

8073

2013-2014 Regular Sessions

I N A S S E M B L Y

June 17, 2013

Introduced by M. of A. SWEENEY, HOOPER, WEISENBERG, ENGLEBRIGHT, RAMOS, LAVINE, SCHIMEL, GOLDFEDER -- (at request of the Governor) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, the public authorities law, the executive law and the education law, in relation to the powers and duties of the department of public service and the Long Island power authority; to repeal subdivision (u) of section 1020-f of the public authorities law relating to general powers of the authority; and providing for the repeal of certain provisions upon expiration thereof (Part A); and in relation to the issuance of securitized restructuring bonds to refinance the outstanding debt of the Long Island power authority (Part B)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act enacts into law major components of legislation
2 relating to issues deemed necessary by the state. Each component is
3 wholly contained within a Part identified as Parts A through B. The
4 effective date for each particular provision contained within such Part
5 is set forth in the last section of such Part. Any provision in any
6 section contained within a Part, including the effective date of the
7 Part, which makes reference to a section "of this act", when used in
8 connection with a particular component, shall be deemed to mean and
9 refer to the corresponding section of the Part in which it is found.
10 Section three of this act sets forth the general effective date of this
11 act.

12 PART A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD12029-11-3

1 Section 1. Section 3 of the public service law, as amended by chapter
2 8 of the laws of 2012, is amended and a new section 3-b is added to read
3 as follows:

4 S 3. Department of public service. [1.] There shall be in the state
5 government a department of public service. The chairman of the public
6 service commission shall be the chief executive officer of the depart-
7 ment. He or she shall appoint and shall have the power to remove,
8 subject to the provisions of the civil service law, all officers,
9 clerks, inspectors, experts and employees of the department, and to
10 approve all contracts for special service. The chairman shall designate
11 one of the commissioners in the department or an officer of the depart-
12 ment to act as deputy chairman during the absence or disability of the
13 chairman and during such times such deputy chairman shall possess all
14 the powers of the chairman as chief executive officer of the department.

15 [2. The department shall, upon notification to the Long Island power
16 authority, undertake a comprehensive and regular management and oper-
17 ations audit of said authority pursuant to subdivision (bb) of section
18 one thousand twenty-f of the public authorities law. The department
19 shall have discretion to have such an audit performed by its staff, or
20 by an independent contractor. In every case in which an audit is
21 required pursuant to subdivision (bb) of section one thousand twenty-f
22 of the public authorities law performed by an independent auditor, the
23 department shall have the authority to select the auditor, and to
24 require the Long Island power authority to enter into a contract with
25 the auditor that is consistent with the contracting-related requirements
26 specified in subdivision nineteen of section sixty-six of this chapter
27 and the requirements of subdivision (bb) of section one thousand twen-
28 ty-f of the public authorities law. Such contract shall provide further
29 that the auditor shall work for and under the direction of the depart-
30 ment according to such terms as the department may determine are neces-
31 sary and reasonable.]

32 S 3-B. LONG ISLAND OFFICE OF THE DEPARTMENT. 1. THERE IS HEREBY ESTAB-
33 LISHED IN THE DEPARTMENT AN OFFICE TO REVIEW AND MAKE RECOMMENDATIONS
34 WITH RESPECT TO THE OPERATIONS AND TERMS AND CONDITIONS OF SERVICE OF,
35 AND RATES AND BUDGETS ESTABLISHED BY, THE LONG ISLAND POWER AUTHORITY
36 AND/OR ITS SERVICE PROVIDER.

37 2. DEFINITIONS. AS USED OR REFERRED TO IN THIS SECTION:

38 (A) "AUTHORITY" MEANS THE LONG ISLAND POWER AUTHORITY.

39 (B) "SERVICE PROVIDER" MEANS THE ENTITY UNDER CONTRACT WITH THE
40 AUTHORITY TO PROVIDE MANAGEMENT AND OPERATION SERVICES ASSOCIATED WITH
41 THE AUTHORITY'S ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM AND ANY
42 SUBSIDIARY OF SUCH ENTITY THAT PROVIDES SUCH SERVICES UNDER CONTRACT.
43 HOWEVER, THE SERVICE PROVIDER AND ANY AFFILIATE OF THE SERVICE PROVIDER
44 WITH WHOM THE AUTHORITY OR SERVICE PROVIDER CONTRACTS TO PROVIDE
45 SERVICES ASSOCIATED WITH THE AUTHORITY'S ELECTRIC TRANSMISSION AND
46 DISTRIBUTION SYSTEM SHALL NOT BE CONSIDERED AN ELECTRIC CORPORATION
47 UNDER THIS CHAPTER.

48 (C) "OPERATIONS SERVICES AGREEMENT" MEANS AN AGREEMENT AND ANY AMEND-
49 MENTS THERETO BETWEEN THE LONG ISLAND LIGHTING COMPANY DBA LIPA OR THE
50 LONG ISLAND POWER AUTHORITY AND THE SERVICE PROVIDER TO PROVIDE MANAGE-
51 MENT AND OPERATION SERVICES ASSOCIATED WITH THE AUTHORITY'S ELECTRIC
52 TRANSMISSION AND DISTRIBUTION SYSTEM.

53 3. GENERAL POWERS. IN UNDERTAKING THE REQUIREMENTS OF THIS SECTION,
54 SUBJECT TO SUBDIVISIONS (U) AND (BB) THROUGH (HH) OF SECTION ONE THOU-
55 SAND TWENTY-F OF THE PUBLIC AUTHORITIES LAW, THE DEPARTMENT SHALL BE
56 EMPOWERED AND AUTHORIZED TO:

1 (A) REVIEW AND MAKE RECOMMENDATIONS TO THE BOARD OF THE LONG ISLAND
2 POWER AUTHORITY WITH RESPECT TO THE RATES AND CHARGES, INCLUDING CHARGES
3 RELATED TO ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAMS, TO BE ESTAB-
4 LISHED BY THE AUTHORITY AND BECOME APPLICABLE ON OR AFTER JANUARY FIRST,
5 TWO THOUSAND SIXTEEN PURSUANT TO SUBDIVISION (U) OF SECTION ONE THOUSAND
6 TWENTY-F OF THE PUBLIC AUTHORITIES LAW.

7 (I) THE PURPOSE OF SUCH REVIEW IS TO MAKE RECOMMENDATIONS DESIGNED TO
8 ENSURE THAT THE AUTHORITY AND THE SERVICE PROVIDER PROVIDE SAFE AND
9 ADEQUATE TRANSMISSION AND DISTRIBUTION SERVICE AT RATES SET AT THE
10 LOWEST LEVEL CONSISTENT WITH SOUND FISCAL OPERATING PRACTICES.

11 (II) THE DEPARTMENT'S RECOMMENDATIONS SHALL BE DESIGNED TO BE CONSIST-
12 ENT WITH ENSURING THAT THE REVENUE REQUIREMENTS RELATED TO SUCH RATE
13 REVIEW ARE SUFFICIENT TO SATISFY THE AUTHORITY'S OBLIGATIONS WITH
14 RESPECT TO ITS BONDS, NOTES AND ALL OTHER CONTRACTS.

15 (III) IN THE CONTEXT OF SUCH REVIEW, THE DEPARTMENT MAY NOT MAKE ANY
16 RECOMMENDATION THAT WOULD MODIFY THE COMPENSATION OR FEE STRUCTURE
17 INCLUDED WITHIN THE OPERATIONS SERVICES AGREEMENT.

18 (IV) IN UNDERTAKING SUCH REVIEW AND IN MAKING RECOMMENDATIONS RELATED
19 TO THE PROPOSED RATES AND CHARGES, THE DEPARTMENT SHALL ESTABLISH STAND-
20 ARDS, POLICIES AND PROCEDURES THAT, AT A MINIMUM, PROVIDE FOR PUBLIC
21 STATEMENT AND EVIDENTIARY HEARINGS AND PARTICIPATION OF INTERVENORS AND
22 OTHER PARTIES, AND ENSURE THAT ANY FINAL RECOMMENDATIONS RELATED TO THE
23 PROPOSED RATES AND CHARGES ARE PROVIDED TO THE AUTHORITY WITHIN TWO
24 HUNDRED FORTY DAYS OF THE FILING WITH THE DEPARTMENT OF SUCH PLAN.

25 (V) THE PARTIES TO ANY SUCH RATE REVIEW PROCEEDING SHALL INCLUDE, BUT
26 NOT BE LIMITED TO, DEPARTMENT STAFF, THE AUTHORITY, THE SERVICE PROVIDER
27 AND, TO THE EXTENT IT DEEMS NECESSARY OR APPROPRIATE, THE UTILITY INTER-
28 VENTION UNIT.

29 (B) REVIEW THE ANNUAL CAPITAL EXPENDITURES PROPOSED BY THE SERVICE
30 PROVIDER AND RECOMMEND SUCH IMPROVEMENT IN THE MANUFACTURE, CONVEYING,
31 TRANSPORTATION, DISTRIBUTION OR SUPPLY OF ELECTRICITY, OR IN THE METHODS
32 EMPLOYED BY THE THE SERVICE PROVIDER AS IN THE DEPARTMENT'S JUDGMENT
33 ALLOWS FOR SAFE AND ADEQUATE SERVICE.

34 (C) ANNUALLY REVIEW THE EMERGENCY RESPONSE PLAN OF THE AUTHORITY AND
35 THE SERVICE PROVIDER IN ACCORDANCE WITH THE FOLLOWING REQUIREMENTS:

36 (I) EXAMINE AND DETERMINE WHETHER THE EMERGENCY RESPONSE PLAN IS
37 CONSISTENT WITH THE REQUIREMENTS OF PARAGRAPH (A) OF SUBDIVISION TWEN-
38 TY-ONE OF SECTION SIXTY-SIX OF THIS CHAPTER AND ANY REGULATIONS OR
39 ORDERS PROMULGATED THERETO, AND TO RECOMMEND AMENDMENTS OF SAME; AND

40 (II) REVIEW AND MAKE RECOMMENDATIONS TO THE AUTHORITY WITH RESPECT TO
41 THE PERFORMANCE OF THE SERVICE PROVIDER IN RESTORING SERVICE OR OTHER-
42 WISE MEETING THE REQUIREMENTS OF THE EMERGENCY RESPONSE PLAN DURING AN
43 EMERGENCY EVENT, DEFINED FOR PURPOSES OF THIS SECTION AS AN EVENT WHERE
44 WIDESPREAD OUTAGES HAVE OCCURRED IN THE AUTHORITY'S SERVICE TERRITORY
45 DUE TO A STORM OR OTHER CAUSES BEYOND THE CONTROL OF THE AUTHORITY AND
46 ITS SERVICE PROVIDER, INCLUDING MAKING DETERMINATIONS WITH RESPECT TO
47 WHETHER THE SERVICE PROVIDER IS REASONABLY ABLE TO IMPLEMENT THE EMER-
48 GENCY RESPONSE PLAN, WHETHER THE LENGTH OF ANY OUTAGES RELATED TO SUCH
49 EMERGENCY WERE MATERIALLY LONGER THAN THEY WOULD OTHERWISE HAVE BEEN
50 BECAUSE THE SERVICE PROVIDER FAILED TO REASONABLY IMPLEMENT THE EMERGEN-
51 CY RESPONSE PLAN, THE REASONABLENESS OF COSTS ASSOCIATED WITH SUCH EMER-
52 GENCY RESPONSE, THE COSTS, IF ANY, THAT WERE UNREASONABLY AND IMPRUDENT-
53 LY INCURRED BY THE SERVICE PROVIDER, AND WHETHER THE SERVICE PROVIDER
54 WOULD BE LIABLE FOR ANY SUCH COSTS PURSUANT TO THE TERMS AND CONDITIONS
55 OF THE OPERATIONS SERVICES AGREEMENT.

1 (D) UPON NOTIFICATION TO THE LONG ISLAND POWER AUTHORITY, UNDERTAKE A
2 COMPREHENSIVE AND REGULAR MANAGEMENT AND OPERATIONS AUDIT OF THE AUTHOR-
3 ITY AND SERVICE PROVIDER PURSUANT TO SUBDIVISION (BB) OF SECTION ONE
4 THOUSAND TWENTY-F OF THE PUBLIC AUTHORITIES LAW. THE DEPARTMENT SHALL
5 HAVE DISCRETION TO HAVE SUCH AN AUDIT PERFORMED BY ITS STAFF, OR BY AN
6 INDEPENDENT CONTRACTOR. IN EVERY CASE IN WHICH AN AUDIT IS REQUIRED
7 PURSUANT TO SUBDIVISION (BB) OF SECTION ONE THOUSAND TWENTY-F OF THE
8 PUBLIC AUTHORITIES LAW PERFORMED BY AN INDEPENDENT AUDITOR, THE DEPART-
9 MENT SHALL HAVE THE AUTHORITY TO SELECT THE AUDITOR, AND TO REQUIRE THE
10 AUTHORITY TO ENTER INTO A CONTRACT WITH THE AUDITOR THAT IS CONSISTENT
11 WITH THE CONTRACTING-RELATED REQUIREMENTS SPECIFIED IN SUBDIVISION NINE-
12 TEEN OF SECTION SIXTY-SIX OF THIS CHAPTER AND THE REQUIREMENTS OF SUBDI-
13 VISION (BB) OF SECTION ONE THOUSAND TWENTY-F OF THE PUBLIC AUTHORITIES
14 LAW. SUCH CONTRACT SHALL PROVIDE FURTHER THAT THE AUDITOR SHALL WORK FOR
15 AND UNDER THE DIRECTION OF THE DEPARTMENT ACCORDING TO SUCH TERMS AS THE
16 DEPARTMENT MAY DETERMINE ARE NECESSARY AND REASONABLE.

17 (E) ACCEPT, INVESTIGATE, MEDIATE TO RESOLVE AND MAKE RECOMMENDATIONS
18 TO THE LONG ISLAND POWER AUTHORITY AND/OR THE SERVICE PROVIDER REGARDING
19 THE RESOLUTION OF COMPLAINTS FROM CONSUMERS IN THE AUTHORITY'S SERVICE
20 TERRITORY RELATING TO, AMONG OTHER THINGS, THE PROVISION OF ELECTRIC
21 SERVICE PROVIDED BY THE SERVICE PROVIDER AND/OR THE AUTHORITY.

22 (F) REVIEW THE NET METERING PROGRAM IMPLEMENTED UNDER SUBDIVISION (H)
23 OF SECTION ONE THOUSAND TWENTY-G OF THE PUBLIC AUTHORITIES LAW AND MAKE
24 RECOMMENDATIONS DESIGNED TO ENSURE CONSISTENCY WITH THE REQUIREMENTS OF
25 SECTIONS SIXTY-SIX-J AND SIXTY-SIX-L OF THIS CHAPTER, AND ANY REGU-
26 LATIONS AND ORDERS ADOPTED THERETO.

27 (G) REVIEW AND MAKE RECOMMENDATIONS WITH RESPECT TO ANY PROPOSED PLAN
28 SUBMITTED BY THE LONG ISLAND POWER AUTHORITY AND/OR THE SERVICE PROVIDER
29 RELATED TO IMPLEMENTATION OF ENERGY EFFICIENCY MEASURES, DISTRIBUTED
30 GENERATION OR ADVANCED GRID TECHNOLOGY PROGRAMS HAVING THE PURPOSE OF
31 PROVIDING CUSTOMERS WITH TOOLS TO MORE EFFICIENTLY AND EFFECTIVELY
32 MANAGE THEIR ENERGY USAGE AND UTILITY BILLS, AND IMPROVING SYSTEM RELI-
33 ABILITY AND POWER QUALITY.

34 (H) REVIEW THE DATA, INFORMATION AND REPORTS SUBMITTED PURSUANT TO
35 SUBDIVISION (HH) OF SECTION ONE THOUSAND TWENTY-F OF THE PUBLIC AUTHORI-
36 TIES LAW AND OTHER PERTINENT INFORMATION RELATED TO THE METRICS IN THE
37 OPERATIONS SERVICES AGREEMENT, THE LONG ISLAND POWER AUTHORITY'S EVALU-
38 ATION OF SUCH DATA, INFORMATION AND REPORTS, AND MAKE RECOMMENDATIONS TO
39 THE AUTHORITY WITH RESPECT TO THE SERVICE PROVIDER'S ANNUAL
40 INCENTIVE-BASED COMPENSATION WITHIN THIRTY DAYS OF RECEIPT OF SUCH EVAL-
41 UATION AND INFORMATION.

