

**New York State Legislative Commission  
on the Future of LIPA**

**Testimony of Thomas Falcone, Chief Executive Officer of the  
Long Island Power Authority**

**September 12, 2023**

## I. Introduction

Thank you, Chairs Thiele and Thomas, and distinguished members, for holding today's hearing and inviting me back to address the Commission.

My name is Tom Falcone, and I am LIPA's Chief Executive Officer. To briefly describe my background, I have been involved in the electric utility industry in various capacities for over 20 years. In addition to my role at LIPA, I am the Board Chair of the Large Public Power Council, which is a member organization serving the nation's 28 largest public power systems, collectively providing electricity to 30 million customers. I am also on the board of the American Public Power Association (APPA) and the Association of Edison Illuminating Companies (AEIC). APPA is the trade association for 2,000 publicly owned electric utilities across the country, while AEIC is where executives from 185 major for-profit and not-for-profit electric companies come together to share best practices in utility operations. Before joining LIPA, I was an investment banker and advisor to many of the largest public utilities in the United States.

I want to thank the Commission and its independent consultants for a comprehensive draft Report that lays out the history of LIPA and describes, in detail, the management options and critical decisions before us. This Commission, along with the members of the State Legislature and the Governor, will decide on the path to a utility that delivers excellent and affordable service, transparency, and accountability to the electric customers of Long Island and the Rockaways.

I want to spend a few minutes on three aspects of the Commission's draft Report, and then I'd be happy to take any questions you may have for me.

## II. Transition Timeline

First, LIPA is at the proverbial 'fork in the road.' The PSEG Long Island management contract expires on December 31, 2025 – a little over two years from now. The transition – whether to LIPA management or to another management provider selected through a competitive bidding process – has already begun and, as detailed in your draft Report, will take most of the remaining time under the current contract.

The longest lead time transition activity involves the ongoing separation of information technology (IT) and affiliate services from those of PSEG's New Jersey companies. The major IT systems that support grid operations already operate independently of New Jersey systems. The LIPA Board adopted an IT Separation Plan on September 28, 2022 to substantially transition the remaining IT systems by the end of 2024. However, other significant tasks include preparing and augmenting the next management team, seamlessly transitioning approximately 2,600 dedicated employees to the new organizational structure, contracting for goods and services needed after PSEG Long Island's contract expiration, and proactively communicating with customers and other stakeholders about the transition before it occurs. Each of these begins with the topic before the Commission – identifying the business structure LIPA will use going forward.

Until the State of New York makes a definitive determination on the future of LIPA, LIPA will continue the status quo – which means that we will rebid the management contract under the current third-party management business model. This process will need to begin early next year to allow sufficient time for the marketing and bidding of the contract, negotiations with multiple potential providers, LIPA Board approval, and State Comptroller review and approval, all of which precede the actual transition activities detailed a moment ago. This timeline ensures the continuity of services to our customers and competitive procurement for alternative management services if these services are not to be provided by LIPA itself. But we are at the point where a definitive business approach needs to be chosen so that the rest of the work can proceed in a timely manner for a successful future for our customers and your constituents.

### III. The Importance of Responsive, Timely, Transparent, and Coherent Governance

Second, I'd like to focus on governance, which is foundational to LIPA's future success. The Report describes LIPA's current governance model as well as several alternatives that have worked for public power utilities in other locales.

Whichever combination of board, advisory, and quasi-regulatory structures the Legislature and Governor choose, the governance model ultimately needs to be designed to provide responsive, timely, transparent, and coherent governance. The draft Report describes the key roles of the Board, including establishing the strategic vision for LIPA's service to customers, making decisions to balance cost and service quality based on local needs, and hiring and oversight of the Chief Executive Officer.

While there is no one best governance model that ensures success, a poor governance structure can ensure failure. Governance structures that duplicate roles and responsibilities among different bodies may foster unnecessary conflicts and complexity, resulting in adverse impacts on *all* aspects of providing service to customers.

For example, multiple, overlapping bodies with similar responsibilities can frustrate customers with a lack of clarity and accountability for decisions.

Additionally, as your Report notes, rating agencies view Boards with extra layers of governance as distancing necessary decisions from those with responsibility for the overall organization. This results in lower credit ratings and higher utility financing costs paid by customers.

And it can be difficult to attract and retain qualified, experienced personnel to a utility with multiple, overlapping decision-making bodies without a clear logic and distinction of their respective roles.

