*** § 1020-h. Acquisition of property, including the exercise of the power of eminent domain.** 1. The legislature hereby expressly finds and determines:

(a) The acquisition by the authority, through purchase or the exercise of the power of eminent domain, of either the securities or assets of LILCO whichever is less expensive for the ratepayers, as the authority may determine will be just to the ratepayers in the service area, is the most appropriate means of dealing with the emergency involving the economy, health and safety of the residents and the industry and commerce in the service area, notwithstanding the fact that LILCO presently may be devoted to a public use, since the public use of such property by the authority is hereby deemed to be superior to the public use of such property by any other person, association, or corporation.

(b) The authority, prior to exercising its power of eminent domain to acquire the stock or assets of LILCO, shall enter into negotiations with LILCO for the purpose of acquiring such stock or assets upon such terms as the authority, in its sole discretion, determines will result in rates equal to or less than the rates which would result if LILCO were to continue in operation.

(c) The situs of all stock issued by LILCO, a New York corporation, is the state of New York.

(d) The compensation paid by the authority to LILCO shall be just to the ratepayers in the service area who must pay such compensation.

(e) If the authority determines that it is the stock of LILCO that should be taken, the proper measure of damages shall be the fair market value thereof as evidenced by the price of such stock on the exchange on which they are traded on the valuation date since there is an established market for such stock that is reflective of its value. In no event, however, shall consequential or severance damages be awarded if control of LILCO shall have been taken by the authority.

(f) If the authority determines that it is the assets of LILCO that should be taken, fair market value would not constitute just compensation to LILCO since there is an insufficient market in the usual sense for its assets to ascertain the value thereof from the market. In determining the compensation payable for such assets, there shall be taken into consideration the capitalization of LILCO's expected future earnings.

(g) LILCO has no reasonable expectation of realizing actual earnings from the Shoreham plant or of giving effect to any earnings or returns which may have been reflected on the books of LILCO for accounting purposes. Moreover, it would not be reasonable, under current and reasonably foreseeable circumstances, to expect that the Shoreham plant would be reproduced by a public or private utility in LILCO's present position.

(h) LILCO would have to phase in over a long period of time any rate increases based on the costs of the Shoreham plant.

(i) The public service commission has imposed a limitation on the earnings which LILCO may realize on its interest in the Nine Mile Point nuclear power facility.

(j) The public service commission has imposed on LILCO imprudence penalties with respect to the Shoreham plant.

(k) In determining just compensation, the following factors shall be evaluated in deciding whether OCLD or RCNLD or neither constitutes the proper basis:

(i) LILCO is a regulated utility. Under the laws of the state providing for the regulation of utilities, LILCO's future earnings are restricted to the permitted rate of return times LILCO's OCLD.

(ii) LILCO presently is being operated as an enterprise the economic viability of which is dependent upon extraordinary financial stability adjustments by the public service commission. Such extraordinary and unprecedented rate relief was granted by the public service commission in order to provide cash flow relief to prevent LILCO's bankruptcy with the expectation that ratepayers would receive the full credit of such in lower rates, and that the public service commission required such extraordinary rate relief to be discontinued in the event that LILCO filed a petition for relief in a voluntary case under the Bankruptcy Act or if a final order for relief was entered involuntarily under such act. LILCO's lack of profitability results not from any repressive or other improper action taken by any governmental entity but from such factors as mismanagement, imprudent decisions regarding the Shoreham plant and general inefficiency.

(iii) There is no reasonable probability that, after condemnation of its assets, LILCO will reproduce them.

(iv) Use of RCNLD may result in an unwarranted windfall to LILCO and

an unjustifiable penalty to the ratepayers who would have to pay it, since to the extent an award based on RCNLD would exceed an award based on OCLD, it would reflect to a large extent the effects of inflation which would not increase the value of the property to LILCO or its rate base for ratemaking purposes or to the authority for the purpose of continuing to generate and transmit electric power within the service area.

(l) Neither consequential nor severance damages are proper if the authority condemns all the assets of LILCO.

(m) In determining whether LILCO has any going concern value, the court shall take into consideration the fact that LILCO's continued operations are dependent upon the extraordinary financial stability adjustments granted by the public service commission.

(n) Such an acquisition by the authority of the securities or assets of LILCO serves the public purposes of assuring the provision of an adequate supply of gas and electricity in a reliable, efficient and economic manner and retaining existing commerce and industry in and attracting new commerce and industry to the service area, all of which are matters of state-wide concern.