42 4. REVIEW AND INSPECTION. TO UNDERTAKE THE REQUIREMENTS OF SUBDIVISION
43 TWO OF THIS SECTION, THE DEPARTMENT SHALL BE AUTHORIZED TO INSPECT ALL
44 PREMISES AND FACILITIES OWNED OR OPERATED BY THE AUTHORITY AND THE
45 SERVICE PROVIDER, REVIEW ALL BOOKS AND RECORDS OF THE AUTHORITY AND THE
46 SERVICE PROVIDER, INTERVIEW ALL APPROPRIATE PERSONNEL, AND REQUIRE ANNU-
47 AL REPORTING CONSISTENT WITH THE REQUIREMENTS OF SUBDIVISION SIX OF
48 SECTION SIXTY-SIX OF THIS CHAPTER AND ANY REGULATIONS AND ORDERS ADOPTED
49 THERETO; PROVIDED, HOWEVER, THAT THIS AUTHORITY SHALL NOT EXTEND TO
50 AFFILIATES OF THE SERVICE PROVIDER.

51 S 2. Subdivision 2 and paragraph (b) of subdivision 6 of section 18-a
52 of the public service law, subdivision 2 as amended by section 2 of part
53 NN of chapter 59 of the laws of 2009 and paragraph (b) of subdivision 6
54 as amended by section 1 of part BB of chapter 59 of the laws of 2013,
55 are amended and a new subdivision 1-a is added to read as follows:

1 1-A. ALL COSTS AND EXPENSES OF THE DEPARTMENT RELATED TO THE DEPART-
2 MENT'S RESPONSIBILITIES UNDER SECTION THREE-B OF THIS CHAPTER SHALL BE
3 PAID PURSUANT TO APPROPRIATION ON THE CERTIFICATION OF THE CHAIRMAN OF
4 THE DEPARTMENT AND UPON THE AUDIT AND WARRANT OF THE COMPTROLLER. FOR
5 THE STATE FISCAL YEAR BEGINNING ON APRIL FIRST, TWO THOUSAND FOURTEEN
6 AND EACH STATE FISCAL YEAR THEREAFTER, PAYMENTS ARE TO BE MADE FROM ALL
7 MONEYS COLLECTED FROM THE LONG ISLAND POWER AUTHORITY PURSUANT TO THIS
8 SECTION. THE TOTAL OF SUCH COSTS AND EXPENSES SHALL BE ASSESSED ON SUCH
9 AUTHORITY IN THE MANNER PROVIDED IN SUBDIVISIONS TWO, THREE AND FOUR OF
10 THIS SECTION.

11 2. (a) The chairman of the department shall estimate prior to the
12 start of each state fiscal year the total costs and expenses, including
13 the compensation and expenses of the commission and the department,
14 their officers, agents and employees, and including the cost of retire-
15 ment contributions, social security, health and dental insurance, survi-
16 vor's benefits, workers' compensation, unemployment insurance and other
17 fringe benefits required to be paid by the state for the personnel of
18 the commission and the department, and including all other items of
19 maintenance and operation expenses, and all other direct and indirect
20 costs. Based on such estimates, the chairman shall determine the amount
21 to be paid by each assessed public utility company AND THE LONG ISLAND
22 POWER AUTHORITY and a bill shall be rendered to each such public utility
23 company AND AUTHORITY.

24 (b) The bill for each public utility company AND THE LONG ISLAND POWER
25 AUTHORITY shall be rendered on or before February first preceding each
26 fiscal year, and shall be for the amount equal to the product of the
27 aforesaid estimated costs and expenses of conducting the department's
28 and commission's total operations during the fiscal year for which bill-
29 ing is being made multiplied by the proportion which compares:

30 (1) the gross operating revenues, over and above five hundred thousand
31 dollars, for that utility company OR THE AUTHORITY derived from intra-
32 state utility operations in the last preceding calendar year, or other
33 twelve month period as determined by the chairman, to:

34 (2) the total of the gross operating revenues, derived from intrastate
35 utility operations for all utility companies AND THE AUTHORITY in the
36 state which revenues are included under subparagraph one of this para-
37 graph.

38 For the purposes of calculating the commodity cost component of its
39 gross operating revenue, where the utility delivers to end-use customers
40 electricity and/or natural gas commodities that are sold to such custom-
41 ers by a third party, such utility shall include in its revenues an
42 estimate of the sales revenue for the electric and/or natural gas
43 commodities that it delivers, including all such commodities sold to
44 end-use customers by third parties, in such manner as to assure that all
45 end-use delivery customers, regardless of the entity from which they
46 purchase their electric and/or natural gas commodities, bear a fair and
47 proportionate share of the assessment imposed herein, as the commission
48 may determine.

49 (c) The minimum assessment for any utility company, AS WELL AS THE
50 LONG ISLAND POWER AUTHORITY, whose gross revenues from intrastate utili-
51 ty operations are in excess of five hundred thousand dollars in the
52 preceding calendar year shall be two hundred dollars.

53 (d) The amount of such bill for fiscal years beginning on or after
54 April first, nineteen hundred eighty-three so rendered shall be paid by
55 such public utility company AND SUCH AUTHORITY to the department on or
56 before April first; provided, however, that [a] ANY SUCH utility company

1 OR SUCH AUTHORITY may elect to make partial payments for such costs and
2 expenses on March tenth of the preceding fiscal year and on September
3 tenth of such fiscal year. Each such partial payment shall be a sum
4 equal to fifty percentum of the estimate of costs and expenses to be
5 assessed against such utility company OR AUTHORITY under the provisions
6 of this subdivision and shall not be less than two hundred dollars.

7 (e) During the course of any state fiscal year, the chairman may
8 increase or decrease the estimate of costs and expenses. In such case,
9 revised bills shall be sent to each public utility company AND SUCH
10 AUTHORITY, and such increase or decrease shall be equally apportioned
11 against the remaining payments for such fiscal year.

12 (f) On or before October tenth of each year, the chairman shall
13 compute the actual costs and expenses of the department and the commis-
14 sion and adjustments or other corrections as needed for the preceding
15 state fiscal year and, after deducting the amounts recovered pursuant to
16 subdivisions three and four of this section, shall, on or before October
17 twentieth, send to each public utility company AND/OR THE AUTHORITY
18 affected thereby a statement setting forth the amount due and payable
19 by, or the amount standing to the credit of, such public utility company
20 AND/OR THE AUTHORITY. Any amount owing by any public utility company
21 AND/OR THE AUTHORITY shall be paid not later than thirty days following
22 the date such statement is received. Any such amount standing to the
23 credit of any public utility company shall be refunded by the commission
24 or, at the option of such utility company, shall be applied as a credit
25 against any succeeding payment due.

26 (g) The total amount which may be charged to any public utility compa-
27 ny AND THE LONG ISLAND POWER AUTHORITY under authority of this subdivi-
28 sion for any state fiscal year shall not exceed one per centum of such
29 public utility company's OR AUTHORITY'S gross operating revenues derived
30 from intrastate utility operations in the last preceding calendar year,
31 or other twelve month period as determined by the chairman; provided,
32 however, that no corporation or person that is subject to the jurisdic-
33 tion of the commission only with respect to safety, or the power author-
34 ity of the state of New York, shall be subject to the general assessment
35 provided for under this subdivision.

36 Notwithstanding the provisions of subdivision one of this section, for
37 telephone corporations as defined in subdivision seventeen of section
38 two of this article, the total amount which may be charged such corpo-
39 rations for department expenses under the authority of subdivision one
40 of this section for any state fiscal year shall not exceed one-third of
41 one percentum of such corporation's gross operating revenue, over and
42 above five hundred thousand dollars, derived from intrastate utility
43 operations in the last preceding calendar year, or other twelve month
44 period as determined by the chairman.

45 (h) On-bill recovery charges billed pursuant to section sixty-six-m of
46 this chapter shall be excluded from any determination of an entity's
47 gross operating revenues derived from intrastate utility operations for
48 purposes of this section.

49 (b) The temporary state energy and utility service conservation
50 assessment shall be based upon the following percentum of the utility
51 entity's gross operating revenues derived from intrastate utility oper-
52 ations in the last preceding calendar year, minus the amount, if any,
53 that such utility entity is assessed pursuant to subdivisions one and
54 two of this section for the corresponding state fiscal year period: (1)
55 two percentum for the state fiscal year beginning April first, two thou-
56 sand thirteen and the state fiscal year beginning April first, two thou-

1 sand fourteen; (2) one and three-quarters percentum for the state fiscal
2 year beginning April first, two thousand fifteen; and (3) one and one-
3 half percentum for the state fiscal year beginning April first, two
4 thousand sixteen. With respect to the temporary state energy and utility
5 service conservation assessment to be paid for the state fiscal year
6 beginning April first, two thousand seventeen and notwithstanding clause
7 (i) of paragraph (d) of this subdivision, on or before March tenth, two
8 thousand seventeen, utility entities shall make a payment equal to one-
9 half of the assessment paid by such entities pursuant to this paragraph
10 for the state fiscal year beginning on April first, two thousand
11 sixteen. With respect to the Long Island power authority, the temporary
12 state energy and utility service conservation assessment shall be based
13 upon the following percentum of such authority's gross operating reven-
14 ues derived from intrastate utility operations in the last preceding
15 calendar year, MINUS THE AMOUNT, IF ANY, THAT SUCH AUTHORITY IS ASSESSED
16 PURSUANT TO SUBDIVISIONS ONE-A AND TWO OF THIS SECTION FOR THE CORRE-
17 SPONDING STATE FISCAL YEAR PERIOD: (1) one percentum for the state
18 fiscal year beginning April first, two thousand thirteen and the state
19 fiscal year beginning April first, two thousand fourteen; (2) three-
20 quarters of one percentum for the state fiscal year beginning April
21 first, two thousand fifteen; and (3) one-half percentum for the state
22 fiscal year beginning April first, two thousand sixteen; PROVIDED,
23 HOWEVER, THAT SHOULD THE AMOUNT ASSESSED BY THE DEPARTMENT FOR COSTS AND
24 EXPENSES PURSUANT TO SUCH SUBDIVISIONS EQUAL OR EXCEED SUCH AUTHORITY'S
25 TEMPORARY STATE ENERGY AND UTILITY SERVICE CONSERVATION ASSESSMENT FOR A
26 PARTICULAR FISCAL YEAR, THE AMOUNT TO BE PAID UNDER THIS SUBDIVISION BY
27 SUCH AUTHORITY SHALL BE ZERO. With respect to the temporary state ener-
28 gy and utility service conservation assessment to be paid for the state
29 fiscal year beginning April first, two thousand seventeen and notwith-
30 standing clause (i) of paragraph (d) of this subdivision, on or before
31 March tenth, two thousand seventeen, the Long Island power authority
32 shall make a payment equal to one-half of the assessment it paid for the
33 state fiscal year beginning on April first, two thousand sixteen. No
34 corporation or person subject to the jurisdiction of the commission only
35 with respect to safety, or the power authority of the state of New York,
36 shall be subject to the temporary state energy and utility service
37 conservation assessment provided for under this subdivision. Utility
38 entities whose gross operating revenues from intrastate utility oper-
39 ations are five hundred thousand dollars or less in the preceding calen-
40 dar year shall not be subject to the temporary state energy and utility
41 service conservation assessment. The minimum temporary state energy and
42 utility service conservation assessment to be billed to any utility
43 entity whose gross revenues from intrastate utility operations are in
44 excess of five hundred thousand dollars in the preceding calendar year
45 shall be two hundred dollars.

46 S 3. Section 1020-b of the public authorities law is amended by adding
47 two new subdivisions 23 and 24 to read as follows:

48 23. "SERVICE PROVIDER" MEANS THE ENTITY UNDER CONTRACT WITH THE
49 AUTHORITY TO PROVIDE MANAGEMENT AND OPERATION SERVICES ASSOCIATED WITH
50 THE AUTHORITY'S ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM AND ANY
51 SUBSIDIARY OF SUCH ENTITY THAT PROVIDES SUCH SERVICES UNDER CONTRACT.

52 24. "OPERATIONS SERVICES AGREEMENT" MEANS AN AGREEMENT AND ANY AMEND-
53 MENTS THERETO BETWEEN THE LONG ISLAND LIGHTING COMPANY DBA LIPA OR THE
54 AUTHORITY AND THE SERVICE PROVIDER TO PROVIDE MANAGEMENT AND OPERATION
55 SERVICES ASSOCIATED WITH THE AUTHORITY'S ELECTRIC TRANSMISSION AND
56 DISTRIBUTION SYSTEM.

1 S 4. Section 1020-d of the public authorities law, as added by chapter
2 506 of the laws of 1995, is amended to read as follows:

3 S 1020-d. [Trustees] BOARD OF TRUSTEES. 1. [The] STARTING ON JANUARY
4 FIRST, TWO THOUSAND FOURTEEN, THE BOARD OF THE authority shall BE
5 CONSTITUTED AND consist of [fifteen] NINE trustees all of whom shall be
6 residents of the service area, [nine] FIVE of whom shall be appointed by
7 the governor, one of whom the governor shall designate as [chairman]
8 CHAIR, and serve at his OR HER pleasure, [three] TWO of whom shall be
9 appointed by the temporary president of the senate, and [three] TWO of
10 whom shall be appointed by the speaker of the assembly. [Two] ONE of
11 the governor's appointees shall serve an initial term of [one year] TWO
12 YEARS; [two] ONE of the governor's appointees shall serve an initial
13 term of [two] THREE years; [two] AND THREE of the governor's appointees
14 shall serve an initial term of [three] FOUR years[; and three of the
15 governor's appointees shall serve an initial term of four years]. [Two]
16 ONE of the appointees of the temporary president of the senate and [two]
17 ONE of the appointees of the speaker of the assembly shall serve initial
18 terms of [one year] TWO YEARS; and one appointee of the temporary presi-
19 dent of the senate and one appointee of the speaker of the assembly
20 shall serve initial terms of [two] THREE years. Thereafter, all terms
21 shall be for a period of four years. In the event of a vacancy occurring
22 in the office of trustee by death, resignation or otherwise, the respec-
23 tive appointing officer shall appoint a successor who shall hold office
24 for the unexpired portion of the term.

25 2. No trustee shall receive a salary, but each shall be entitled to
26 reimbursement for reasonable expenses in the performance of duties
27 assigned hereunder.

28 3. Notwithstanding the provisions of any other law, no trustee, offi-
29 cer or employee of the state, any state agency or municipality appointed
30 a trustee shall be deemed to have forfeited or shall forfeit his or her
31 office or employment by reason of his or her acceptance of a trusteeship
32 on the authority, his or her service thereon or his or her employment
33 therewith.

34 4. ALL TRUSTEES APPOINTED UNDER THIS SECTION SHALL HAVE RELEVANT UTIL-
35 ITY, CORPORATE BOARD OR FINANCIAL EXPERIENCE.

36 S 5. On or before December 1, 2013 the governor, the temporary presi-
37 dent of the senate and the speaker of the assembly shall choose and
38 announce their appointments to the board of the Long Island power
39 authority to be made pursuant to section 1020-d of the public authori-
40 ties law, as amended by section four of this act, giving due consider-
41 ation to continuity of business. The board of trustees of the Long
42 Island power authority in existence on December 31, 2013, shall be abol-
43 ished on such date and be constituted on January 1, 2014 pursuant to
44 section 1020-d of the public authorities law, as amended by section four
45 of this act.

46 S 6. Subdivision (u) of section 1020-f of the public authorities law
47 is REPEALED.

48 S 7. Subdivisions (c) and (bb) of section 1020-f of the public author-
49 ities law, subdivision (c) as amended by chapter 506 of the laws of 2009
50 and subdivision (bb) as added by chapter 8 of the laws of 2012, are
51 amended and seven new subdivisions (u), (cc), (dd), (ee), (ff), (gg) and
52 (hh) are added to read as follows:

53 (c) To appoint officers, agents and employees, without regard to any
54 personnel or civil service law, rule or regulation of the state and in
55 accordance with guidelines adopted by the authority, prescribe their
56 duties and qualifications and fix and pay their compensation[, provided,

1 however, that the appointment of the chief executive officer shall be
2 subject to confirmation by the senate in accordance with section twen-
3 ty-eight hundred fifty-two of this chapter;]. BY JANUARY FIRST, TWO
4 THOUSAND FOURTEEN, THE AUTHORITY, THROUGH ITS GOVERNANCE COMMITTEE,
5 SHALL AMEND SUCH GUIDELINES TO REQUIRE THAT STAFFING AT THE AUTHORITY IS
6 KEPT AT LEVELS ONLY NECESSARY TO ENSURE THAT THE AUTHORITY IS ABLE TO
7 MEET OBLIGATIONS WITH RESPECT TO ITS BONDS AND NOTES AND ALL APPLICABLE
8 STATUTES AND CONTRACTS, AND OVERSEE THE ACTIVITIES OF THE SERVICE
9 PROVIDER;

10 (U) RATE PLANS. SUBJECT TO SUBDIVISION SIX OF SECTION ONE THOUSAND
11 TWENTY-K OF THIS TITLE TO FIX RATES AND CHARGES FOR THE FURNISHING OR
12 RENDITION OF GAS OR ELECTRIC POWER OR OF ANY RELATED SERVICE AT THE
13 LOWEST LEVEL CONSISTENT WITH SOUND FISCAL AND OPERATING PRACTICES OF THE
14 AUTHORITY AND WHICH PROVIDE FOR SAFE AND ADEQUATE SERVICE. IN IMPLEMENT-
15 ING THIS POWER:

16 1. THE AUTHORITY AND THE SERVICE PROVIDER SHALL, ON OR BEFORE FEBRUARY
17 FIRST, TWO THOUSAND FIFTEEN, SUBMIT FOR REVIEW TO THE DEPARTMENT OF
18 PUBLIC SERVICE A THREE-YEAR RATE PROPOSAL FOR RATES AND CHARGES TO TAKE
19 EFFECT ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN.