That is not to say that a Board cannot or should not be complemented by advisory or quasi-regulatory structures to bring forth additional expertise and ensure responsiveness to our customers and communities. In fact, such advisory structures are common in public power utilities. However, the Board must retain ultimate authority and responsibility for service to customers. As detailed in your Report, many public power boards have

advisory structures, but in every example, those structures are truly there to assist the board, not to supplant it.

As your draft Report notes, “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 citizen’s 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.”

#### IV. Holding ServCo Employees Harmless from a Management Transition

Third, LIPA agrees with the Commission that it is “critically important” that the current workforce and the established relationship with the International Brotherhood of Electrical Workers (IBEW) Local 1049 be maintained. LIPA management has long had a strong, constructive relationship with IBEW that puts the safety and welfare of the employees serving our customers first in our thoughts. The approximately 2,600 ServCo employees should be held harmless in any potential management transition in 2025, as they were in the prior management transitions in 1998 and 2014.

The Commission’s draft Report discusses three models to do so – the “MTA Model,” the “LLC Model,” and the “Professional Employer Organization or PEO Model.”

The MTA Model, while a helpful precedent, would not take full advantage of the broader powers contemplated by the State Legislature in the original LIPA Act to create and acquire subsidiaries and manage the utility for the benefit of customers without disturbing employees’ private sector employment relationships and benefits. As the draft Report notes, the MTA Model will likely result in a transition of the ServCo employees into public sector employment under the Taylor Law. LIPA employees are already exempt from the Taylor Law, and IBEW Local 1049 has previously indicated that they disfavor employment under the Taylor Law because it alters the union’s rights to bargain effectively.

Similarly, the PEO Model is another helpful precedent; however, as noted in the draft Report, it “carries forward aspects of the inefficiencies” present in the current contractual model (with the private utility managers being replaced by private PEO managers). The PEO model also introduces additional cost. As the draft Report notes, in retaining a PEO to be the joint employer of the ServCo workforce, the cost may be between 3% and 12% of payroll.

The draft Report’s LLC model best preserves the existing, collectively bargained benefit plans and rights for ServCo employees and is consistent with the public policy pursued by the State since the creation of LIPA in 1986, which recognized the importance of maintaining promises to the workforce. Notably, this model supports the Commission’s goals of reducing total costs to LIPA customers by avoiding additional third-party costs, as all costs of the current salaries and benefits for ServCo employees are already directly paid by LIPA.

With reference to the statement on page 127 of the draft Report that a new LIPA subsidiary must be created for ServCo employees, we suggest ServCo itself could and should serve as the LIPA subsidiary LLC. ServCo is the sponsor of the ServCo employee benefit plans, which should be maintained, unchanged, through any transition. Moving current ServCo employees to a newly established LLC may be considered a change of employer and implicate additional risks and procedures that would not be needed in a direct transfer of ownership of ServCo. Additionally, this transfer of ServCo was contemplated and provided for at no cost under the current contract with PSEG Long Island. Additionally, we agree with the draft Report’s suggestion of amending the LIPA Act to extend to ServCo employees the Taylor Law exemption that already applies to LIPA employees.

We concur with the draft Report’s conclusion that the National Labor Relations Board (NLRB) jurisdiction would likely be retained under the LLC Model. It is helpful that the existing labor contract and the IBEW relationship are already recognized by the NLRB and will be maintained through the transfer of ServCo ownership to LIPA. LIPA engages in significant interstate commerce, which is also an important factor in the NLRB’s

considerations. Creating an agreement between ServCo, LIPA, and IBEW Local 1049 to record their joint understanding and interest in the *status quo*, and amending the LIPA Act to maintain existing benefit plans and extend its Taylor Law exemption to the ServCo employees, are also valuable to maintaining NLRB jurisdiction, and we endorse these strategies to support retention of jurisdiction by the NLRB.

Finally, by maintaining the existing benefit plans and extending LIPA's Taylor Act exemption to ServCo, the Commission would be recommending a "belt and suspenders" approach, as the employees' rights under the New York State Employment Relations Act would then be similar to the NLRB *status quo* even if the NLRB for some reason declined to exercise jurisdiction in the future.

#### V. Conclusion

I look forward to continued discussion with the members of this Commission, your colleagues in the State Legislature, and the Governor as we work towards the customer-first utility that Long Island and the Rockaways deserve – one that is clean, reliable, and affordable.

Thank you, and I would be happy to answer your questions.