation and maintenance of those transmission and distribution assets to a private party. In August 2020, Tropical Storm Isaias exposed flaws in that model, some of which were later addressed by revision of the operative contract between LIPA and PSEGLI. The Legislature has assigned this Commission the task "to provide the legislature with the specific actions, legislation, and timeline necessary to restructure LIPA into a true publicly owned power authority" (Legislative Law § 83-n.2.), and laid out fourteen topics that the Commission is to consider in formulating its recommendations. I have been asked to talk about elements of the first two of those statutory topics: (a) the method of governance of the public authority, and (b) improved transparency, accountability, and public involvement.

VIABILITY OF THE PUBLIC POWER MODEL

The Commission will hear expressions of skepticism about the viability of the public power organizational model for a utility the size and operational complexity of LIPA, with a service territory covering Suffolk and Nassau Counties and the Rockaways, about 1.1 million customers (meters), and serving a population of approximately 2.9 million. Do not be discouraged.

New York has outstanding homegrown examples of the success of the public power model in the New York Power Authority at the wholesale and transmission level, and the many member communities of the Municipal Electric Utility Association of New York and the New York Municipal Power Agency. From a national perspective, the Cities of Seattle and Tacoma (Washington), Los Angeles and Sacramento (California), metropolitan Phoenix, Arizona (the Salt River Project Agricultural and Improvement District), San Antonio (Texas), Nashville, Memphis,

and Chattanooga (Tennessee) – among many others – operate electric utility systems comparable in size and complexity to the LIPA system.

There are a total of approximately 2,200 public power communities in the United States. Accepting the premise that there is no inherently “right” or “wrong” choice between private and public enterprise, the public power utility model generally promotes transparency and accountability by offering its consumer-owners:

- ***Local Control***

- Citizen participation at the ballot box, in open public meetings of their utility’s governing authority, through open public records, through personal feedback and interaction.
- Transparency and Accountability – because the utility’s business is largely done in public, the public has the opportunity to be better informed, to participate in the decisional processes of the utility’s governing authority, and to respond to unsatisfactory performance at the ballot box.
- Support for local government through payment in lieu of taxes, in-kind contributions, and the ability to work cooperatively with Town and Village governments and public safety representatives.
- Communication – because of the proximity between consumer and utility, consumer concerns are more typically front-of-mind for utility management.
- Opportunities for shared space and shared support services (information technology, billing, environmental support).
- Unity, or at least commonality, of interest between utility and its consumers – no inherent conflict between quality service and profitability. Look north to Connecticut for correlation of frequency and duration of outages due to cost-cutting on tree-trimming.

- ***Reliability***

- Transparency and accountability in turn promote reliability; physical proximity of utility personnel and management to the communities they serve ensures that the utility is engaged, knowledgeable, and concerned about local priorities

- Local line workers know their service areas, and physical proximity to the service area creates opportunities for more proactive and efficient maintenance and faster responses to outages.
- ***Affordability***
 - Public power systems generally have access to lower cost capital than their investor-owned counterparts.
 - Public power rates are not marked up to provide a return on shareholder equity.
 - Public power generally enjoys more favorable credit ratings (and therefore lower interest costs) than investor-owned counterparts.
 - Public scrutiny incentivizes efficiency.

OBSERVATIONS ON GOVERNANCE

The governance structure is critical to the creation, maintenance, and expansion of the benefits of full public ownership (including the operation and maintenance function). A couple of recommendations as LIPA pursues the transition to full public ownership, based on experience:

- The effective governance and management structure creates and sustains a productive working relationship between the policymakers for the utility (the governing board) and the utility's executive team. One effect of the transition to full public ownership will likely be that the LIPA is no longer chosen entirely in Albany (the LIPA Board is currently chosen by the Governor, the Senate, and the Assembly, with specific numbers of board members allocated to each). Recognizing (as Tip O'Neil observed) that all politics is local, it is prudent to ensure that local political concerns are balanced by a commitment to the efficient and effective operation of the utility.
- Make sure that governing board and management have ample (but not burdensome) opportunities for constructive engagement.
- Ensure that there are governing board members with the technical expertise to contribute to, understand technically, and to support the utility's executive team on key issues of public concern.