20 2. THE AUTHORITY AND THE SERVICE PROVIDER SHALL THEREAFTER SUBMIT FOR
21 REVIEW TO THE DEPARTMENT OF PUBLIC SERVICE ANY RATE PROPOSAL THAT WOULD
22 INCREASE THE RATES AND CHARGES AND THUS INCREASE THE AGGREGATE REVENUES
23 OF THE AUTHORITY BY MORE THAN TWO AND ONE-HALF PERCENT TO BE MEASURED ON
24 AN ANNUAL BASIS; PROVIDED, HOWEVER, THAT THE AUTHORITY MAY PLACE SUCH
25 RATES AND CHARGES INTO EFFECT ON AN INTERIM BASIS, SUBJECT TO PROSPEC-
26 TIVE RATE ADJUSTMENT; PROVIDED, FURTHER, THAT A FINAL RATE PLAN ISSUED
27 BY THE AUTHORITY THAT WOULD NOT SO INCREASE SUCH RATES AND CHARGES SHALL
28 NOT BE SUBJECT TO THE REQUIREMENTS OF PARAGRAPH FOUR OF THIS SUBDIVISION
29 AND SHALL BE CONSIDERED FINAL FOR THE PURPOSES OF REVIEW UNDER ARTICLE
30 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. THE AUTHORITY AND/OR
31 THE SERVICE PROVIDER MAY OTHERWISE SUBMIT FOR REVIEW TO SUCH DEPARTMENT
32 ANY RATE PROPOSAL IRRESPECTIVE OF ITS EFFECT ON REVENUES.

33 3. THE AUTHORITY SHALL NOT FIX ANY FINAL RATES AND CHARGES PROPOSED
34 THAT WOULD NOT BE SUBJECT TO REVIEW BY THE DEPARTMENT OF PUBLIC SERVICE
35 PURSUANT TO PARAGRAPHS ONE AND TWO OF THIS SUBDIVISION UNTIL AFTER HOLD-
36 ING PUBLIC HEARINGS THEREON UPON REASONABLE PUBLIC NOTICE, WITH AT LEAST
37 ONE SUCH HEARING TO BE HELD EACH IN THE COUNTY OF SUFFOLK AND THE COUNTY
38 OF NASSAU.

39 4. ANY RECOMMENDATIONS ASSOCIATED WITH A RATE PROPOSAL SUBMITTED
40 PURSUANT TO PARAGRAPHS ONE AND TWO OF THIS SUBDIVISION SHALL BE PROVIDED
41 BY THE DEPARTMENT OF PUBLIC SERVICE TO THE BOARD OF THE AUTHORITY IMME-
42 DIATELY UPON THEIR FINALIZATION BY THE DEPARTMENT. UNLESS THE BOARD OF
43 THE AUTHORITY MAKES A PRELIMINARY DETERMINATION IN ITS DISCRETION THAT
44 ANY PARTICULAR RECOMMENDATION IS INCONSISTENT WITH THE AUTHORITY'S SOUND
45 FISCAL OPERATING PRACTICES, ANY EXISTING CONTRACTUAL OR OPERATING OBLI-
46 GATIONS, OR THE PROVISION OF SAFE AND ADEQUATE SERVICE, THE BOARD SHALL
47 IMPLEMENT SUCH RECOMMENDATIONS AS PART OF ITS FINAL RATE PLAN AND SUCH
48 FINAL DETERMINATION SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF THIS
49 SUBDIVISION AND BE CONSIDERED FINAL FOR THE PURPOSES OF REVIEW UNDER
50 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. THE BOARD
51 SHALL MAKE ANY SUCH PRELIMINARY DETERMINATION OF INCONSISTENCY WITHIN
52 THIRTY DAYS OF RECEIPT OF SUCH RECOMMENDATIONS, WITH NOTICE AND THE
53 BASIS OF SUCH DETERMINATION BEING PROVIDED TO THE DEPARTMENT OF PUBLIC
54 SERVICE, AND CONTEMPORANEOUSLY POSTED ON THE WEBSITES OF THE AUTHORITY
55 AND ITS SERVICE PROVIDER. THE BOARD SHALL THEREAFTER, WITHIN THIRTY DAYS
56 OF SUCH POSTING AND WITH DUE ADVANCE NOTICE TO THE PUBLIC, HOLD A PUBLIC

1 HEARING WITH RESPECT TO ITS PRELIMINARY DETERMINATION OF INCONSISTENCY.
2 AT SUCH HEARING, THE DEPARTMENT OF PUBLIC SERVICE SHALL PRESENT THE
3 BASIS FOR ITS RECOMMENDATIONS, THE BOARD SHALL PRESENT THE BASIS FOR ITS
4 DETERMINATION OF INCONSISTENCY AND THE SERVICE PROVIDER MAY PRESENT ITS
5 POSITION. THE AUTHORITY AND THE SERVICE PROVIDER MAY, DURING THE TIME
6 PERIOD BEFORE SUCH PUBLIC HEARING REACH AGREEMENT WITH THE DEPARTMENT ON
7 DISPUTED ISSUES. WITHIN THIRTY DAYS AFTER SUCH PUBLIC HEARING, THE
8 BOARD OF THE AUTHORITY SHALL ANNOUNCE ITS FINAL DETERMINATION AND
9 PLANNED IMPLEMENTATION WITH RESPECT TO ANY SUCH RECOMMENDATIONS. THE
10 AUTHORITY'S FINAL DETERMINATION OF INCONSISTENCY SHALL BE SUBJECT TO ANY
11 APPLICABLE JUDICIAL REVIEW PROCEEDING, INCLUDING REVIEW AVAILABLE UNDER
12 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

13 (bb) Comprehensive and regular management and operations audits. 1.
14 The authority AND THE SERVICE PROVIDER shall cooperate in the undertak-
15 ing and completion of a regular and comprehensive management and oper-
16 ations audit conducted pursuant to the requirements of this subdivision
17 and [subdivision two of section three] PARAGRAPH (D) OF SUBDIVISION
18 THREE OF SECTION THREE-B of the public service law. Such audit shall
19 review and evaluate the [authority's] overall operations and management
20 OF THE AUTHORITY AND SERVICE PROVIDER, including [the authority's] SUCH
21 operations and management in the context of [its] THE AUTHORITY'S duty
22 to set rates at the lowest level consistent with standards and proce-
23 dures provided in subdivision (u) of this section, and include, but not
24 be limited to: (i) the [authority's] SERVICE PROVIDER'S construction and
25 capital program planning in relation to the needs of [its] customers for
26 reliable service; (ii) the overall efficiency of the authority's AND
27 SERVICE PROVIDER'S operations; (iii) the manner in which the authority
28 is meeting its debt service obligations; (iv) the authority's Fuel and
29 Purchased Power Cost Adjustment clause and recovery of costs associated
30 with such clause; (v) the authority's AND SERVICE PROVIDER'S annual
31 budgeting procedures and process; (VI) THE APPLICATION, IF ANY, OF THE
32 PERFORMANCE METRICS DESIGNATED IN THE OPERATIONS SERVICES AGREEMENT AND
33 THE ACCURACY OF THE DATA RELIED UPON WITH RESPECT TO SUCH APPLICATION;
34 and [(vi)] (VII) the authority's compliance with debt covenants.

35 2. The department of public service shall notify the authority that
36 said department is in the process of initiating a comprehensive manage-
37 ment and operations audit as described in paragraph one of this subdivi-
38 sion in a manner that ensures the timeliness of such audit, and in
39 accordance with the following timeframe: the first comprehensive manage-
40 ment and operations audit shall be initiated as of the effective date of
41 [this subdivision] CHAPTER EIGHT OF THE LAWS OF TWO THOUSAND TWELVE and
42 undertaken in a manner and to an extent that is practicable in the
43 context of the authority's transition to a new management service struc-
44 ture; the second comprehensive management and operations audit shall be
45 initiated no later than December fifteenth, two thousand [fifteen]
46 SIXTEEN; and all additional comprehensive management and operations
47 audits shall be initiated at least once every five years thereafter.
48 Within a reasonable time after such notification to the authority, said
49 department or the independent auditor retained by the authority to
50 undertake such audit shall hold public statement hearings, with proper
51 notice, in both Nassau and Suffolk counties for the purpose of receiving
52 both oral and written comments from the public on matters related to
53 such audit as described in paragraph one of this subdivision.

54 3. Each such audit shall be completed within eighteen months of initi-
55 ation absent an extension for good cause shown by the department of
56 public service or the independent auditor under contract with the

1 authority with notice of such extension to the governor, the temporary
2 president of the senate, the speaker of the assembly, and the chairs of
3 the authority and the department of public service. Such audit shall be
4 provided to the board of the authority immediately upon its completion.
5 The department of public service shall provide notice of completion of
6 such audit to the governor, the temporary president of the senate, the
7 speaker of the assembly, and the minority leaders of the senate and
8 assembly, and the authority, upon receipt of such audit, shall post a
9 copy of such audit, including findings and recommendations, on its
10 website AND THE WEBSITE OF THE SERVICE PROVIDER. Unless the board of the
11 authority makes a preliminary determination that any particular finding
12 or recommendation contained in such audit is inconsistent with the
13 authority's sound fiscal operating practices, any existing contractual
14 or operating obligation, or the provision for safe and adequate service,
15 the board shall implement OR CAUSE ITS SERVICE PROVIDER TO IMPLEMENT
16 such findings and recommendations in accordance with the timeframe spec-
17 ified under such audit.

18 4. The board of the authority shall make any preliminary determination
19 of inconsistency with respect to any such finding or recommendation
20 within thirty days of receipt of the audit, with notice and the basis of
21 such determination being provided to the department of public service.
22 Such notice and basis shall be posted contemporaneously on the authori-
23 ty's website AND THE WEBSITE OF THE SERVICE PROVIDER and the board
24 shall, within thirty days of such posting and with due advance notice to
25 the public, hold a public hearing with respect to its preliminary deter-
26 mination of inconsistency. At such hearing the department of public
27 service or the independent auditor responsible for undertaking such
28 audit shall present the basis for its findings and recommendations and
29 the board shall present the basis for its determination of inconsistency
30 AND THE SERVICE PROVIDER MAY PRESENT IS POSITION. The authority, SERVICE
31 PROVIDER and auditor may during the time period prior to such public
32 hearing reach agreement on disputed issues. Within thirty days after
33 such public hearing, the board of the authority shall announce its final
34 determination and planned implementations with respect to any such find-
35 ings and/or recommendations. The [board's] AUTHORITY'S final determi-
36 nation of inconsistency shall be subject to any applicable judicial
37 review proceeding, including review available under article seventy-
38 eight of the civil practice law and rules.

39 (CC) TO PREPARE AN EMERGENCY RESPONSE PLAN PURSUANT TO THIS SUBDIVI-
40 SION. 1. THE SERVICE PROVIDER SHALL, IN CONSULTATION WITH THE AUTHORITY,
41 PREPARE AND MAINTAIN AN EMERGENCY RESPONSE PLAN (I) TO ASSURE THE
42 REASONABLY PROMPT RESTORATION OF SERVICE IN THE CASE OF AN EMERGENCY
43 EVENT, DEFINED FOR PURPOSES OF THIS SUBDIVISION AS AN EVENT WHERE WIDE-
44 SPREAD OUTAGES HAVE OCCURRED IN THE AUTHORITY'S SERVICE TERRITORY DUE TO
45 A STORM OR OTHER CAUSES BEYOND THE CONTROL OF THE AUTHORITY AND THE
46 SERVICE PROVIDER, (II) CONSISTENT WITH THE REQUIREMENTS OF PARAGRAPH (A)
47 OF SUBDIVISION TWENTY-ONE OF SECTION SIXTY-SIX OF THE PUBLIC SERVICE LAW
48 AND ANY REGULATIONS AND ORDERS ADOPTED THERETO, AND (III) ESTABLISHING
49 THE SEPARATE RESPONSIBILITIES OF THE AUTHORITY AND SERVICE PROVIDER.

50 2. ON OR BEFORE FEBRUARY THIRD, TWO THOUSAND FOURTEEN, THE AUTHORITY
51 AND SERVICE PROVIDER SHALL SUBMIT AN EMERGENCY RESPONSE PLAN TO THE
52 DEPARTMENT OF PUBLIC SERVICE FOR REVIEW. CONTEMPORANEOUSLY WITH SUCH
53 SUBMISSION, THE AUTHORITY SHALL PROVIDE NOTICE OF SUCH PROPOSED PLAN TO
54 THE SECRETARY OF STATE FOR PUBLICATION IN THE STATE REGISTER, THE
55 AUTHORITY AND SERVICE PROVIDER EACH SHALL POST SUCH PLAN ON THEIR
56 WEBSITES AND OTHERWISE MAKE SUCH PLAN AVAILABLE FOR REVIEW IN-PERSON,

1 AND AFFORD MEMBERS OF THE PUBLIC AN OPPORTUNITY TO SUBMIT WRITTEN
2 COMMENTS AND ORAL COMMENTS PURSUANT TO AT LEAST ONE HEARING TO BE HELD
3 EACH IN THE COUNTY OF SUFFOLK AND THE COUNTY OF NASSAU. SUCH WRITTEN
4 COMMENTS MUST BE SUBMITTED BY MARCH FOURTEENTH, TWO THOUSAND FOURTEEN.
5 THE AUTHORITY AND SERVICE PROVIDER SHALL PROVIDE A COPY OF ALL WRITTEN
6 COMMENTS THEY RECEIVE AND A TRANSCRIPT OF SUCH PUBLIC HEARINGS TO THE
7 DEPARTMENT OF PUBLIC SERVICE FOR ITS CONSIDERATION IN REVIEWING THE
8 EMERGENCY RESPONSE PLAN. THE DEPARTMENT SHALL PROVIDE ANY RECOMMENDA-
9 TIONS TO THE AUTHORITY AND SERVICE PROVIDER WITH RESPECT TO SUCH PLAN ON
10 OR BEFORE APRIL FIFTEENTH, TWO THOUSAND FOURTEEN. SUCH PLAN MUST BE MADE
11 FINAL BY JUNE SECOND, TWO THOUSAND FOURTEEN. FOR EACH YEAR THEREAFTER,
12 THE SERVICE PROVIDER SHALL SUBMIT AN EMERGENCY RESPONSE PLAN TO THE
13 DEPARTMENT OF PUBLIC SERVICE, AND SUCH DEPARTMENT SHALL PROVIDE ITS
14 RECOMMENDATIONS, IN ACCORDANCE WITH A SCHEDULE TO BE ESTABLISHED BY SUCH
15 DEPARTMENT AND THAT IS CONSISTENT WITH THE SCHEDULE ASSOCIATED WITH SUCH
16 DEPARTMENT'S REVIEW OF SIMILAR SUCH PLANS PROVIDED BY ELECTRIC CORPO-
17 RATIONS PURSUANT TO SUBDIVISION TWENTY-ONE OF SECTION SIXTY-SIX OF THE
18 PUBLIC SERVICE LAW.