2. In furtherance of the legislative findings and determinations set forth in subdivision one of this section, the authority is hereby authorized and empowered to acquire, through purchase or the exercise of the power of eminent domain, all or any part of the securities or assets of LILCO, as the authority in its sole discretion may determine; provided, however, that prior to proceeding with any such acquisition under this title, the board shall determine, in its sole discretion based upon such engineering, financial and legal data, studies and opinions as it may deem appropriate, that the rates projected to be charged after such acquisition and for such reasonable period of time as the board may determine will not be higher than the rates projected to be charged by LILCO during such period if such acquisition had not occurred.

3. The authority also is authorized and empowered, in its discretion, to make a tender offer or tender offers for all or any portion of the securities of LILCO at such price or prices as the authority may

determine to be appropriate; provided, however that such tender offer or tender offers, in the sole judgment of the authority, will result in rates less than the rates which would result from continued operation by LILCO.

(a) The authority shall make such offer or offers or any adjustment thereof prior to acquiring any such securities or any assets of LILCO through the exercise of the power of eminent domain. The authority may pay for such securities in cash or by exchanging therefor the authority's bonds or a combination thereof.

(b) In the case of a tender offer in which a subsidiary of the authority acquires at least sixty-six and two-thirds percent of LILCO's common stock, such subsidiary may merge with LILCO and either continue in existence or dissolve, as it may determine.

(c) The provisions of section five hundred thirteen and article sixteen of the business corporation law and any other provisions of law relating to procedures in a corporate takeover, including without limitation chapter nine hundred fifteen of the laws of nineteen hundred eighty-five, shall not be applicable to the actions of the authority pursuant to this title.

(d) In determining whether acceptance of such a tender offer by the authority is in the best interests of LILCO, the directors of LILCO shall consider not only the dollar amount of such offer but the interests of employees, suppliers, ratepayers, creditors (including holders of LILCO's debt securities), and the economy of the service area and the state.

4. The authority, should it determine, in its sole discretion, to acquire the stock or assets of LILCO by the exercise of the power of eminent domain, shall not take title to nor possession of such stock or assets prior to a final determination of the amount of compensation to be paid for such stock or assets nor prior to a determination by the authority, in its sole discretion that the taking of such stock or assets will result in rates less than the rates which would result from continued operation by LILCO. Notwithstanding the provisions of the eminent domain procedure law, the provisions of subdivisions five and six shall apply to the acquisition of the stock or property of LILCO by the power of eminent domain, provided however, to the extent the

provisions herein do not supersede or conflict with the provisions of such law the provisions of such law shall apply.

5. Procedure for acquisition of LILCO stock. (a) In the event the authority determines to acquire the stock of LILCO by the exercise of the power of eminent domain, having first entered into negotiations with LILCO for the purchase of such stock, the authority need not hold any public hearing on its intention to condemn such stock or on the question of the public use of such action, such finding having been made by the legislature herein. The authority shall commence such acquisition by serving upon LILCO and filing with the county clerk of the county in which the principal office of LILCO is located a notice describing the stock being acquired, the valuation date, as determined by the authority, and such additional information as the authority may reasonably deem necessary to facilitate the process of condemnation and payment. The notice shall state that it is a notice of pendency of an acquisition proceeding and that the authority will elect whether or not to pay the amount of such award when it has been finally determined. The authority also shall cause a copy of such notice (i) to be served upon the stock transfer agent or agents designated by LILCO for the transfer and registration of its stock and (ii) to be published in at least five successive issues of a daily newspaper of national circulation.

(b) Upon receipt of such notice, the stock transfer agent or agents, at the expense of the authority, shall forthwith serve upon each of the registered owners of such stock a copy of such notice. Service shall be deemed sufficient if mailed by certified or registered mail to the address of each such owner as shown on LILCO's stock transfer books. Service of the notice upon the stock transfer agent or agents and its publication shall not be jurisdictional prerequisites to the validity of the taking. Failure to notify any owner of stock to be taken will not invalidate any proceedings brought hereunder or any title acquired by the authority.

(c) Upon filing of the notice described in paragraph (a) hereof, the authority shall petition a special term of the supreme court in the judicial district in which LILCO has its principal office for the acquisition of the stock. Such petition shall be generally in the form prescribed by the eminent domain procedure law so far as consistent

herewith.

