New York State Assembly

MARCH 15, 2013

Testimony of

Neal Lewis, Esq.

Executive Director of the Sustainability Institute at Molloy College

&

LIPA Trustee

Honorable members of the New York State Assembly and others here today, I would like to thank you for the opportunity to address the very important topic of the future of electric service to the people of Long Island.

Before I begin, let me state that I of course do not speak here today as an official representative or officer of the Long Island Power Authority (LIPA), or on behalf of the LIPA Board of Trustees, but instead, I speak as an individual who is an appointed, volunteer member of the LIPA board of trustees.

I would like to point out that I have revised my testimony from what I delivered last week to the Senate Investigations Committee Chaired by Senator Marcellino. For the sake of brevity, I cut some items, but I also added additional points. I have also brought along a packet of a few items I would like added into the record. With that said, I will start with the main question that this committee is considering, namely: what should be the future of LIPA?

ServCo

My strongly held opinion regarding what business model will best serve the people of Long Island is the structure that was unanimously approved by the LIPA Board of Trustees after extensive study and analysis by the Board and the LIPA executive team with the assistance of the utility experts team from the Brattle Group (Report, October 2011). This model is a much-improved version of the current hybrid model. I find it very frustrating that many people insist on saying that the proposed ServCo business model is no different than the current structure that LIPA operates under. Unfortunately, the media coverage of this issue has failed to explain how ServCo would improve on the current structure (with the exception of the Newsday article by Mark Harrington on Oct. 27, 2011, which I included in my exhibits packet.). I would also say, that in addition to the media needing to do a better job, LIPA has information available on its web site that should be of interest to members of the public and elected officials about how ServCo will be an improvement over the current MSA structure with National Grid. This year, as the transition process proceeds, I believe that even more information will be posted by LIPA explaining the mechanics of and advantages related to this new business model. I also believe that hearings such as today's and last week's by the Senate, are good ways to better inform people about how a major reform of how the LIPA electric grid will be managed is set to be implemented starting January 1st of 2014.

<u>I want to be absolutely clear that I am not here today to say that the old structure of LIPA should be maintained going forward</u>. I respect all of those who call for reform of LIPA, I simply believe that the ServCo model is the best reform that could be implemented—along with other reforms I will suggest today.

As developed by LIPA and described in the *Brattle Group report*, ServCo is designed to be a dedicated and self-contained subsidiary of the Service Provider (PSEG Long Island LLC), that is comprised of employees, systems, and resources that are dedicated to LIPA-related activities. This subsidiary, known for now as "ServCo," provides the LIPA board *strategic optionality*. ServCo is transportable, which gives LIPA leverage in working with the contractor as LIPA will have the option to move the subsidiary in its entirety to another entity, or another service provider. The ServCo model and the new contract, together address several functional problems experienced under the current MSA, including issues related to storm restoration.

For people who are advocates of LIPA converting to a full municipalization model, and even for those who support privatization, it should be understood that the strategic optionality provided for in the ServCo structure keeps the door open to these choices at any future date, at no extra cost or "penalty" to LIPA ratepayers (other than wind-down expenses and pass-through expenditures and some other fees). Contrary to the testimony at last week's Senate hearing and contrary to what has been reported at meetings of the Suffolk Legislature and posted on the Suffolk LIPA Oversight Committee website, there is no multi-million dollar cancelation penalty if either full municipalization or privatization is chosen by the LIPA Board of Trustees in future years.

Regarding this issue, I direct your attention to the Operation Services Agreement (OSM Section 7.4(a) and (C)). This contract is posted on the LIPA website.

The failure to understand how the ServCo model preserves strategic optionality and holds the door open for future consideration of both full municipalization and/or the privatization options, is just one of the false premises that are part of the underpinning of the proposal for privatizing LIPA that was contained in the Moreland Commission's Interim Report.