19 3. BY JUNE SECOND, TWO THOUSAND FOURTEEN, AND BY JUNE FIRST ANNUALLY
20 THEREAFTER, THE AUTHORITY AND SERVICE PROVIDER SHALL JOINTLY CERTIFY TO
21 THE DEPARTMENT OF HOMELAND SECURITY AND EMERGENCY SERVICES THAT THE
22 EMERGENCY RESPONSE PLAN ENSURES, TO THE GREATEST EXTENT FEASIBLE, THE
23 TIMELY AND SAFE RESTORATION OF ENERGY SERVICES AFTER AN EMERGENCY
24 CONSISTENT WITH THE REQUIREMENTS OF PARAGRAPH (A) OF SUBDIVISION TWEN-
25 TY-ONE OF THE PUBLIC SERVICE LAW AND THE DEPARTMENT'S RECOMMENDATIONS.
26 THE FILING OF SUCH EMERGENCY RESPONSE PLAN SHALL ALSO INCLUDE A COPY OF
27 ALL WRITTEN MUTUAL ASSISTANCE AGREEMENTS AMONG UTILITIES. THE AUTHORITY
28 AND SERVICE PROVIDER SHALL FILE WITH THE COUNTY EXECUTIVES OF NASSAU AND
29 SUFFOLK COUNTY AND THE MAYOR OF THE CITY OF NEW YORK THE MOST RECENT
30 VERSION OF THE EMERGENCY RESPONSE PLAN, AND MAKE SURE THAT SUCH AMENDED
31 VERSIONS ARE TIMELY FILED.

32 4. STARTING IN CALENDAR YEAR TWO THOUSAND FOURTEEN, THE SERVICE
33 PROVIDER ANNUALLY SHALL UNDERTAKE AT LEAST ONE DRILL TO IMPLEMENT PROCE-
34 DURES TO PRACTICE ITS EMERGENCY RESPONSE PLAN. THE SERVICE PROVIDER
35 SHALL NOTIFY AND ALLOW PARTICIPATION IN SUCH DRILL OF ALL APPROPRIATE
36 MUNICIPAL EMERGENCY RESPONDERS AND OFFICIALS.

37 5. IF, DURING AN EMERGENCY EVENT, ELECTRIC SERVICE IS NOT RESTORED IN
38 THREE DAYS, THE SERVICE PROVIDER SHALL WITHIN SIXTY DAYS FROM THE DATE
39 OF FULL RESTORATION FILE WITH THE DEPARTMENT A REPORT CONSTITUTING A
40 REVIEW OF ALL ASPECTS OF THE PREPARATION AND SYSTEM RESTORATION PERFORM-
41 ANCE DURING THE EVENT, AND SHALL THEREAFTER TAKE INTO CONSIDERATION ANY
42 RECOMMENDATIONS MADE BY THE DEPARTMENT ASSOCIATED WITH SUCH REVIEW.

43 (DD) ON OR BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN, AND BY JANUARY
44 FIRST OF EACH CALENDAR YEAR THEREAFTER, TO SUBMIT FOR REVIEW TO THE
45 DEPARTMENT OF PUBLIC SERVICE A REPORT DETAILING THE SERVICE PROVIDER'S
46 PLANNED CAPITAL EXPENDITURES.

47 (EE) ON OR BEFORE JULY FIRST, TWO THOUSAND FOURTEEN, AND ANNUALLY
48 THEREAFTER, TO SUBMIT FOR REVIEW TO THE DEPARTMENT OF PUBLIC SERVICE ANY
49 PROPOSED PLAN RELATED TO IMPLEMENTING ENERGY EFFICIENCY MEASURES,
50 DISTRIBUTED GENERATION OR ADVANCED GRID TECHNOLOGY PROGRAMS FOR THE
51 PURPOSE PROVIDED PURSUANT TO PARAGRAPH (G) OF SUBDIVISION THREE OF
52 SECTION THREE-B OF THE PUBLIC SERVICE LAW.

53 (FF) TO ASSIST AND COOPERATE WITH THE DEPARTMENT OF PUBLIC SERVICE
54 WITH RESPECT TO ANY REVIEW UNDERTAKEN PURSUANT TO SECTION THREE-B OF THE
55 PUBLIC SERVICE LAW, INCLUDING PROVIDING THE DEPARTMENT WITH REASONABLE
56 ACCESS TO ALL FACILITIES AND PREMISES OWNED OR OPERATED BY THE AUTHORITY

1 OR ITS SERVICE PROVIDER, ALLOWING REVIEW OF ALL BOOKS AND RECORDS OF THE
2 AUTHORITY AND ITS SERVICE PROVIDER, PROVIDING COPIES OF REQUESTED DOCU-
3 MENTS, ALLOWING INTERVIEWS OF ALL APPROPRIATE PERSONNEL, AND RESPONDING
4 IN A REASONABLE AND TIMELY MANNER TO ANY INQUIRIES OR REPORTING REQUESTS
5 MADE BY THE DEPARTMENT; PROVIDED, HOWEVER, THAT THE OBLIGATIONS SET
6 FORTH IN THIS SUBDIVISION SHALL NOT EXTEND TO AFFILIATES OF THE SERVICE
7 PROVIDER.

8 (GG) RENEWABLE GENERATION AND ENERGY EFFICIENCY PROGRAMS. 1. THE
9 AUTHORITY IN COORDINATION WITH THE SERVICE PROVIDER, THE POWER AUTHORITY
10 OF THE STATE OF NEW YORK AND THE NEW YORK STATE ENERGY RESEARCH AND
11 DEVELOPMENT AUTHORITY SHALL, TO THE EXTENT THE AUTHORITY'S RATES ARE
12 SUFFICIENT TO PROVIDE SAFE AND ADEQUATE TRANSMISSION AND DISTRIBUTION
13 SERVICE, AND THE MEASURES HEREIN, UNDERTAKE ACTIONS TO DESIGN AND ADMIN-
14 ISTER RENEWABLE ENERGY AND ENERGY EFFICIENCY MEASURES IN THE SERVICE
15 AREA, WITH THE GOAL OF CONTINUING AND EXPANDING SUCH MEASURES THAT
16 COST-EFFECTIVELY REDUCE SYSTEM-WIDE PEAK DEMAND, MINIMIZE LONG-TERM FUEL
17 PRICE RISK TO RATE PAYERS, LOWER EMISSIONS, IMPROVE ENVIRONMENTAL QUALI-
18 TY, AND SEEK TO MEET NEW YORK STATE CLIMATE CHANGE AND ENVIRONMENTAL
19 GOALS. SUCH ACTIONS SHALL ALSO INCLUDE IMPLEMENTATION OF ANY RENEWABLE
20 ENERGY COMPETITIVE PROCUREMENT OR FEED-IN-TARIFF PROGRAMS THAT WERE
21 APPROVED BY THE AUTHORITY AS OF THE EFFECTIVE DATE OF THE CHAPTER OF THE
22 LAWS OF TWO THOUSAND THIRTEEN WHICH ADDED THIS SUBDIVISION.

23 2. THE SERVICE PROVIDER SHALL CONSIDER, CONSISTENT WITH MAINTAINING
24 SYSTEM RELIABILITY, RENEWABLE GENERATION AND ENERGY EFFICIENCY PROGRAM
25 RESULTS AND OPTIONS IN ESTABLISHING CAPITAL PLANS.

26 (HH) STARTING IN CALENDAR YEAR TWO THOUSAND FIFTEEN, THE AUTHORITY AND
27 THE SERVICE PROVIDER SHALL SUBMIT TO THE DEPARTMENT OF PUBLIC SERVICE
28 FOR REVIEW, ANY AND ALL DATA, INFORMATION AND REPORTS WHICH SET FORTH
29 THE SERVICE PROVIDER'S ACTUAL PERFORMANCE RELATED TO THE METRICS IN THE
30 OPERATIONS SERVICES AGREEMENT, INCLUDING THE AUTHORITY'S EVALUATION
31 THEREOF, NO LESS THAN FORTY-FIVE DAYS PRIOR TO THE AUTHORITY'S DETERMI-
32 NATION OF THE SERVICE PROVIDER'S ANNUAL INCENTIVE COMPENSATION.

33 S 8. Section 1020-q of the public authorities law, as added by chapter
34 517 of the laws of 1986 and subdivision 2 as amended by section 19 of
35 part Y of chapter 63 of the laws of 2000, is amended to read as follows:

36 S 1020-q. Payments in lieu of taxes. 1. Each year after property ther-
37 etofore owned by LILCO is acquired by the authority by any means author-
38 ized by this title and, as a consequence, is removed from the tax rolls,
39 the authority shall make payments in lieu of taxes to municipalities and
40 school districts equal to the taxes and assessments which would have
41 been received from year to year by each such jurisdiction if such acqui-
42 sition had not occurred, [except for such taxing jurisdictions which tax
43 the Shoreham plant, in which case the in lieu of tax payments shall in
44 the first year after the acquisition be equal to one hundred percent of
45 the taxes and assessments which would have been received by such taxing
46 jurisdictions. In each succeeding year such in lieu of tax payments
47 shall be decreased by ten percent until such time as such payments equal
48 taxes and assessments which would have been levied on such plant in a
49 nonoperative state] PROVIDED, HOWEVER, THAT FOR THE CALENDAR YEAR START-
50 ING ON JANUARY FIRST, TWO THOUSAND FIFTEEN, AND FOR EACH CALENDAR YEAR
51 THEREAFTER, SUCH PAYMENTS IN LIEU OF TAXES SHALL NOT EXCEED THE IN LIEU
52 OF TAX PAYMENTS MADE TO SUCH MUNICIPALITIES AND SCHOOL DISTRICTS IN THE
53 IMMEDIATELY PRECEDING YEAR BY MORE THAN TWO PERCENT.

54 2. The authority shall also make payments in lieu of taxes for those
55 taxes which would otherwise be imposed [upon LILCO, if LILCO were to
56 continue in operation,] pursuant to sections one hundred eighty-six-a

1 and one hundred eighty-six-c of the tax law, and to former [sections one
2 hundred eighty-six and] SECTION one hundred eighty-six-b of the tax law
3 as such [sections one hundred eighty-six and one hundred eighty-six-b
4 were] SECTION WAS in effect on December thirty-first, nineteen hundred
5 ninety-nine, [paragraph (b) of subdivision four of section one hundred
6 seventy-four of the navigation law,] and any taxes imposed by a city
7 pursuant to the authorization granted by section twenty-b of the general
8 city law.

9 3. No municipality or governmental subdivision, including a school
10 district or special district, shall be liable to the authority or any
11 other entity for a refund of property taxes originally assessed against
12 the Shoreham plant. Any judicial determination that the Shoreham plant
13 assessment was excessive, unequal or unlawful for any of the years from
14 nineteen hundred seventy-six to the effective date of this title shall
15 not result in a refund by any taxing jurisdiction of taxes previously
16 paid by LILCO pursuant to such Shoreham plant assessment. The authority
17 shall discontinue and abandon all proceedings, brought by its predeces-
18 sor in interest, which seek the repayment of all or part of the taxes
19 assessed against the Shoreham plant.

20 S 9. Subdivision 1 of section 1020-s of the public authorities law, as
21 amended by chapter 388 of the laws of 2011, is amended to read as
22 follows:

23 1. The rates, services and practices relating to the electricity
24 generated by facilities owned or operated by the authority shall not be
25 subject to the provisions of the public service law or to regulation by,
26 or the jurisdiction of, the public service commission, except to the
27 extent (a) article seven of the public service law applies to the siting
28 and operation of a major utility transmission facility as defined there-
29 in, (b) article ten of such law applies to the siting of a generating
30 facility as defined therein, [and] (c) section eighteen-a of such law
31 provides for assessment for certain costs, property or operations, AND
32 (D) TO THE EXTENT THAT THE DEPARTMENT OF PUBLIC SERVICE REVIEWS AND
33 MAKES RECOMMENDATIONS WITH RESPECT TO THE OPERATIONS AND PROVISION OF
34 SERVICES OF, AND RATES AND BUDGETS ESTABLISHED BY, THE AUTHORITY PURSU-
35 ANT TO SECTION THREE-B OF SUCH LAW.

36 S 10. Section 1020-w of the public authorities law, as added by chap-
37 ter 517 of the laws of 1986, is amended to read as follows:

38 S 1020-w. Audit and annual reports. The accounts of the authority
39 shall be subject to the supervision of the state comptroller and an
40 annual audit shall be performed by an independent certified accountant
41 selected by the [state division of the budget] AUTHORITY, UPON RECOMMEN-
42 DATION OF ITS FINANCE AND AUDIT COMMITTEE. The authority shall submit
43 annually to the governor, the state comptroller, the temporary president
44 of the senate, the speaker of the assembly and the county executives and
45 governing bodies of the counties of Suffolk and Nassau, a detailed
46 report pursuant to the provisions of section two thousand eight hundred
47 of [title one of article nine of] this chapter, which report shall be
48 verified by the chairman of the authority. The authority shall comply
49 with the provisions of sections two thousand eight hundred one, two
50 thousand eight hundred two and two thousand eight hundred three of
51 [title one of article nine of] this chapter.

52 S 11. Section 1020-cc of the public authorities law, as amended by
53 chapter 413 of the laws of 2011, is amended to read as follows:

54 S 1020-cc. Authority subject to certain provisions contained in the
55 state finance law, the public service law, the social services law and
56 the general municipal law. 1. All contracts of the authority shall be

1 subject to the provisions of the state finance law relating to contracts
2 made by the state. The authority shall also establish rules and regu-
3 lations with respect to providing to its residential gas, electric and
4 steam utility customers those rights and protections provided in article
5 two and sections one hundred seventeen and one hundred eighteen of the
6 public service law and section one hundred thirty-one-s of the social
7 services law. The authority shall conform to any safety standards
8 regarding manual lockable disconnect switches for solar electric gener-
9 ating equipment established by the public service commission pursuant to
10 subparagraph (ii) of paragraph (a) of subdivision five and subparagraph
11 (ii) of paragraph (a) of subdivision five-a of section sixty-six-j of
12 the public service law. The authority shall let contracts for
13 construction or purchase of supplies, materials, or equipment pursuant
14 to section one hundred three and paragraph (e) of subdivision four of
15 section one hundred twenty-w of the general municipal law.

16 2. THE AUTHORITY AND SERVICE PROVIDER SHALL PROVIDE TO THE STATE COMP-
17 TROLLER ON MARCH THIRTY-FIRST AND SEPTEMBER THIRTIETH OF EACH YEAR A
18 REPORT DOCUMENTING EACH CONTRACT IN EXCESS OF TWO HUNDRED FIFTY THOUSAND
19 DOLLARS PER YEAR ENTERED INTO WITH A THIRD PARTY AND RELATED TO MANAGE-
20 MENT AND OPERATION SERVICES ASSOCIATED WITH THE AUTHORITY'S ELECTRIC
21 TRANSMISSION AND DISTRIBUTION SYSTEM, INCLUDING THE NAME OF THE THIRD
22 PARTY, THE CONTRACT TERM AND A DESCRIPTION OF SERVICES OR GOODS TO BE
23 PROCURED, AND POST SUCH REPORT ON EACH OF THEIR WEBSITES. ALL CONTRACTS
24 ENTERED INTO BETWEEN THE SERVICE PROVIDER AND THIRD PARTIES ARE NOT
25 SUBJECT TO THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION.

26 S 12. Paragraph (b) of subdivision 4 of section 94-a of the executive
27 law, as amended by chapter 8 of the laws of 2012, is amended to read as
28 follows:

29 (b) The utility intervention unit shall have the power and duty to:

30 (i) on behalf of the secretary, initiate, intervene in, or participate
31 in any proceedings before the public service commission OR THE DEPART-
32 MENT OF PUBLIC SERVICE, to the extent authorized by sections THREE-B,
33 twenty-four-a, seventy-one, eighty-four or ninety-six of the public
34 service law or any other applicable provision of law, where he or she
35 deems such initiation, intervention or participation to be necessary or
36 appropriate;

37 (ii) represent the interests of consumers of the state before federal,
38 state and local administrative and regulatory agencies engaged in the
39 regulation of energy services; [and]

40 (iii) accept and investigate complaints of any kind from Long Island
41 power authority consumers, attempt to mediate such complaints where
42 appropriate directly with such authority and refer complaints to the
43 appropriate state or local agency authorized by law to take action with
44 respect to such complaints[.]; AND

45 (IV) HOLD REGULAR FORUMS IN EACH OF THE SERVICE TERRITORIES OF THE
46 COMBINATION GAS AND ELECTRIC CORPORATIONS, AS DEFINED UNDER SECTION TWO
47 OF THE PUBLIC SERVICE LAW, AND THE LONG ISLAND POWER AUTHORITY TO
48 EDUCATE CONSUMERS ABOUT UTILITY-RELATED MATTERS AND THE REGULATORY PROC-
49 ESS, OPPORTUNITIES TO LOWER ENERGY COSTS, INCLUDING THROUGH ENERGY EFFI-
50 CIENCY AND DISTRIBUTED GENERATION, AND OTHER MATTERS AFFECTING CONSUM-
51 ERS.