(d) The supreme court in the district in which LILCO has its principal office shall have exclusive jurisdiction to hear and determine all claims arising from the acquisition of stock by the exercise of the power of eminent domain and shall hear such claims without a jury and without referral to a referee or commissioners. Notwithstanding the provisions of section nine hundred one of the civil practice law and rules, upon motion to the court by the authority, the condemnation proceeding for the acquisition of stock shall be maintained as a class action, pursuant to remaining provisions of article nine of the civil practice law and rules, and the owners of the stock shall be deemed a defendant class on the basis of the following express legislative findings:

(i) the class of LILCO stock owners is so numerous that joinder of all members is impracticable;

(ii) the issue of valuation of LILCO stock is common to all LILCO stock owners and there are questions of law or fact common to the members of such class which predominate over any questions affecting only individual members;

(iii) the claims or defenses, if any, of any representative owner of LILCO stock to acquisition thereof by the authority are typical of the claims or defenses of the class;

(iv) there are representative parties who will fairly and adequately protect the interests of the class; and

(v) the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to the issue of valuation and other issues common to the class.

(e) The procedure for determining just compensation shall be in the manner prescribed by the eminent domain procedure law, except to the extent such procedure is inconsistent with the provisions of this title, in which case the provisions of this title shall control.

(f) Upon the entry of an award finally determining just compensation for the stock, the authority shall have sixty days after receipt of notice of entry of such award within which to elect to proceed with the taking or to abandon such acquisition as provided in subdivision ten hereof. Notice of such election shall be served by the authority and by

the stock transfer agent in the manner described in paragraph (a) hereof. If the authority elects to proceed with the acquisition, it shall deposit with the supreme court in which the condemnation proceeding was held an amount equal to the award within one hundred eighty days after receipt by the authority of notice of entry of such award. Upon the making of such deposit, the authority shall notify LILCO's stock transfer agent in writing of such deposit. The sum so depositied shall be applied as provided in the eminent domain procedure law. Upon making such deposit and giving such notice to the stock transfer agent, title to all stock described in the notice of taking shall immediately vest in the authority and the authority shall have the immediate right thereto. In the event the authority elects to abandon the acquisition, the provisions of subdivision ten hereof shall apply.

(g) It shall be a condition precedent to the payment of compensation for any such securities that such securities be surrendered to the supreme court or to such other entity, including the issuer's stock transfer agent, as the supreme court may direct.

6. Procedure for acquisition of LILCO assets. (a) If the authority shall find it necessary or convenient to acquire any real or personal property of LILCO, (other than securities), whether for immediate or future use, then the authority need not determine that such property is required for public use, since the legislature already has made such determination in this title which determination shall be binding for all purposes. The authority need not publish any notice of its intention to acquire such property or hold any public hearing with respect thereto or to the public use of such action.

(b) When any real property of LILCO within this state is sought to be acquired by the exercise of the power of eminent domain, and after the authority shall have entered into negotiations with LILCO for the purchase of such property, the authority shall cause a survey and map to be made thereof and shall cause such survey and map to be filed in its office and in the office of the county clerk in which such property is located. There shall be annexed to such survey and map a certificate executed by the chief engineer of the authority, or by such other officer or employee as may be designated by the board, stating that the property or interest therein described in such survey and map is

necessary for its purposes.

(c) Upon filing such survey and map, the authority shall petition a special term of the supreme court in the judicial district in which the property is located for the acquisition of such property or interest therein. Such petition shall describe the property being acquired, the valuation date, as determined by the authority, and such additional information as the authority may reasonably deem necessary to facilitate the process of condemnation and payment. The petition shall state that the authority will elect whether or not to pay the amount of such award when it has been finally determined. In all other respects, such petition shall be generally in the form prescribed by the eminent domain procedure law, so far as consistent herewith. Such petition, together with a notice of pendency of the proceeding, shall be filed in the office of the county clerk of the county in which the property is located and shall be indexed and recorded as provided by law. A copy of such petition, together with a notice of the presentation thereof to such special term of the supreme court, shall be served upon the owners of such property as provided in the eminent domain procedure law. The authority may cause a duplicate original affidavit of the service thereof to be recorded in the books used for recording deeds in the office of the county clerk of the county in which the property described in such notice is located, and the recording of such affidavit shall be prima facie evidence of due service thereof.

(d) Subsequent proceedings shall be conducted generally in the manner prescribed by the eminent domain procedure law except to the extent the provisions thereof are inconsistent with the provisions of this title, in which case the provisions of this title shall control.

(e) In any proceeding involving the valuation of LILCO property taken by the authority the supreme court shall ascertain and determine just compensation for the property taken as of the valuation date, giving due consideration to the applicable findings and determinations of the legislature set forth in subdivision one hereof.