In my opinion, ServCo presents the opportunity to get the best of both worlds of public power and privatization. With ServCo, Long Island will retain public power, with a publicly appointed board that controls policy, adopts budgets and sets out to achieve high standards of investment in the system to promote high reliability. The Board will not be driven to increase profits by increasing electricity sales, and instead can focus on the most cost-effective option of promoting energy efficiency. LIPA has, over the last decade, established itself as a leader in New York State and nationally in promoting efficiency and renewables. (I feel very strongly about continuing LIPA's leadership on promoting clean energy, and I have included in my exhibits package a recent announcement by the EPA awarding LIPA with the *Energy Star Partner of the Year – Sustained Excellence Award*.)

Under ServCo, LIPA's clean energy leadership can continue. Local control over the significant investments (over $120 million annually for Efficiency Long Island) in clean energy will be retained by LIPA. The board will also not be tempted to cut service or system improvements in order to increase profits, or to make system investments in order to qualify for rate increases.

With public power and the ServCo business model, LIPA will continue to qualify for low interest municipal bond rates, and for FEMA reimbursement for major storm restoration efforts. Also, as a not-for-profit, LIPA does not pay income taxes and can qualify for certain sales tax exemptions. And finally, no payments will be made to shareholders.

Of course, it has been well reported that the Brattle Group estimated that all of these different savings could result in as much as 20% lower rates under ServCo as compared to privatization.

ServCo also captures the best benefits of a private utility without the downside of selling the system off to a private company. With ServCo, LIPA will benefit from the talent, expertise and experience of the managers of a major private utility who will be providing a service under contract for a specific time period (10 years).

From my perspective, the privatization option is by far the worst of the three. During the lengthy analysis that the trustees engaged in before reaching a unanimous decision in favor of ServCo, the key factor that helped persuade me was the issue of risk of change.

Currently, the computer systems that operate many of the customer-facing and other operations of the utility are on a schedule for enhancement or replacement. Having the expertise and experience of the PSEG and Lockheed Martin management team to oversee those complicated upgrades substantially reduces transitional risks.

In my opinion, the LIPA Board of Trustees has done an excellent job of adopting a much improved business model and choosing a highly qualified company to carry out operations under the new system.

I would like to point out that the Moreland Commission, in their Interim Report, did not consider the ServCo model as one of the three possibilities when evaluating options for the future of LIPA.

This week I read a blog from a lawyer by the name of Cynthia Kouril who succinctly explained key factors to the Moreland Commission's failed analysis, which I agree with fully. I would like to quote her blog, which is found at: my fire dog lake.com. The article is called *The Tale of Three Non-Transparent Investigations of LIPA*.

The interim Moreland Commission Report compared the current, moot, contract between LIPA and National Grid to privatization. This is a false comparison. The National Grid contract expires at the end of this year. LIPA engaged in a multiyear, multi-consultant, series of management reviews and crafted a new contract which will begin January 1, 2014. This contract is a dramatic departure from the expiring contract and works on a new collaborative model that will allow for a transition to a fully municipalized LIPA, as the LIPA in-house team gains experience and expertise in directly running the T&D (transmission and delivery) system. The new business model is called ServCo, and its financial incentives align the new operator with the ratepayer's interests.
…. http://my.firedoglake.com/cindykouril/2013/03/11/the-tale-of-three-non-transparent-investigations-into-lipa/

Misaligned of Interests

As stated above, it is my opinion that starting next year, the ServCo model is the best structure for delivering electricity to the people of Long Island. This is true both for reasons having to do with storm response, and for other reasons. I believe the ServCo model will go a long way towards addressing the low customer satisfaction ratings that plague LIPA. Under the current MSA, LIPA and its contractor have interests and incentives that are misaligned.

LIPA Trustees have approved important steps to significantly improve service, first by selecting PSEG as the product of a competitive process, and secondly by working with and supporting PSEG's planned improvements. This combined with the re-alignment of interests made under the ServCo model, including that the contractor will not have an incentive to cut corners on the number of people working in the call center as part of the budget for the subsidiary, because their payments (or profit) will not go up by implementing such cuts. As such, customers (or ratepayers) will have a far better experience with the LIPA electric system when the ServCo model is implemented, and the PSEG team, which has consistently rated very well with customer satisfaction, is managing the workforce.

Under the current MSA, LIPA and its contractor have interests and incentives that under the current contractual structure, are misaligned in many ways. With the ServCo model and corresponding contract were designed to alleviate the misalignment in order to better service customers.