52 S 13. Notwithstanding section 112 of the state finance law and
53 notwithstanding any other provision of law to the contrary, including
54 but not limited to any provision of law related to rebidding, letting or
55 amending contracts of any amount, the Long Island Lighting Company dba
56 LIPA is authorized to amend the operations services agreement, dated

1 December 28, 2011, entered into with PSEG Long Island LLC, including
2 Amendment Nos. 1 and 2 thereto, approved on June 27, 2012, solely by the
3 following: (1) upon review and written recommendations made by the
4 department of public service to the board of trustees of the Long Island
5 power authority ("authority"), setting forth the reasons for and find-
6 ings underlying such recommendations; and (2) adoption of a resolution
7 by a majority of the authority's board of trustees.

8 S 14. This act shall supersede the fifth project condition established
9 in Resolution No. 97-LI-1 of the public authorities control board, dated
10 July 16, 1997, related to the implementation of certain rate increases.

11 S 15. Subdivision 1 of section 7208 of the education law, as amended
12 by chapter 994 of the laws of 1971, is amended to read as follows:

13 1. The practice of engineering or land surveying, or using the title
14 "engineer" or "surveyor" (I) exclusively as an officer or employee of a
15 public service corporation by rendering to such corporation such
16 services in connection with its lines and property which are subject to
17 supervision with respect to the safety and security thereof by the
18 public service commission of this state, the interstate commerce commis-
19 sion or other federal regulatory body and so long as such person is thus
20 actually and exclusively employed and no longer, OR (II) EXCLUSIVELY AS
21 AN OFFICER OR EMPLOYEE OF THE LONG ISLAND POWER AUTHORITY OR ITS SERVICE
22 PROVIDER, AS DEFINED UNDER SECTION THREE-B OF THE PUBLIC SERVICE LAW, BY
23 RENDERING TO SUCH AUTHORITY OR PROVIDER SUCH SERVICES IN CONNECTION WITH
24 ITS LINES AND PROPERTY WHICH ARE LOCATED IN SUCH AUTHORITY'S SERVICE
25 AREA AND SO LONG AS SUCH PERSON IS THUS ACTUALLY AND EXCLUSIVELY
26 EMPLOYED AND NO LONGER;

27 S 16. Repowering. If after the Long Island power authority, or its
28 successor, determines, in accordance with the terms and conditions
29 contained in the amended and restated power supply agreement ("A&R
30 PSA"), dated October 10, 2012, between the authority and the owner of
31 the legacy LILCO power generating facilities, that repowering any such
32 generating facility is in the best interests of its ratepayers and will
33 enhance the authority's ability to provide a more efficient, reliable
34 and economical supply of electric energy in its service territory,
35 consistent with the goal of improving environmental quality, the author-
36 ity will exercise its rights under the A&R PSA related to repowering
37 such facility, and shall enter into an agreement related to payments in
38 lieu-of-taxes for a term commensurate with any power purchase agreement
39 entered into related to such repowered facility, consistent with other
40 such agreements related to generating facilities under contract to the
41 authority in the service territory.

42 S 17. This act shall take effect January 1, 2014; provided, however,
43 that section twelve of this act shall take effect April 1, 2014,
44 sections five, ten, eleven, thirteen, fourteen, fifteen and sixteen of
45 this act shall take effect immediately; provided further that section
46 thirteen of this act shall expire and be deemed repealed January 1,
47 2015; and provided further that the amendments to subdivision 6 of
48 section 18-a of the public service law made by section two of this act
49 shall not affect the repeal of such subdivision and shall be deemed
50 repealed therewith.

51 PART B

52 Section 1. Legislative findings. The legislature hereby finds and
53 determines:

1 1. On May 28, 1998, Long Island Power Authority (the authority)
2 acquired all the capital stock and associated assets, including trans-
3 mission and distribution (T&D) system assets of Long Island Lighting
4 Company (LILCO) which does business as the retail electric utility on
5 Long Island, New York under the name of LIPA. In connection with that
6 acquisition, the authority took over ultimate responsibility for provid-
7 ing electric utility service to residential, commercial, industrial,
8 nonprofit and governmental customers in the counties of Suffolk and
9 Nassau and a portion of the county of Queens (hereinafter referred to as
10 the "service area"). Such acquisition effectively converted LILCO from
11 an investor-owned utility that was comprehensively regulated by the New
12 York Public Service Commission (PSC) and the United States Federal Ener-
13 gy Regulatory Commission (FERC), to a municipal utility that is not
14 comprehensively regulated either by the PSC or FERC.

15 2. Since May 28, 1998, neither the authority nor LIPA has directly
16 operated or maintained the T&D system assets, provided electric service
17 or billed and collected T&D rates from LIPA's customers; instead, the
18 authority and LIPA have contracted out virtually all of these activities
19 to other companies. Most of these operations and service responsibil-
20 ities have been contracted out to affiliates of a company now known as
21 National Grid plc (National Grid), a multi-national electric and gas
22 utility company organized under the laws of England and Wales pursuant
23 to a management services agreement. Thus, while the LIPA name appears on
24 customer bills as well as on service trucks and other equipment used in
25 the service area, affiliates of National Grid have been principally in
26 charge of management and operation of the T&D system assets and provid-
27 ing electricity to consumers in the service area. The authority and
28 LIPA have now contracted with affiliates of Public Service Enterprise
29 Group and Lockheed Martin Services Inc. (PSEG-Lockheed) to provide oper-
30 ation and maintenance services for the T&D system assets for ten years
31 starting January 1, 2014, when the National Grid contract expires.

32 3. High costs of electric utility service poses a serious threat to
33 the economic well-being, health and safety of the residents of and the
34 commerce and industry in the service area. High costs of electric util-
35 ity service deter commerce and industry from locating in the service
36 area and have caused existing commerce and industry to consider serious-
37 ly moving out of the service area.

38 4. High debt and associated debt service contribute to the authority's
39 high electric rates. The authority has approximately seven billion
40 dollars in outstanding debt, a substantial portion of which was issued
41 to refinance debt associated with construction of the now abandoned
42 Shoreham nuclear power plant. The annual debt service associated with
43 such bonds puts pressure on the authority's customer rates.

44 5. As of December 31, 2012, the three major rating agencies generally
45 rated the authority's debt in the single-A range, though Moody's Inves-
46 tors Services assigns approximately seven hundred million dollars of the
47 authority's debt slightly lower ratings of Baal and Baa2.

48 6. If securitized restructuring bonds were issued by a bankruptcy-re-
49 mote entity with a AAA or equivalent rating in current market conditions
50 to finance a portion of the costs of purchasing, redeeming or defeasing
51 outstanding debt of the authority, and other associated costs, the debt
52 service on the authority's debt could be reduced and the costs of elec-
53 tric utility service could be lowered.

54 7. Securitized restructuring bonds are likely to be most attractive to
55 the investing public and result in the lowest possible yields if they

1 are issued by a newly organized, special purpose public benefit corpo-
2 ration or other corporate municipal instrumentality of the state.

3 8. The purpose of this act is to provide a legislative foundation for
4 the issuance of securitized restructuring bonds to refinance outstanding
5 debt of the authority, a significant portion of which relates to LILCO's
6 costs of constructing and financing the now abandoned Shoreham nuclear
7 power plant, including the creation of restructuring property by the
8 authority to provide for the redemption or defeasance of a portion of
9 the outstanding debt of the authority. It is the intent of the legisla-
10 ture to authorize, for the purpose of reducing electric utility costs to
11 consumers in the service area, the following: (a) the organization of a
12 restructuring bond issuer as a special purpose corporate municipal
13 instrumentality of the state, created for the limited purpose of issuing
14 securitized restructuring bonds to purchase restructuring property to
15 finance the cost of purchasing, redeeming or defeasing a portion of the
16 outstanding debt of the authority and associated costs, which securi-
17 tized restructuring bonds create no new financial obligations or liabil-
18 ities for the authority or for the state; and (b) implementation of
19 contracts with owners of the securitized restructuring bonds through a
20 statutory pledge and agreement that the state will not in any way take
21 or permit any action to revoke, modify, impair, postpone, terminate or
22 amend this act in any manner that is materially adverse to the owners of
23 the restructuring bonds until those bonds are no longer outstanding and
24 all amounts due and owing under the related transaction documents have
25 been paid in full.

26 9. Accordingly, the issuance of securitized restructuring bonds is
27 expected to result in lower aggregate distribution and transmission
28 charges and transition charges, compared to other available alterna-
29 tives.

30 S 2. Definitions. As used or referred to in this act, unless a differ-
31 ing meaning clearly appears from the context:

32 1. "Ancillary agreement" means any bond insurance policy, letter of
33 credit, reserve account, surety bond, swap arrangement, hedging arrange-
34 ment, liquidity or credit support arrangement or other similar agreement
35 or arrangement entered into in connection with the issuance of restruc-
36 turing bonds that is designed to promote the credit quality and marketa-
37 bility of such restructuring bonds or to mitigate the risk of an
38 increase in interest rates.

39 2. "Approved restructuring costs" means, to the extent approved as
40 such under a restructuring cost financing order, (a) costs of purchas-
41 ing, redeeming or defeasing a portion of outstanding debt of the author-
42 ity, including bonds and notes issued by the authority, debt issued by
43 the New York state energy research and development authority for the
44 benefit of the LILCO; (b) costs of terminating interest rate swap
45 contracts and other financial contracts entered into by or for the bene-
46 fit of the authority and related to debt obligations of the authority;
47 (c) rebate, yield reduction payments and any other amounts payable to
48 the United States Treasury or to the Internal Revenue Service to
49 preserve or protect the federal tax-exempt status of outstanding debt
50 obligations of the authority; and (d) upfront financing costs associated
51 with restructuring bonds.

52 3. "Assignee" means any individual, corporation, limited liability
53 company, partnership or limited partnership, trust or other legally-re-
54 cognized entity to which an interest in restructuring property is
55 assigned, sold or transferred, other than as security, including any
56 assignee of that party.

1 4. "Authority" means Long Island Power Authority, a corporate municipi-
2 pal instrumentality and political subdivision of the state.

3 5. "Consumer" means any individual, governmental body, trust, business
4 entity, nonprofit organization or other legally-recognized entity that
5 takes electric delivery service within the service area by means of
6 electric transmission or distribution facilities, whether those electric
7 transmission or distribution facilities are owned by LIPA or any other
8 entity.

9 6. "Financing cost" means the costs to issue, service, or repay
10 restructuring bonds, whether incurred upon issuance of such restructur-
11 ing bonds or over the life of the restructuring bonds, and approved for
12 recovery in a restructuring cost financing order. Without limitation,
13 "financing cost" may include, as applicable, any of the following:

14 (a) principal, interest and redemption premiums payable on restructur-
15 ing bonds;

16 (b) any payment required under an ancillary agreement and any amount
17 required to fund or replenish a debt service reserve account or other
18 account established under any indenture, ancillary agreement or other
19 financing document relating to the restructuring bonds;

20 (c) any federal, state or local taxes, payments in lieu of taxes,
21 franchise fees or license fees imposed on transition charge revenues;
22 and

23 (d) any cost related to issuing restructuring bonds, administering the
24 restructuring bond issuer and servicing restructuring property and
25 restructuring bonds, or related to the efforts to prepare or obtain
26 approval of a restructuring cost financing order, including, without
27 limitation, costs of calculating adjustments of transition charges,
28 servicing fees and expenses, trustee fees and expenses, legal fees and
29 expenses, accounting fees and expenses, administrative fees and
30 expenses, placement fees, underwriting fees, fees and expenses of the
31 authority's advisors and outside counsel, if any, rating agency fees and
32 any other related cost that is approved for recovery in the restructur-
33 ing cost financing order.

34 7. "Financing entity" means the restructuring bond issuer, the author-
35 ity or any servicer, trustee, collateral agent, and other person or
36 entity acting for the benefit of owners of the restructuring bonds, the
37 restructuring bond issuer or the authority that may own restructuring
38 property or have rights to receive proceeds of restructuring bonds or to
39 receive proceeds from the sale of restructuring property.

40 8. "LIPA" means Long Island Lighting Company, currently doing business
41 under the name of LIPA.

42 9. "Ongoing financing costs" means financing costs that are not
43 upfront financing costs. Ongoing financing costs include: (a) principal,
44 interest and redemption premiums payable on restructuring bonds; (b) any
45 payment required under an ancillary agreement and any amount required to
46 replenish a debt service reserve account or other account established
47 under any indenture, ancillary agreement or other financing document
48 relating to restructuring bonds; (c) any federal, state or local taxes,
49 payments in lieu of taxes, franchise fees or license fees imposed on
50 transition charge revenues; and (d) any cost related to administering
51 the restructuring bond issuer and servicing restructuring property or
52 restructuring bonds, including, without limitation, costs of calculating
53 adjustments of transition charges, servicing fees and expenses, adminis-
54 trative fees and expenses, trustee fees and expenses, and legal fees and
55 expenses, accounting fees and expenses, and rating agency fees, approved
56 for recovery in the restructuring cost financing order. Ongoing financ-

1 ing costs shall include any excess of actual upfront financing costs
2 over the estimate of upfront financing costs included in the principal
3 amount of the restructuring bonds.

4 10. "Restructuring bond issuer" means the corporate municipal instru-
5 mentality of the state created under section four of this act.

6 11. "Restructuring bonds" means bonds or other evidences of indebt-
7 edness that are issued pursuant to an indenture or other agreement of
8 the restructuring bond issuer under a restructuring cost financing order
9 (a) the proceeds of which are used, directly or indirectly, to recover,
10 finance, or refinance approved restructuring costs, (b) that are direct-
11 ly or indirectly secured by, or payable from, restructuring property,
12 and (c) that have a term no longer than thirty years.

13 12. "Restructuring cost financing order" means an order by the author-
14 ity, adopted in accordance with this act, which approves the imposition
15 and collection of transition charges, and the financing of approved
16 restructuring costs and upfront financing costs through the sale of
17 restructuring property and the issuance of restructuring bonds, and
18 which includes a procedure to require periodic adjustments to transition
19 charges to ensure the collection of transition charges sufficient to
20 provide for the timely payment of scheduled debt service on the restruc-
21 turing bonds and all other ongoing financing costs contemplated by the
22 restructuring cost financing order.

23 13. "Restructuring property" means the property rights and interests
24 created pursuant to this act, including, without limitation, the right,
25 title, and interest: (a) in and to the transition charges established
26 pursuant to a restructuring cost financing order, as adjusted from time
27 to time in accordance with the restructuring cost financing order; (b)
28 in and to all revenues, collections, claims, payments, money, or
29 proceeds of or arising from the transition charges or constituting tran-
30 sition charges that are the subject of a restructuring cost financing
31 order, regardless of whether such revenues, collections, claims,
32 payments, money, or proceeds are imposed, billed, received, collected or
33 maintained together with or commingled with other revenues, collections,
34 claims, payments, money or proceeds; and (c) in and to all rights to
35 obtain adjustments to the transition charges pursuant to the terms of
36 the restructuring cost financing order. Restructuring property shall
37 constitute a vested, presently existing property right notwithstanding
38 the fact that the value of the property right will depend on further
39 acts that have not yet occurred, including but not limited to, consumers
40 remaining or becoming connected to the T&D system assets and taking
41 electric delivery service, the imposition and billing of transition
42 charges, or, in those instances where consumers are customers of LIPA or
43 any successor owner of the T&D system assets, such owner performing
44 certain services.

45 14. "Service area" means the geographical area within which LIPA
46 provided electric distribution services as of the implementation date of
47 this act.

48 15. "Servicer" means an entity authorized and required, by contract or
49 otherwise, to impose, bill and collect transition charges, to prepare
50 periodic reports regarding billings and collections of transition charg-
51 es, to remit collections to the appropriate financing entity, and to
52 provide other services contemplated by the restructuring cost financing
53 order, which may include calculation of periodic adjustments to the
54 transition charges or providing other services related to the restruc-
55 turing property. Without limitation, LIPA or any successor owner of the

1 T&D system assets, their agents or subcontractors, or any entity author-
2 ized to bill and collect T&D rates may be a servicer.

3 16. "Servicing fee" means, except to the extent otherwise specified in
4 a restructuring cost financing order, the periodic amount paid pursuant
5 to a servicing agreement, indenture or other such document to a servicer
6 of restructuring property which amount shall approximate the estimated
7 incremental cost of imposing, billing and collecting transition charges,
8 preparing servicing reports and performing other customary servicing
9 services required in connection with securitized bonds. A restructuring
10 cost financing order may authorize a smaller fee payable to a successor
11 servicer that is affiliated with a successor owner of the T&D system
12 assets if the incremental cost of providing servicing services is less
13 than LIPA's incremental costs. A restructuring cost financing order may
14 authorize a larger fee payable to a successor servicer that is not
15 affiliated with the owner of the T&D system assets or is not performing
16 similar services with respect to the base rates of the owner of the T&D
17 system assets if such larger fee is reasonably necessary to employ a
18 reliable successor servicer.