(f) Should LILCO's property be taken by the exercise of the power of eminent domain and if LILCO shall have agreed upon the compensation to be paid therefor in settlement of the proceeding, if, LILCO shall be entitled to payment of the agreed or awarded compensation within one hundred eighty days after the date of the agreement upon the amount of

the compensation or of the entry of the award, together with interest upon the amount of such compensation from the time of acquisition thereof by the authority to the date of payment of such compensation; but such interest shall cease upon the service by the authority, upon the person or corporation entitled thereto, of a fifteen days' notice that the authority is ready and willing to pay the amount of such compensation upon the presentation of proper proofs and vouchers. Such notice shall be served personally or by registered mail and publication thereof shall be made at least once a week for three successive weeks in a daily newspaper of general circulation in the county in which such property or any part thereof is located.

(g) Upon the entry of an award finally determining just compensation for the property of LILCO, the authority shall have sixty days after receipt of notice of entry of such award within which to elect to proceed with the taking or to abandon such acquisition as provided in subdivision ten hereof. Notice of such election shall be served by the authority on the owners of such property in the manner described in paragraph (c) hereof. If the authority elects to proceed with the acquisition, it shall deposit with the supreme court in which the condemnation proceeding was held an amount equal to the award within one hundred eighty days after receipt by the authority of notice of entry of such award. Upon the making of such deposit, the authority shall notify LILCO in writing of such deposit. The sum so deposited shall be applied as provided in the eminent domain procedure law. Upon making such deposit and giving such notice to LILCO, title to all property described in the notice of taking shall immediately vest in the authority and the authority shall have the immediate right thereto. The order setting forth the award, together with evidence from the clerk of the court of receipt of the amount of the award, shall be filed in the office of the county clerk of the county in which the property is located and shall be indexed and recorded in the same manner as a notice of pendency under the eminent domain procedure law. The owner or person in possession of such property shall deliver possession thereof to the authority upon demand, and in case possession is not delivered when demanded or demand is not convenient because of absence of the owner or inability to locate or determine the owner, the authority may apply to the court without notice for an order requiring the sheriff to put it into possession of

such real property. Such an order shall be executed as if it were an execution for the delivery of the possession of the property. In the event the authority elects to abandon the acquisition, the provisions of subdivision ten hereof shall apply.

7. At any time the authority and its duly authorized agents and employees may, on reasonable notice and during business hours, (i) enter upon any real property proposed to be acquired for the purpose of making the surveys or maps mentioned in this section, or of making such other surveys, inspections or examinations of real and personal property and (ii) inspect and make copies of the books and records of the issuer of such securities, all as the authority may deem necessary or convenient for the purposes of this title.

8. Upon the acquisition of all the outstanding shares of stock of a corporate issuer representing all the voting rights and equity thereof, the authority shall as soon as reasonably practicable take all steps necessary to assure that the rights and claims of all the holders of any other stock and debt securities and all other creditors thereof are as secure as they were immediately prior to the acquisition by the authority. Nothing herein shall prohibit the authority from taking any appropriate and prudent action to renegotiate and restructure such debt or from purchasing the preferred stock and debt securities issued by such corporation at such prices as the authority may determine. The authority may also exchange its bonds for any outstanding preferred stock or debt securities with the consent of the holders of such preferred stock or debt securities.

9. As soon as practicable after the authority has acquired sufficient shares of LILCO stock to do so or after it has acquired all the property of LILCO pursuant to this title, the authority shall forthwith close and decommission the Shoreham plant and shall investigate and develop alternative uses, if any, for such plant.

10. If the authority determines, in its sole discretion, that the total cost of acquisition will result in rates in excess of the rates which would result from continued operation by LILCO, the authority

shall abandon the acquisition. In such event, the authority shall serve notice of such abandonment (i) in the case of a stock acquisition, by causing to be mailed by certified or registered mail a copy of such notice to each former owner of stock as shown on LILCO's stock transfer books immediately prior to such acquisition at the address shown on such stock transfer books and by causing to be published a copy of such notice in at least five successive issues of a daily newspaper of national circulation or (ii) in the case of an asset acquisition, in the same manner as provided for the service of a petition for acquisition in paragraph (c) of subdivision six hereof. In addition, in the case of an asset acquisition the authority shall file a copy of the notice of abandonment with the county clerk of the county in which is located any real property that was taken and with the clerk of the supreme court in which the proceeding was instituted.

11. The provisions with respect to the valuation of stock and property set forth in this section shall apply only to stock or property of LILCO, as the case may be, acquired by the authority by the exercise of the power of eminent domain.

* NB There are 2 § 1020-h's