The Bifurcation Problem

Although I disagree strongly with the conclusions of the Moreland Commission Interim Report, I did write in the margin of the report "good point" in the section where they discussed how the bifurcated nature of the LIPA and National Grid hybrid model is *"unworkable in the context of a storm event."* (Page 17.) In my opinion, there is no problem with LIPA being the lead brand under day-to-day, or what are called "blue sky" conditions. The point that I agree with however, is that during a large-scale emergency presented by a major storm, LIPA should remove any potential bifurcation problem by simply directing the contractor to communicate directly with the public and thereby removing any potential communications bottlenecks. I call this the one commander during a major storm rule.

During the lengthy process of developing and evaluating the ServCo model, the board of trustees discussed the idea that the new contractor would be responsible for communicating with the public, holding press conferences, sending out press releases, emails, social media updates, and maintaining the outage map—during major storms. That is why I was surprised when I read on page 26 of the Moreland Commission Interim Report that under the contract with PSEG, *"the bulk of the owner-manager relationship remains the same."*

At the last meeting of the LIPA Board of Trustees, I referred to this conclusion in the Moreland Commission Interim Report. I explained how it was inconsistent with what I understood as the plans for how the new structure would work starting January 2013, and I asked that our general counsel research the issue and provide the board with an explanation at a future meeting. Since that meeting, I have come to learn that although the Moreland Commission may have reviewed the contract with PSEG, they could not review the documents that are still being developed during the transition phase, and they did not have the benefit of the many discussions that took place during the Brattle analysis process.

The Case for Dismantling LIPA Has Not Been Demonstrated

I believe that it was a monumental task and a herculean accomplishment to restore power after Superstore Sandy, and that there is no fact-based assessment that demonstrates that the time it took to achieve restoration was in anyway a failure. **The Moreland Commission Interim Report does not contain any analysis of the facts, comparison to other storms or other utilities, or any metrics whatsoever to demonstrate that LIPA's rate of outage restoration after Sandy was a failure that warrants privatization.** Understanding that every storm is different and that even the same storm can have vastly different impacts in different communities makes it a challenge to conduct comparisons of storm restoration rates. The media often relies merely upon the simple comparison of the number of homes and businesses that were without power (as reported on utility websites) and how long it took to restore power, but I would like to suggest that the better comparison for major storms is to compare the number of repairs that needed to be made.

For example, with Hurricane Gloria in 1985, it took approximately 11 days to restore power (it is not clear if that was 100% restoration) by completing approximately 10,000 repairs. Superstorm Sandy required approximately 40,000 repairs, and 99.5% of outages were restored in 14 days and 100% in 16 days. If LILCO were still running things, and restored power after Sandy at the rate they did after Gloria, then it could have taken more than 40 days to achieve power restoration. Irene required 19,000 repairs and took 9 days to restore. If Sandy restoration was achieved at the pace that Irene was achieved, it would have taken about 19 days to restore power. The damage from Sandy has been compared to Rita that took over 50 days to restore power. Every storm is different, but in none of these other storms were there storm surge or a second storm (nor'easter) in the middle of the restoration efforts, both of these factors made Superstorm Sandy significantly more difficult. Based upon the tremendous number of repairs required for Superstorm Sandy–clearly the most devastatingly impactful storm to hit Long Island in modern history, and the flooding and additional snow storm, I stand by my assessment that the rate of restoration was a tremendous accomplishment and certainly not a failure that demonstrates a need to tear down the LIPA structure in favor of privatization.

The other major complaint was that LIPA failed to communicate effectively during the storm restoration efforts. On this point, I certainly agree that a better job needs to be done in the future, but my research informs me that there is not a single utility in the Country that could have provided people with accurate ETRs (estimated time of restoration) with a storm that caused anything approaching the level of damage that Sandy caused. I understand that other utilities in New York and New Jersey were also criticized for poor communications after Sandy; this problem was not unique to LIPA. We live in a time of instant communication and the public therefore has an expectation that information should flow freely even in the worse crisis, but until our electric grids have been converted to smart grids (and perhaps even then), it will remain very difficult to give people accurate estimates when the number of outages exceeds the range of 150,000 to 200,000.