19 17. "Successor regulator" means a regulatory department, commission or
20 other instrumentality or subdivision of the state with jurisdiction to
21 regulate the T&D rates of LIPA or its successor as owner of the T&D
22 system assets.

23 18. "Third-party biller" means any person or entity authorized,
24 required or entitled to bill or collect transition charges or T&D rates
25 other than the authority, LIPA or a successor owner of the T&D system
26 assets, or a servicer.

27 19. "T&D rates" means rates and charges for electric transmission and
28 distribution services in the service area. "T&D rates" shall not include
29 charges for the generation or resale of electricity or any charges
30 imposed to fund public purpose programs.

31 20. "T&D system assets" means the physically integrated system of
32 electric transmission and distribution facilities (and other general
33 property and equipment used in connection therewith) owned by LIPA as of
34 the effective date of this act or thereafter acquired for use by LIPA or
35 its successors in providing retail electric utility service to consumers
36 in the service area.

37 21. "Transition charges" means those rates and charges relating to the
38 T&D system assets that are separate and apart from base rates of LIPA or
39 any successor owner of the T&D system assets and that are authorized in
40 a restructuring cost financing order to recover from consumers the prin-
41 cipal, interest and premium payable on restructuring bonds and the other
42 ongoing financing costs associated with the restructuring bonds. As
43 provided in paragraph (c) of subdivision 5 of section five of this act,
44 transition charges shall be imposed on all consumers in the service area
45 and collected by LIPA or any successor owner of the T&D system assets,
46 their agents, subcontractors, assignees, collection agents or any other
47 entity designated under the restructuring cost financing order.

48 22. "Upfront financing costs" means the fees and expenses to issue
49 restructuring bonds, including, without limitation, expenses associated
50 with the efforts to prepare or obtain approval of a restructuring cost
51 financing order, as well as the fees and expenses associated with the
52 structuring, marketing, and issuance of restructuring bonds, including,
53 without limitation, counsel fees, structural advisory fees, underwriting
54 fees and original issue discount, rating agency and trustee fees
55 (including fees of trustee's counsel), accounting and auditing fees,
56 printing and marketing expenses, stock exchange listing fees and compli-

1 ance fees, filing fees, any applicable taxes, payments in lieu of taxes,
2 the amount required to fund a debt service reserve account or other
3 account established under any indenture, ancillary agreement or other
4 financing document relating to the restructuring bonds, and fees and
5 expenses of the authority's advisors and outside counsel, if any.
6 Upfront financing costs include reimbursement to any person of amounts
7 advanced for payment of such costs. Upfront financing costs do not
8 include scheduled debt service or other ongoing financing costs, to the
9 extent such ongoing financing costs are payable from transition charge
10 revenues. If any upfront financing costs cannot be reasonably determined
11 before the principal amount of restructuring bonds is fixed, such
12 financing costs shall be estimated and the aggregate of such estimates
13 shall be included as an upfront financing cost for purposes of determin-
14 ing the principal amount of restructuring bonds to be issued. If the
15 actual upfront financing costs are greater than the estimated upfront
16 financing costs, the difference shall be deemed to be an ongoing financ-
17 ing cost; if the actual upfront financing costs are less than the esti-
18 mated upfront financing costs, the proceeds corresponding to such
19 difference shall be used to pay ongoing financing costs.

20 S 3. Procedure; judicial review. 1. Standard. The authority may
21 prepare a restructuring cost financing order for the purpose of issuing
22 restructuring bonds to refinance outstanding debt of the authority based
23 on a finding that such bond issuance is expected to result in savings to
24 consumers of electric transmission and distribution services in the
25 service area on a net present value basis.

26 2. Public hearings. Notwithstanding any other provision of law to the
27 contrary, at any time after the effective date of this act, after making
28 such finding, the authority shall schedule and hold one or more expe-
29 dited public statement hearings on the proposed restructuring cost
30 financing order. After the conclusion of such hearings and its review of
31 any comments received, the authority shall finalize the restructuring
32 cost financing order for submission to the board of trustees of the
33 authority and to the public authorities control board ("PACB"). The
34 PACB shall have the power and it shall be its duty to, upon receiving an
35 application for approval of a restructuring cost financing order, within
36 thirty days after receipt of such order, either approve, absent any
37 conditions of approval, or disapprove such order based solely on the
38 assumptions and conditions set forth in the restructuring cost financing
39 order and whether such order complies with the standards set forth in
40 this act. If the public authorities control board fails to approve or
41 disapprove such restructuring cost financing order within such thirty
42 day period, the PACB shall be deemed to have approved the restructuring
43 cost financing order. If the board of trustees of the authority approves
44 such restructuring cost financing order and the PACB approves or is
45 deemed to have approved such restructuring cost financing order, the
46 restructuring cost financing order shall become a final rate order by
47 the authority.

48 3. Appeals. Because delay in the final determination of the petition
49 will delay the issuance of restructuring bonds, thereby diminishing
50 savings to consumers that might be achieved if the restructuring bonds
51 were issued promptly after the issuance of the restructuring cost
52 financing order, notwithstanding any other law to the contrary, any
53 action, suit or proceeding to which the authority or the restructuring
54 bond issuer may be a party, in which any question arises as to the
55 validity of this act or any restructuring cost financing order, shall be
56 preferred over all other civil causes in all courts of the state, except

1 election matters, and shall be heard and determined in preference to all
2 other civil business pending therein, except election matters, irrespec-
3 tive of position on the calendar. Such preference shall also be granted
4 upon application of counsel to the authority in any action or proceeding
5 questioning the validity of this act or any restructuring cost financing
6 order in which such counsel may be allowed to intervene. Notwithstanding
7 any other provision of law to the contrary, the validity of this act may
8 only be challenged by an aggrieved party pursuant to an action, suit or
9 proceeding filed within thirty days of the effective date of this act,
10 and the validity of any restructuring cost financing order may only be
11 challenged by an aggrieved party pursuant to an action, suit or proceed-
12 ing filed within thirty days after such restructuring cost financing
13 order becomes a final rate order by the authority; provided, however,
14 that any such action, suit or proceeding and all supporting papers shall
15 be filed directly to the Supreme Court, Appellate Division, Second Judi-
16 cial Department.

17 4. Expiration of appeals. The authority shall provide written notifi-
18 cation to the restructuring bond issuer upon the authority's determi-
19 nation that any and all actions, suits and proceedings challenging this
20 act and the final restructuring cost financing order have been denied or
21 dismissed or the timing associated with the filing of such actions,
22 suits and proceedings has lapsed or expired, and any related appeals
23 have been exhausted or the timing related to such appeals has lapsed or
24 expired.

25 5. Agreement to sell restructuring bonds. Within the time specified in
26 the restructuring cost financing order, after receiving notice from the
27 authority that the time for petitions and appeals has lapsed or expired,
28 the restructuring bond issuer shall enter into an agreement with one or
29 more underwriters or purchasers satisfactory to the authority to sell
30 the restructuring bonds in compliance with the restructuring cost
31 financing order. No later than the third business day after the pricing
32 of the restructuring bonds in accordance with such agreement, the
33 initial servicer shall determine the initial transition charges and the
34 expected savings to consumers in accordance with the restructuring cost
35 financing order and shall file an issuance advice letter with the
36 authority and the restructuring bond issuer setting forth the principal
37 amount of restructuring bonds to be issued, the pricing, the net
38 proceeds, the initial transition charges, the expected savings to
39 consumers and any other information required by the restructuring cost
40 financing order. No later than the end of the third business day after
41 the filing of such issuance advice letter, the authority shall confirm
42 in a notice to the restructuring bond issuer that such pricing complies
43 with the restructuring cost financing order.

44 6. Issuance of restructuring bonds. Within ninety days after receiving
45 notice of confirmation from the authority, the restructuring bond issuer
46 shall issue the restructuring bonds, in one or more series or tranches
47 and at one or more times, pursuant to the agreement to sell the restruc-
48 turing bonds. The restructuring bond issuer shall purchase the restruc-
49 turing property from the authority for a purchase price equal to the net
50 proceeds from the sale of the restructuring bonds less any amounts of
51 such proceeds required to fund or pay upfront financing costs.

52 7. Irrevocability. Upon the issuance of the restructuring bonds, the
53 transition charges, including any adjustments thereof as provided in the
54 restructuring cost financing order, shall be deemed established by the
55 authority as irrevocable, final and effective without further action by
56 the authority, or any other entity. The state, including the authority

1 or any successor regulator, thereafter may not in any way take or permit
2 any action to reduce, impair, postpone or terminate the transition
3 charges approved in the restructuring cost financing order, as the same
4 may be adjusted from time to time pursuant to subdivision 3 of section
5 five of this act, or impair the restructuring property or the collection
6 or recovery of transition charge revenues, including, but not limited
7 to, either directly or indirectly by taking transition charges into
8 account when setting other rates for any owner of the T&D system assets;
9 nor shall the amount of revenues arising with respect to restructuring
10 property be subject in any way to reduction, impairment, postponement,
11 or termination.

12 8. Application of proceeds. The restructuring bond issuer shall cause
13 the proceeds from its issuance of the restructuring bonds to be placed
14 in one or more separate accounts and used only to pay or fund upfront
15 financing costs and to purchase the restructuring property from the
16 authority. The authority shall cause the proceeds from its sale of
17 restructuring property to be placed in one or more separate accounts and
18 used only to pay approved restructuring costs, and if funds remain in
19 those accounts after the payment of all approved restructuring costs, to
20 make a refund or credit to consumers on the same basis that transition
21 charges are then being imposed, to the extent such a refund or credit is
22 practical.

23 S 4. Creation of restructuring bond issuer. 1. Creation of restruc-
24 turing bond issuer. For the purpose of effectuating the purposes
25 declared in section one of this act, there is hereby created a special
26 purpose corporate municipal instrumentality of the state to be known as
27 "utility debt securitization authority", which shall be a body corporate
28 and politic, a political subdivision of the state, and a public benefit
29 corporation, exercising essential governmental and public powers for the
30 good of the public. The restructuring bond issuer shall not be created
31 or organized, and its operations shall not be conducted, for the purpose
32 of making a profit. No part of the revenues or assets of the restruc-
33 turing bond issuer shall inure to the benefit of or be distributable to its
34 trustees or officers or any other private persons, except as herein
35 provided for actual services rendered.

36 2. Activities limited to issuing restructuring bonds and related
37 activities.

38 (a) The restructuring bond issuer is hereby authorized to:

39 (i) issue the restructuring bonds contemplated by a restructuring cost
40 financing order, and use the proceeds thereof to purchase or acquire,
41 and to own, hold and use restructuring property or to pay or fund
42 upfront financing costs provided, however, that the restructuring bond
43 issuer shall only issue and sell restructuring bonds once;

44 (ii) contract for servicing of restructuring property and restructur-
45 ing bonds and for administrative services; and

46 (iii) pledge the restructuring property to secure the restructuring
47 bonds and the payment of ongoing financing costs, all pursuant to
48 section seven of this act.

49 (b) So long as any restructuring bonds remain outstanding, the
50 restructuring bond issuer shall not be authorized to merge or consol-
51 idate, directly or indirectly, with any person or entity. Additionally,
52 the restructuring bond issuer shall not have the power or authority to
53 incur, guarantee or otherwise become obligated to pay any debt or other
54 obligations other than the restructuring bonds and financing costs
55 unless otherwise permitted by the restructuring cost financing order.

1 The restructuring bond issuer shall keep its assets and liabilities
2 separate and distinct from those of any other entity.

3 (c) The restructuring bond issuer shall have no additional authority
4 to engage in other business activities; provided, however, that in
5 connection with the powers specified in paragraph (a) of subdivision 2
6 of this section, as a financing entity, the restructuring bond issuer
7 shall have the power to:

8 (i) sue and be sued;

9 (ii) have a seal and alter the same at pleasure;

10 (iii) make and alter by-laws for its organization and internal manage-
11 ment and make rules and regulations governing the use of its property;

12 (iv) make and execute contracts and all other instruments necessary or
13 convenient for the exercise of its powers and functions under this act
14 and to commence any action to protect or enforce any right conferred
15 upon it by any law, contract or other agreement, including, without
16 limitation, make and execute contracts with the authority, LIPA or any
17 successor owner of the T&D system assets, any servicers, any financing
18 entity or any other public or private entities to service restructuring
19 property owned by restructuring bond issuer, to service restructuring
20 bonds issued by restructuring bond issuer, and to provide services in
21 administering the restructuring bond issuer, and to pay compensation for
22 such services;

23 (v) appoint officers, agents and employees, prescribe their duties and
24 qualifications, fix their compensation and engage the services of
25 private consultants, accountants, counsel and others on a contract basis
26 for rendering professional and technical assistance and advice;

27 (vi) pay its operating expenses, scheduled debt service on the
28 restructuring bonds and other ongoing financing costs;

29 (vii) issue restructuring bonds and provide for the rights of the
30 holders thereof;

31 (viii) procure insurance against any loss in connection with its
32 activities, properties and assets in such amount and from such insurers
33 as it deems desirable;

34 (ix) invest any funds or other moneys under its custody and control in
35 investment securities or under any ancillary agreement;

36 (x) establish and maintain such reserves, special funds and accounts,
37 to be held in trust or otherwise, as may be required by agreements made
38 in connection with the restructuring bonds, or any agreement between
39 itself and third parties;

40 (xi) as security for the payment of the principal of and interest on
41 any restructuring bonds issued by it pursuant to this act, and any
42 agreement made in connection therewith, pledge all or any part of its
43 revenues or assets, including, without limitation, restructuring proper-
44 ty, unspent proceeds of its restructuring bonds, transition charge
45 revenues, and earnings from the investment and reinvestment of unspent
46 proceeds of its restructuring bonds and transition charge revenues; and

47 (xii) do any and all things necessary or convenient to carry out its
48 purposes and exercise the powers expressly given and granted in this
49 section.

50 3. No authority to file for bankruptcy protection. The restructuring
51 bond issuer shall not be authorized to be a debtor under chapter 9 of
52 the United States Bankruptcy Code or any other provision of the United
53 States Bankruptcy Code. No governmental officer or organization is
54 empowered to authorize, whether by executive order or otherwise,
55 restructuring bond issuer to be a debtor under chapter 9 of the United
56 States Bankruptcy Code or any other provision of the United States Bank-

1 ruptcy Code. Until at least one year and one day after all restructuring
2 bonds issued by restructuring bond issuer have ceased to be outstanding
3 and all unpaid financing costs have been paid, the state hereby pledges,
4 contracts and agrees with owners of restructuring bonds issued by
5 restructuring bond issuer that the state will not limit or alter the
6 denial of authority to the restructuring bond issuer to be a debtor
7 under chapter 9 of the United States Bankruptcy Code or any other
8 provision of the United States Bankruptcy Code.

9 4. Governance. The restructuring bond issuer shall be governed by a
10 board consisting of three trustees appointed by the governor. The trus-
11 tees shall not be trustees, directors, officers, or employees of the
12 authority, LIPA or any successor owner of the T&D system assets.

13 (a) One of the trustees first appointed shall serve for a term ending
14 four years from January first next succeeding his appointment; one of
15 such trustees shall serve for a term ending five years from such date;
16 and one of such trustees shall serve for a term ending six years from
17 such date. Their successors shall serve for terms of six years each.
18 Trustees shall continue in office until their successors have been
19 appointed and qualified and the provisions of section 39 of the public
20 officers law shall apply. In the event of a vacancy occurring in the
21 office of a trustee by death, removal, resignation or otherwise, the
22 Governor shall appoint a successor to serve for the balance of the unex-
23 pired term.

24 (b) Trustees shall serve without salary or other compensation, but
25 each trustee shall be entitled to reimbursement for actual and necessary
26 expenses incurred in the performance of his or her official duties.

27 (c) A majority of the trustees shall constitute a quorum for the tran-
28 saction of any business or the exercise of any power or function of
29 restructuring bond issuer. Any one or more trustees may participate in a
30 meeting of the board by means of a conference telephone or similar
31 communications equipment allowing all persons participating in the meet-
32 ing to hear each other at the same time. Participation by such means
33 shall constitute presence in person at a meeting. The board may delegate
34 to one or more of its trustees, or officers, agents and employees, such
35 powers and duties as the board may deem proper.

36 (d) Such trustees may engage in private employment, or in a profession
37 or business. Restructuring bond issuer, its trustees, officers and
38 employees shall be subject to the provisions of sections 73 and 74 of
39 the public officers law.