- These considerations may recommend organizing governing authority by geographic districts; or by allocating some Board seats to local election and some to appointment by various levels of affected government (State, County, Towns, Villages). The offsetting consideration is that larger boards tend to be more unwieldy in decision making. Identify an ideal size and structure.
- There are numerous public authorities in the State of New York (and elsewhere), and it is well worthwhile for the Commission to survey the various governance models to make an informed decision about what will probably work best for Long Island. Then, do not be reluctant to change what turns out not to work.
- Ensure operational coordination with local governments and public safety.
- Coordinate planning with local authorities to ensure that utility programs and objectives are fully serving the needs of constituent communities.
- Avoid patronage.
- Pay careful attention to the utility's collective bargaining relationships in the transition from hybrid/public-private organization to full public ownership. Keeping ServCo in place is a sound strategy. It is crucial to approach concerns proactively, openly, and constructively. The transition is much easier if the workforce supports it.
 - Skills training to replace “graying” utility workforce is also key – D.C. Infrastructure Academy is a good example.
- It is essential to attract and retain talent at all levels, but especially in utility management, with a pay and benefit structure comparable to those provided by well-regarded private sector enterprises in the relevant area.

Thank you for the opportunity to share these thoughts this evening. I will be happy to answer any questions that anyone might have. Or, I can be reached at Duncan & Allen LLP, 1730 Rhode Island Avenue, N.W., Suite 700, Washington, D.C. 20036; (202) 842-8194 (office direct line) or jpc@duncanallen.com if the questions arise later.

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Preparatory Education: Tufts University
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For the past 35 years, John has represented municipalities, consumer-owned utilities and other consumer interests in proceedings before the Federal Energy Regulatory Commission (FERC), state utility regulatory commissions, federal and state trial and appellate courts, arbitration tribunals and North American Electric Reliability Corporation (NERC). Representative engagements:

- developer and regulatory interests in negotiations and disputes involving renewable resource power sales and interconnection agreements
- consumer-owned utilities in negotiation of power purchase and sale agreements, and in disputes with Regional Transmission Organizations and transmission owners over market design and rules, cost allocation, reliability must-run issues, transmission planning, tariff design and rate issues, and formula rates for transmission revenue requirements.
- several political subdivisions in establishing new, fully operational electric utilities, including the acquisition of facilities and power supply.
- a state consumer advocate in parallel federal bankruptcy reorganization and state regulatory proceedings, obtaining, and later enforcing, restraints against burdening utility credit with non-utility risk.
- municipalities and other consumer interests in utility merger proceedings before federal and regulatory commissions, including the Government of the District of Columbia before the District of Columbia Public Service Commission in acquisition of Pepco Holdings, Inc. by Exelon Corp. (2015), exposure and mitigation of market concentration in the *Duke-Progress* merger proceedings before FERC (2011-2012), and stopping the Babcock & Brown acquisition of NorthWestern Corporation before the Montana PSC (2007).
- American Public Power Association and National Rural Electric Cooperative Association as *amici curiae* in briefing to the United States Supreme Court in *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288, 194 L.Ed.2d 414 (2016).

Admitted to practice before: United States Supreme Court; District of Columbia Court of Appeals; Supreme Judicial Court of Massachusetts; United States Court of Federal Claims; United States District Courts for the District of Columbia, Maryland and Massachusetts; United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, District of Columbia and Federal Circuits.

Recent speaking appearances include: American Public Power Association's June 2019 National Conference (on energy security and resilience) and the Energy Bar Association's May 2019 Annual Conference ("Will FERC (Finally) Resolve Electric ROEs?").