While the press coverage of LIPA and National Grid's restoration efforts after Superstorm Sandy were highly critical, particularly with regard to communications difficulties, I have included in my exhibit packet a more favorable industry trade group publication article regarding LIPA's restoration efforts from *Transmission & Distribution World*.

Reliability

Next I would like to address the claim that the LIPA system was essentially falling apart when the storm hit explaining the extensive damage. This claim is also completely false. Let me state for the record what no newspaper has mentioned in their coverage of these issues after Superstorm Sandy, that at the time the storm hit, **the LIPA grid was either the single most, or among the most reliable systems in New York State** (for any above ground utility). This claim by me is based upon established metrics that are regularly reported to the LIPA Board of Trustees. I have brought with me 20 copies of a PowerPoint handout from the LIPA trustee meeting of May 24, 2012

(if deemed appropriate, I would like to make it a part of the record, it is the third item in my exhibit packet). You can see on slide 7, that LIPA was ranked number 1 in NYS for 3 of these major reliability metrics for Dec. 2011 (SAIFI - System Average Interruption Frequency Index,
CAIDI - Customer Average Interruption Duration Index, and
SAIDI - System Average Interruption Duration Index).

Other Reforms

Board Appointments

My proposal for reform starts with the ServCo model, but it does not end there. I also believe that there is a perception of an accountability issue with the current structure where all of the trustees are appointed by the leadership in Albany. I therefore believe that local governments should have an opportunity to appoint people to the LIPA Board of Trustees. I believe that each County Executive should have seats on the board. (The exact number and formula to be determined.)

During emergency planning and storm restoration efforts, an important part of what LIPA needs to do is ensure coordination with local governments for tree clearing from roads and other functions. By giving local municipalities on Long Island a direct say in appointing some of the voting members of the board, this coordination could be greatly enhanced.

Unified Emergency Response Under OEM

I also believe that the annual hurricane table-top drill that LIPA holds should be more clearly integrated into the functioning command structure of the two County Offices of Emergency Management (OEM). In my opinion, both County OEMs performed well during Superstorm Sandy, and it makes sense to build upon what worked. The OEMs are well equipped with communication capabilities that can be relied upon during storms or other crises, and I therefore believe that working with them is a good way to improve communications during the next major storm.

MOUs

After Tropical Storm Irene, LIPA implemented several reforms designed to improve coordination with local government to accomplish tree removal and other goals. (Some of these reforms were recommended by the Senate.) When Sandy hit, LIPA instituted twice-daily municipal calls. There are now discussions about perhaps having more than one large muni-call, instead, perhaps four regional calls. Another change was the assignment of approximately 100 workers by LIPA to local governments to assist with downed wires to speed up tree clearing from roads.

In my opinion, we should explore whether more can be accomplished by developing formalized Memorandums of Understanding (MOU) to be adopted by LIPA and LI municipalities that should anticipate a specific series of different contingencies, set out responsibilities and should be enforceable. While this may appear complicated to develop, a good starting place for review is the extensive transcripts of the daily Muni Calls that were compiled. With the right resources, these transcripts could be reviewed; the key issues identified, and the MOUs could then be drafted.

PSC Review

Lastly, I think that if it can be done in a way that minimize potential impact on LIPA's bond ratings, the state should simply make LIPA subject to the PSC review going forward. I don't see any reason for LIPA to seek a rate increase that is unwarranted, so if it requested a rate increase, there should be good cause. If the rate increase is denied, then it was not justified.

Conclusion

In conclusion, it is my opinion that there is a strong basis to believe that the ServCo business model approved by the LIPA Board of Trustees and the State will deliver the best results for Long Islanders who want reliable, affordable electric service that is delivered by a corporate structure well designed to respond to major storms and to advance public policy goals such as being a leader in promoting energy efficiency and renewable clean energy. I also believe the ServCo model can be further enhanced by giving local government officials who work with LIPA the ability to appoint trustees, by unifying emergency planning and responses by LIPA with the existing offices of emergency management, but considering adopting MOUs to establish clear agreements for tree clearing from roads, and lastly, by subjecting LIPA to additional oversight.