40 (e) Notwithstanding any inconsistent provision of law to the contrary,
41 general, special or local, no officer of the state or of any civil divi-
42 sion thereof shall be deemed to have forfeited or shall forfeit his or
43 her office or employment by reason of his or her acceptance of an
44 appointment as trustee of restructuring bond issuer.

45 (f) The governor may remove any trustee for inefficiency, neglect of
46 duty or misconduct in office after giving him or her a copy of the
47 charges against him or her and an opportunity to be heard, in person or
48 by counsel, in his or her defense, upon not less than ten days notice.
49 If any trustee shall be so removed, the governor shall file in the
50 office of the department of state a complete statement of the charges
51 made against such trustee and his or her findings thereon, together with
52 a complete record of the proceedings.

53 (g) Each trustee shall have a fiduciary duty to act in the best inter-
54 ests of the restructuring bond issuer, including its creditors, the
55 owners of the restructuring bonds, and such other duties as may be spec-

1 ified in the organizational documents or other agreements of the
2 restructuring bond issuer.

3 (h) The restructuring bond issuer and its corporate existence shall
4 continue until one year and one day after all restructuring bonds and
5 ongoing financing costs and other indebtedness of restructuring bond
6 issuer have been actually paid and all its other liabilities and obli-
7 gations have been paid, met or otherwise discharged. Upon termination of
8 the existence of restructuring bond issuer, all of its rights and prop-
9 erty shall pass to and be vested in the state.

10 S 5. Restructuring cost financing orders. 1. Content of restructuring
11 cost financing orders. The restructuring cost financing order shall
12 include the following: (i) a description of the approved restructuring
13 costs; (ii) the amount of approved restructuring costs that the authori-
14 ty proposes to pay through the sale of the restructuring property and
15 the issuance of the restructuring bonds; (iii) designation of the
16 authority as the entity in which initial ownership of restructuring
17 property will vest; (iv) an estimate of the date on which restructuring
18 bonds will be issued and the expected scheduled term to maturity of the
19 restructuring bonds; (v) a description of the estimated debt service on
20 the restructuring bonds and other ongoing financing costs that may be
21 recovered through transition charges; as part of this description, the
22 restructuring cost financing order may include qualitative or quantita-
23 tive limitations on financing costs approved to be recovered provided
24 that no such limitation on financing costs shall impair the ability of
25 the restructuring bond issuer to pay and service the restructuring bonds
26 in accordance with their terms; (vi) a proposed methodology for allocat-
27 ing transition charges on an equal percentage basis among customer
28 service classifications and among volumetric (kWh) and demand (kW)
29 charges within those customer service classifications, along with an
30 associated bill impact analysis of the proposed methodology; (vii) a
31 description of the proposed adjustment mechanism to reconcile actual
32 collections with forecasted collection on at least an annual basis and a
33 finding that the adjustment mechanism is just and reasonable; (viii) a
34 description of the benefits to consumers in the service area that are
35 expected to result from the sale of the restructuring property and the
36 issuance of restructuring bonds as opposed to traditional alternative
37 financing mechanisms; (ix) specifying the entity that will contract to
38 act as servicer with respect to the restructuring property and the
39 restructuring bonds on terms and conditions mutually acceptable to such
40 servicer and the restructuring bond issuer; (x) specifying the entity or
41 entities that will contract to provide administrative or other services
42 to the restructuring bond issuer; (xi) specifying when the restructuring
43 property will be created and vest and addressing such other matters as
44 may be necessary or desirable for the marketing or servicing of the
45 restructuring bonds or the servicing of the restructuring property;
46 (xii) authorizing the imposition, billing and collection of transition
47 charges to pay debt service on the restructuring bonds and other ongoing
48 financing costs; (xiii) a description of the restructuring property that
49 will be created and that may be used to pay and secure the payment of
50 the restructuring bonds approved to be issued in the restructuring cost
51 financing order; (xiv) a requirement that the amounts in the debt
52 service reserve accounts or other accounts funded with the proceeds of
53 restructuring bonds or transition charges be fully used, to the extent
54 practical, to make the final payments of principal and interest on the
55 restructuring bonds and other ongoing financing costs or to make refunds
56 to consumers on the same basis as such consumers would have then been

1 obligated to pay transition costs; and (xv) the finding required by
2 subdivision 1 of section 3 of this act.

3 2. Periodic reports. A restructuring cost financing order shall
4 require the restructuring bond issuer or the servicer to file at least
5 annually with the authority and the appropriate financing entity a peri-
6 odic report showing the billing and collection of transition charges,
7 the application of transition charge revenues to debt service on the
8 restructuring bonds and other ongoing financing costs, and the balances
9 in any debt service reserve accounts or other accounts required by the
10 restructuring cost financing order.

11 3. Adjustment mechanism.

12 (a) Each restructuring cost financing order shall include a mathemat-
13 ical formula for making periodic adjustments to the transition charges.
14 The mathematical formula shall apply the following principles:

15 (i) The transition charges will be adjusted at least annually to
16 ensure that the collections of transition charges are adequate to pay
17 principal and interest on the associated restructuring bonds when due
18 pursuant to the expected amortization schedule, to fund all debt service
19 reserve accounts to the required levels and to pay when due all other
20 expected ongoing financing costs.

21 (ii) The adjustments of transition charges will take into account
22 historical and reasonably foreseeable differences between amounts billed
23 and amounts collected due to applicable taxes, consumer defaults and
24 delays, billing lags, write-offs and other factors.

25 (iii) The adjustments of transition charges will take into account
26 historical and reasonably foreseeable variations in billings due to
27 variations in electricity consumption associated with the seasons,
28 storms and other weather conditions, outages, gain or loss of consumers,
29 efficiencies, electric vehicles, economic conditions or other factors.

30 (iv) The adjustments of transition charges will take into account any
31 over-collection or under-collection of transition charges so that, to
32 the extent practical, the outstanding balance of restructuring bonds is
33 equal to the scheduled balance on the expected amortization schedule,
34 the amounts in the debt service reserve accounts are equal to the
35 required reserve level, and all ongoing financing costs are paid when
36 due.

37 (v) The adjustments of transition charges will be applied ratably to
38 the transition charges for each customer service classification.

39 (b) Once restructuring bonds have been issued, the adjustment mech-
40 anism specified in the restructuring cost financing order shall be
41 applied to correct for any over-collection or under-collection of tran-
42 sition charges and to provide for timely payment of scheduled principal
43 of and interest on the restructuring bonds and the payment and recovery
44 of other ongoing financing costs in accordance with the restructuring
45 cost financing order. Application of the adjustment mechanism shall
46 occur at least annually or more frequently as provided in the restruc-
47 turing cost financing order. A notice of such periodic adjustment of
48 transition charges shall be filed with the authority by or on behalf of
49 the owner of restructuring property and a copy shall be provided to the
50 owner of the T&D system assets at least sixty days before the adjustment
51 is to take effect, provided that the restructuring bond issuer may
52 request an earlier effective date.

53 (c) Each adjustment to the transition charge, in amounts as calculated
54 by or on behalf of the owner of restructuring property, shall automat-
55 ically become effective sixty days following the date on which the
56 notice of periodic adjustment is filed with the authority unless the

1 authority approves an earlier effective date requested by the restruc-
2 turing bond issuer.

3 (d) Notwithstanding any other provision of law to the contrary, the
4 authority shall allow interested parties thirty days from the date of
5 filing of the notice for adjustment within which to make comments. Such
6 comments shall be limited to the mathematical accuracy of the calcu-
7 lations of the amount of the adjustments. If the authority determines
8 that the calculation of the transition charge adjustment in the notice
9 was mathematically inaccurate, the transition charge adjustment shall be
10 changed as soon as it is reasonably practical to do so, but estimated
11 overcollections or undercollections resulting from the mathematical
12 error shall be taken into account in the next succeeding periodic
13 adjustment.

14 (e) No adjustment pursuant to this section shall in any way affect the
15 irrevocability of the restructuring cost financing order as specified in
16 subdivision 4 of section five of this act. No adjustment pursuant to
17 this section shall require any approvals or action under any other law
18 or shall be deemed to be the establishment of a new charge, fee or rate
19 under any law.

20 4. Irrevocability of restructuring cost financing orders.

21 (a) A restructuring cost financing order shall be an irrevocable final
22 rate order when the time for any actions, suits, proceedings and appeals
23 challenging such final restructuring cost financing order has lapsed or
24 expired as provided in subdivision 3 of section three of this act.

25 (b) A restructuring cost financing order may be amended on or after
26 the date of issuance of restructuring bonds approved thereunder only:
27 (i) at the request of the authority; (ii) in accordance with any
28 restrictions and limitations on amendment set forth in the restructuring
29 cost financing order; (iii) subject to the limitations set forth in
30 subdivision 7 of section three of this act; and (iv) upon approval by
31 the PACB within thirty days of receipt of such amendment; provided,
32 however, that if no approval or disapproval is made within such time,
33 the amendment shall be deemed approved.

34 (c) This act, and any restructuring cost financing order made pursuant
35 to this act, shall not be interpreted to alter or limit the rights vest-
36 ed in the authority to establish sufficient T&D rates to pay and perform
37 all of its obligations and contracts with the authority's bondholders
38 and others when due.

39 5. Effect of restructuring cost financing order.

40 (a) A restructuring cost financing order shall remain in effect and
41 unabated until the restructuring bonds issued pursuant to the restruc-
42 turing cost financing order have been paid in full and all ongoing
43 financing and all amounts to be paid to an assignee or financing party
44 under an ancillary agreement are paid or performed in full.

45 (b) A restructuring cost financing order shall remain in effect and
46 unabated notwithstanding the bankruptcy, reorganization or insolvency of
47 the authority, the restructuring bond issuer, LIPA or any successor
48 owner of the T&D system assets, or any affiliate of the aforementioned,
49 or the commencement of any judicial or nonjudicial proceeding therefor.

50 (c) For so long as restructuring bonds issued pursuant to a restruc-
51 turing cost financing order are outstanding, and the related approved
52 restructuring costs have not been paid in full, the transition charges
53 authorized in the restructuring cost financing order shall be non-by-
54 passable and shall apply to all consumers connected to the T&D system
55 assets and taking electric delivery service located within the service
56 area, whether or not the consumers produce their own electricity or

1 purchase electric generation services from a provider of electric gener-
2 ation services other than the owner of the T&D system assets and whether
3 or not the T&D system assets continue to be owned by LIPA.

4 S 6. Restructuring bonds. 1. No recourse. Restructuring bonds shall
5 be without recourse to the credit or any assets of the authority, LIPA
6 and the restructuring bond issuer, other than the restructuring property
7 and other assets and revenues of restructuring bond issuer as specified
8 in the pertinent restructuring cost financing order.

9 2. Exemption from taxation.

10 (a) It is hereby found and declared that the activities of the
11 restructuring bond issuer are primarily for the benefit of the people of
12 the state of New York, for the improvement of their welfare and prosper-
13 ity, and is a public purpose, and the restructuring bond issuer shall be
14 regarded as performing an essential governmental function in carrying
15 out the provisions of this act.

16 (b) The restructuring bond issuer shall not be required to pay taxes
17 or assessments upon any of the property acquired or controlled by it or
18 upon its activities in the use thereof or upon income derived therefrom.

19 (c) Restructuring bonds, their transfer and the income therefrom
20 shall, at all times, be free from taxation by the state or any municipi-
21 pality, except for estate and gift taxes.

22 3. Restructuring bonds not debt of the state. Restructuring bonds
23 issued pursuant to a restructuring cost financing order and the
24 provisions of this act shall not constitute a debt, general obligation
25 or a pledge of the faith and credit or taxing power of the state or of
26 any county, municipality or any other political subdivision, agency or
27 instrumentality of the state. Holders of restructuring bonds shall not
28 be taxed by the legislature or the taxing authority of any county, muni-
29 cipality or any other political subdivision, agency or instrumentality
30 of this state for the payment of the principal thereof or interest ther-
31 eon. The issuance of restructuring bonds does not obligate the state or
32 any county, municipality or any other political subdivision, agency or
33 instrumentality of the state to levy any tax or make any appropriation
34 for payment of the principal of or interest on the restructuring bonds.
35 All restructuring bonds must contain a statement to the following
36 effect: "Neither the full faith and credit nor the taxing power of the
37 state of New York is pledged to the payment of the principal of, or
38 interest on, this bond."

39 4. Restructuring bonds as legal investments. Any restructuring bonds
40 issued by the restructuring bond issuer are hereby made securities in
41 which all public officers and bodies of this state and all municipi-
42 palities, all insurance companies and associations and other persons
43 carrying on an insurance business, all banks, bankers, trust companies,
44 savings banks and savings associations, including savings and loan asso-
45 ciations, building and loan associations, investment companies and other
46 persons carrying on a banking business, all trusts, estates and guardi-
47 anships and all other persons whatsoever, who are now or may hereafter
48 be authorized to invest in bonds or other obligations of this state, may
49 properly and legally invest funds, including capital in their control or
50 belonging to them. The restructuring bonds are also hereby made securi-
51 ties which may be deposited with and shall be received by all public
52 officers and bodies of the state and all municipalities for any purpose
53 for which the deposit of bonds or other obligations of the state is now
54 or may hereafter be authorized.

55 S 7. Restructuring property. 1. (a) Restructuring property that is
56 created pursuant to a restructuring cost financing order shall consti-

1 tute an existing, present property right, notwithstanding the fact that
2 the imposition and collection of transition charges will depend on
3 further acts that have not yet occurred, including but not limited to:
4 (i) LIPA or any successor owner of the T&D system assets delivering
5 electric energy or related services, (ii) a servicer performing servic-
6 ing functions relating to the collection of transition charges, or (iii)
7 the level of future consumption of electric energy. Restructuring prop-
8 erty shall exist whether or not transition charges have been imposed,
9 billed, accrued or collected and notwithstanding the fact that the value
10 or amount of the restructuring property is dependent on the future
11 provision of service to customers by LIPA or any successor owner of the
12 T&D system assets.

13 (b) All restructuring property created pursuant to a restructuring
14 cost financing order shall continue to exist until the restructuring
15 bonds issued pursuant to such restructuring cost financing order are
16 paid in full and all ongoing financing costs relating to the restructur-
17 ing bonds have been paid in full.

18 (c) The restructuring property may be transferred, sold, conveyed or
19 assigned to the restructuring bond issuer. All or any portion of
20 restructuring property may be pledged to secure the payment of restructur-
21 ing bonds, amounts payable to financing parties, amounts payable to
22 holders of restructuring bonds, amounts payable under any ancillary
23 agreement and other ongoing financing costs. So long as the restructur-
24 ing property remains pledged to secure the restructuring bonds, revenues
25 from the collection of transition charges shall be applied solely to the
26 repayment of restructuring bonds and other ongoing financing costs.
27 After the occurrence of an event of default with respect to the restructur-
28 ing bonds, all or any portion of restructuring property may be trans-
29 ferred, sold, conveyed or assigned to any person or entity. Any trans-
30 fer, sale, conveyance, assignment, grant of a security interest in or
31 pledge of restructuring property by the authority, the restructuring
32 bond issuer, or other financing entity, to the extent previously
33 approved in a restructuring cost financing order, does not require the
34 prior consent and approval of any other person or entity under the
35 public service law or any other law.

36 (d) If the owner of the T&D system assets, servicer, third-party
37 biller, or any other person or entity authorized to collect transition
38 charges, defaults on any required remittance of transition charge reven-
39 ues, any court in the state, upon application by an interested party and
40 without limiting any other remedies available to the applying party,
41 shall order the sequestration and payment of the transition charge
42 revenues for the benefit of the owners or pledgees of restructuring
43 property. The order shall remain in full force and effect notwithstand-
44 ing any bankruptcy, reorganization, or other insolvency proceedings with
45 respect to a servicer, authority, LIPA or any successor owner of the T&D
46 system assets or any affiliate thereof or of any other person or entity.

47 (e) Restructuring property, transition charges, transition charge
48 revenues, and the interests of an assignee, bondholder, financing party
49 or any other person in restructuring property or in transition charge
50 revenues, are not subject to setoff, counterclaim, surcharge or defense
51 by a servicer, any consumer, the authority, LIPA or any successor owner
52 of the T&D system assets or any other person or in connection with any
53 default, bankruptcy, reorganization or other insolvency proceeding of
54 the authority, LIPA or any successor owner of the T&D system assets, any
55 affiliate thereof or any other entity or otherwise. To the extent that
56 any consumer makes a partial payment of a bill containing both transi-

1 tion charges and any other charges, such payment shall be allocated pro
2 rata between the transition charges and the other charges unless the
3 consumer specifies that a greater proportion of such payment is to be
4 allocated to the transition charges, except that the other charges shall
5 be reduced by the amount of any claims of setoff, counterclaim,
6 surcharge or defense for purposes of such allocation.

7 (f) Any successor owner of the T&D system assets and any successor
8 servicer shall be bound by the requirements of this act and shall
9 perform and satisfy all obligations of a servicer in the same manner and
10 to the same extent under a restructuring cost financing order as did
11 LIPA and the initial servicer, including, without limitation, the obli-
12 gation to impose, bill and collect the transition charges and to pay
13 such collections to the person entitled to receive the transition charge
14 revenues.

15 2. Security interests. Any pledge of restructuring property or
16 proceeds thereof, including any moneys, revenues or property or of a
17 revenue producing contract or contracts constituting part of the
18 restructuring property, made by the owner of restructuring property,
19 shall be perfected, valid and binding from the time when the pledge is
20 made. The proceeds, moneys, revenues or proceeds so pledged and there-
21 after received by the owner of restructuring property shall immediately
22 be subject to the lien of such pledge, and such lien shall be perfected,
23 without any physical delivery thereof or further act. The lien of any
24 such pledge shall be perfected, valid and binding as against all parties
25 having claims of any kind in tort, contract or otherwise against the
26 owner of restructuring property irrespective of whether such parties
27 have notice thereof and shall be superior to any judicial liens or other
28 liens obtained by such claimants or transferees. The description of the
29 restructuring property in a pledge or security agreement and any financ-
30 ing statement is sufficient if and only if the description refers to
31 this Act and the restructuring cost financing order creating such
32 restructuring property. No instrument by which a pledge or lien is
33 created pursuant to this subdivision need be recorded in order to
34 perfect such pledge or lien. However, the restructuring bond issuer
35 shall cause a financing statement describing the pledge and referring to
36 the restructuring cost financing order and the restructuring property
37 described therein to be filed for informational purposes only under
38 article 9 of the uniform commercial code. The secretary of state shall
39 maintain any financing statement filed under this section in the same
40 manner that the secretary maintains financing statements filed by trans-
41 mitting utilities under section 9-501 of the uniform commercial code
42 until a termination statement is filed. A pledge of restructuring prop-
43 erty is a continuously perfected security interest and has priority over
44 any other lien, created by operation of law or otherwise, that may
45 subsequently attach to that restructuring property or proceeds thereof
46 unless the holder of any such lien has agreed in writing otherwise. Any
47 pledgee of restructuring property shall have a perfected security inter-
48 est in the amount of all restructuring property revenues or other
49 proceeds that are deposited in any deposit account or other account of
50 the servicer or other entity in which restructuring property revenues or
51 other proceeds have been commingled with other funds. Any other security
52 interest that may apply to restructuring revenues or other proceeds
53 shall be terminated when such revenues or proceeds are transferred to a
54 segregated account for an assignee or a financing party. No application
55 of the adjustment mechanism as described in this act shall affect the

1 validity, perfection, or priority of a pledge of, security interest in
2 or the sale or transfer of restructuring property.

3 3. Sales of restructuring property.

4 (a) A transfer of all or any portion of restructuring property, which
5 the parties in the governing documentation have expressly stated to be a
6 sale or other absolute transfer, in a transaction approved in a restruc-
7 turing cost financing order, shall be treated as an absolute transfer of
8 all of the transferor's right, title, and interest (as in a true sale),
9 and not as a pledge or other financing, of the restructuring property,
10 other than for federal, state and local income and franchise tax
11 purposes.

12 (b) Any transfer of an interest in restructuring property shall be
13 perfected, vested, valid and binding from the time when the transfer is
14 made. Such transfer shall be perfected, vested, valid and binding as
15 against the transferor, all parties having claims of any kind in tort,
16 contract or otherwise against the transferor, and all other transferees
17 of the transferor, irrespective of whether such parties have notice
18 thereof and shall be superior to any judicial liens or other liens
19 obtained by such claimants or transferees. The description of the
20 restructuring property in a sale or transfer agreement and any financing
21 statement is sufficient if and only if the description refers to this
22 act and the restructuring cost financing order creating such restruc-
23 turing property. No instrument by which a transfer is created pursuant to
24 this section need be recorded in order to perfect such transfer. Howev-
25 er, the restructuring bond issuer shall cause a financing statement
26 describing the pledge and referring to the restructuring cost financing
27 order and the restructuring property described therein to be filed for
28 informational purposes only under article nine of the uniform commercial
29 code. The secretary of state shall maintain any financing statement
30 filed under this section in the same manner that such secretary main-
31 tains financing statements filed by transmitting utilities under section
32 9-501 of the uniform commercial code until a termination statement is
33 filed.

34 (c) The characterization of the sale, assignment or transfer as an
35 absolute transfer and true sale and the corresponding characterization
36 of the property interest of the purchaser, shall not adversely be
37 affected or impaired by, among other things, the occurrence of any of
38 the following factors: (i) commingling of revenues or other proceeds
39 from transition charges with other amounts; (ii) the retention by the
40 seller of: (A) a partial or residual interest, including an equity
41 interest, in the restructuring property, whether direct or indirect, or
42 whether subordinate or otherwise; or (B) the right to recover costs
43 associated with taxes, payments in lieu of taxes, franchise fees or
44 license fees imposed on the collection of transition charges; (iii) any
45 recourse that the purchaser may have against the seller; (iv) any indem-
46 nification rights, obligations or repurchase rights made or provided by
47 the seller; (v) the obligation of the seller to collect transition
48 charges on behalf of an assignee, including but not limited to, any
49 retention by the seller to bare legal title for the purpose of collect-
50 ing transition charges; (vi) the treatment of the sale, assignment or
51 transfer for tax, financial reporting or other purposes; (vii) any
52 subsequent order of the authority amending a restructuring cost financ-
53 ing order pursuant to paragraph (b) of subdivision 4 of section five of
54 this act; or (viii) any application of the adjustment mechanism as
55 provided in subdivision 3 of section five of this act.

1 (d) An assignee or financing party shall not be considered to be a
2 public utility or person providing electric service solely by virtue of
3 the transactions described in this act.

4 S 8. Rights and duties while restructuring bonds are outstanding. 1.
5 Responsibilities of the authority. (a) For the purpose of investigating
6 compliance with the provisions of this act and the applicable restruc-
7 turing cost financing order, the authority shall have the right, juris-
8 diction, power and authority to examine the books and records of LIPA or
9 any successor owner of the T&D system assets, the restructuring bond
10 issuer, any other financing entity, any servicer, any third-party biller
11 and any other person or entity that owns restructuring property or has
12 the right to impose, bill or collect transition charges until the
13 restructuring bonds issued pursuant to the restructuring cost financing
14 order have been paid in full and all financing costs relating to such
15 restructuring bonds have been paid in full.

16 (b) Neither the authority nor any successor regulator may, in exercis-
17 ing its powers and carrying out its duties regarding regulation and
18 ratemaking, consider restructuring bonds issued pursuant to the restruc-
19 turing cost financing order to be the debt of any owner of the T&D
20 system assets, consider transition charges paid under the restructuring
21 cost financing order to be revenue of any owner of the T&D system
22 assets, or consider the approved restructuring costs or ongoing financ-
23 ing costs specified in the restructuring cost financing order to be
24 costs of any owner of the T&D system assets or any affiliate, nor may
25 the authority or any successor regulator determine that any action taken
26 by any owner of the T&D system assets that is consistent with the
27 restructuring cost financing order is unjust or unreasonable from a
28 regulatory or ratemaking perspective; provided that, subject to the
29 limitations set forth in subdivision 4 of section five of this act and
30 the state pledge in section nine of this act, nothing in this subdivi-
31 sion shall (i) affect the authority to apply the adjustment mechanism as
32 provided in subdivision 3 of section five of this act; (ii) prevent or
33 preclude the authority from investigating the compliance of any owner of
34 the T&D system assets and of any financing entity with the terms and
35 conditions of a restructuring cost financing order and requiring compli-
36 ance therewith; or (iii) prevent or preclude the authority or any
37 successor regulator from imposing regulatory sanctions against any owner
38 of the T&D system assets for failure to comply with the terms and condi-
39 tions of a restructuring cost financing order or the requirements of
40 this act. When setting other rates for any owner of the T&D system
41 assets, nothing in this act shall prevent the authority or any successor
42 regulator from taking into account the collection by such owner of
43 servicing fees in excess of incremental costs of providing servicing
44 services, or the collection by such owner of administration fees in
45 excess of incremental costs of providing administration services;
46 provided that this would not result in a recharacterization of the tax,
47 accounting, and other intended characteristics of the financing, includ-
48 ing, but not limited to, either of the following: (i) treating restruc-
49 turing bonds as debt for federal income tax purposes; or (ii) treating
50 any transfer of the restructuring property to the restructuring bond
51 issuer or to any other financing entity as a true sale for bankruptcy
52 purposes.

53 2. Duties of financing entities and any owner of T&D system assets.

54 (a) Any failure of any financing entity to apply the proceeds of
55 restructuring bonds, or proceeds from the sale of restructuring proper-
56 ty, in a reasonable, prudent and appropriate manner or otherwise comply

1 with any provision of this act shall not invalidate, impair or affect
2 any restructuring cost financing order, restructuring property, transi-
3 tion charge, or restructuring bonds.

4 (b) Any owner of T&D system assets, any servicer, any third-party
5 biller and any other entity that bills or collects T&D rates shall
6 simultaneously impose, bill and collect any transition charges applica-
7 ble to consumers in the service area, including all consumers connected
8 to the T&D system assets and taking electric delivery service located
9 within the service area, shall allocate partial payments by consumers as
10 provided in this act, shall terminate service to non-paying consumers on
11 the same basis as termination of service is permitted for non-payment of
12 T&D rates, shall exercise all enforcement rights of the owner or pledgee
13 of the restructuring property for the benefit of such owner or pledgee,
14 and shall remit any transition charge revenue to the owner or pledgee of
15 the restructuring property.

16 S 9. State pledge. (a) The state pledges to and agrees with the hold-
17 ers of restructuring bonds, any assignee and all financing entities that
18 the state will not in any way take or permit any action that limits,
19 alters or impairs the value of restructuring property or, except as
20 required by the adjustment mechanism described in the restructuring cost
21 financing order, reduce, alter or impair transition charges that are
22 imposed, collected and remitted for the benefit of the owners of
23 restructuring bonds, any assignee, and all financing entities, until any
24 principal, interest and redemption premium in respect of restructuring
25 bonds, all ongoing financing costs and all amounts to be paid to an
26 assignee or financing party under an ancillary agreement are paid or
27 performed in full.

28 (b) Any person who issues restructuring bonds is permitted to include
29 the pledge specified in subdivision (a) of this section in the restruc-
30 turing bonds, ancillary agreements and documentation related to the
31 issuance and marketing of the restructuring bonds.

32 S 10. Choice of law. The law governing, as applicable, the validity,
33 enforceability, attachment, perfection, priority and exercise of reme-
34 dies with respect to the transfer of an interest or right or creation of
35 a security interest in any restructuring property, transition charge or
36 restructuring cost financing order, shall be the laws of the state of
37 New York.

38 S 11. Conflicts. In the event of conflict between this act and any
39 other law regarding the attachment, assignment or perfection, or the
40 effect of perfection, or priority of any pledge of, security interest in
41 or transfer of restructuring property, this act shall govern to the
42 extent of the conflict. In the event of conflict between this act and
43 the public service law, the Long Island power authority act or any other
44 law, this act shall govern to the extent of the conflict. Notwithstand-
45 ing any provisions of law to the contrary, no approvals, notices or
46 authorizations other than those specified in this act shall be required
47 with respect to any restructuring cost financing order, and the trans-
48 actions and contracts authorized in or contemplated by this act or any
49 restructuring cost financing order, including but not limited to the
50 incurrence and payment of any financing costs, the incurrence or payment
51 of any approved restructuring costs, the issuance of restructuring
52 bonds, the sale or other transfer of restructuring property, and any
53 contracts and expenses incurred to facilitate the preparation of any
54 restructuring cost financing order.

55 S 12. Effect of invalidity on actions. Effective on the date that
56 restructuring bonds are first issued under this act, if any provision of

1 this act is held to be invalid or is invalidated, superseded, replaced,
2 repealed or expires for any reason, that occurrence shall not affect any
3 action allowed under this act that is taken by the authority, LIPA, the
4 restructuring bond issuer, any owner of T&D system assets, an assignee,
5 a collection agent, a financing party, a holder of restructuring bonds
6 or a party to an ancillary agreement and any such action shall remain in
7 full force and effect.

8 S 13. Effectiveness of the act. The authority may not adopt its first
9 restructuring cost financing order after the five year period after the
10 effective date of this act.

11 S 14. Severability. If any section, subdivision, paragraph or subpara-
12 graph of this act or the application thereof to any person, circumstance
13 or transaction is held by a court of competent jurisdiction to be uncon-
14 stitutional or invalid, the unconstitutionality or invalidity shall not
15 affect the constitutionality or validity of any other section, subdivi-
16 sion, paragraph or subparagraph of this act or its application or valid-
17 ity to any person, circumstance or transaction, including, without limi-
18 tation, the irrevocability of a restructuring cost financing order
19 issued pursuant to this act, the validity of the issuance of restructur-
20 ing bonds, the imposition of transition charges, the transfer or assign-
21 ment of restructuring property or the collection and recovery of reven-
22 ues from transition charges. To these ends, the legislature hereby
23 declares that the provisions of this act are intended to be severable
24 and that the legislature would have enacted this act even if any
25 section, subdivision, paragraph or subparagraph of this act held to be
26 unconstitutional or invalid had not been included in this act.

27 S 15. Standing. (a) The owner of restructuring property, or the trus-
28 tee representing holders of restructuring bonds, shall be expressly
29 permitted hereby to bring actions against any owner of the T&D system
30 assets, any third-party biller, or any other entity authorized to bill
31 or collect T&D rates, any consumers in the service area or any other
32 person or entity for failure to impose, bill, pay or collect any transi-
33 tion charges constituting part of the restructuring property then held
34 pledged as security for such restructuring bonds or for enforcement of
35 any other provision of this act or the applicable restructuring cost
36 financing order.

37 (b) Except as provided in section three of this act, any court and the
38 authority shall have jurisdiction over any actions for failure to
39 impose, bill, pay or collect any transition charges or for enforcement
40 of other provision of this act or any restructuring cost financing
41 order.

42 S 16. Third-party billing. If and to the extent that third parties are
43 allowed to bill and/or collect any transition charges, the authority,
44 any successor regulator, and any owner of the T&D system assets will
45 take steps to ensure non-bypassability and minimize the likelihood of
46 default by third-party billers, which generally would include (i) opera-
47 tional standards and minimum credit requirements for any such third-par-
48 ty biller, or require a cash deposit, letter of credit or other credit
49 mitigant in lieu thereof, to minimize the likelihood that defaults by a
50 third-party biller would result in an increase in transition charges
51 thereafter billed to consumers, (ii) a finding that, regardless of who
52 is responsible for billing, consumers shall continue to be responsible
53 for transition charges, (iii) if a third party meters and bills for the
54 transition charges, that the owner of the T&D system assets and any
55 servicer must have access to information on billing and usage by consum-
56 ers to provide for proper reporting to the restructuring bond issuer and

1 to perform its obligations as servicer, (iv) in the case of a default by
2 a third-party biller, billing responsibilities must be promptly trans-
3 ferred to another party to minimize potential losses, and (v) the fail-
4 ure of consumers to pay transition charges shall allow service termi-
5 nation by the owner of the T&D system assets on behalf of the
6 restructuring bond issuer of the consumers failing to pay transition
7 charges in accordance with service termination rules and orders applica-
8 ble to T&D rates. Any costs associated with such third-party billing
9 and/or collection shall be included as part of the recoverable ongoing
10 financing costs or other rates or charges, as appropriate. Further, the
11 authority and any successor regulator shall not permit implementation of
12 any third-party billing or collection that would result in a reduction
13 or withdrawal of the then current ratings on any tranche or series of
14 the restructuring bonds by any nationally recognized statistical rating
15 organization designated by the restructuring bond issuer.

16 S 17. This act shall take effect immediately.

17 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
18 sion, section or part of this act shall be adjudged by any court of
19 competent jurisdiction to be invalid, such judgment shall not take
20 affect, impair, or invalidate the remainder thereof, but shall be
21 confined in its operation to the clause, sentence, paragraph, subdivi-
22 sion, section or part thereof directly involved in the controversy in
23 which such judgment shall have been rendered. It is hereby declared to
24 be the intent of the legislature that this act would have been enacted
25 even if such invalid provisions had not been included herein.

26 S 3. This act shall take effect immediately; provided, however, that
27 the applicable effective date of Parts A through B of this act shall be
28 as specifically set forth in the last section of such Parts.