

STATE OF NEW YORK

5844

2013-2014 Regular Sessions

IN SENATE

June 17, 2013

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

13 Section 1. Section 3 of the public service law, as amended by chapter
14 8 of the laws of 2012, is amended and a new section 3-b is added to read
15 as follows:

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

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1 § 3. Department of public service. ~~[4.]~~ There shall be in the state

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

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

29 § 3-b. Long Island office of the department. 1. There is hereby estab-
30 lished in the department an office to review and make recommendations
31 with respect to the operations and terms and conditions of service of,
32 and rates and budgets established by, the Long Island power authority
33 and/or its service provider.

34 2. Definitions. As used or referred to in this section:

35 (a) "Authority" means the Long Island power authority.

36 (b) "Service provider" means the entity under contract with the
37 authority to provide management and operation services associated with
38 the authority's electric transmission and distribution system and any
39 subsidiary of such entity that provides such services under contract.
40 However, the service provider and any affiliate of the service provider
41 with whom the authority or service provider contracts to provide
42 services associated with the authority's electric transmission and
43 distribution system shall not be considered an electric corporation
44 under this chapter.

45 (c) "Operations services agreement" means an agreement and any amend-
46 ments thereto between the Long Island lighting company dba LIPA or the
47 Long Island power authority and the service provider to provide manage-
48 ment and operation services associated with the authority's electric
49 transmission and distribution system.

50 3. General powers. In undertaking the requirements of this section,
51 subject to subdivisions (u) and (bb) through (hh) of section one thou-
52 sand twenty-f of the public authorities law, the department shall be
53 empowered and authorized to:

54 (a) Review and make recommendations to the board of the Long Island
55 power authority with respect to the rates and charges, including charges
56 related to energy efficiency and renewable energy programs, to be estab-

1 lished by the authority and become applicable on or after January first,
2 two thousand sixteen pursuant to subdivision (u) of section one thousand
3 twenty-f of the public authorities law.

4 (i) The purpose of such review is to make recommendations designed to
5 ensure that the authority and the service provider provide safe and
6 adequate transmission and distribution service at rates set at the
7 lowest level consistent with sound fiscal operating practices.

8 (ii) The department's recommendations shall be designed to be consist-
9 ent with ensuring that the revenue requirements related to such rate
10 review are sufficient to satisfy the authority's obligations with
11 respect to its bonds, notes and all other contracts.

12 (iii) In the context of such review, the department may not make any
13 recommendation that would modify the compensation or fee structure
14 included within the operations services agreement.

15 (iv) In undertaking such review and in making recommendations related
16 to the proposed rates and charges, the department shall establish stand-
17 ards, policies and procedures that, at a minimum, provide for public
18 statement and evidentiary hearings and participation of intervenors and
19 other parties, and ensure that any final recommendations related to the
20 proposed rates and charges are provided to the authority within two
21 hundred forty days of the filing with the department of such plan.

22 (v) The parties to any such rate review proceeding shall include, but
23 not be limited to, department staff, the authority, the service provider
24 and, to the extent it deems necessary or appropriate, the utility inter-
25 vention unit.

26 (b) Review the annual capital expenditures proposed by the service
27 provider and recommend such improvement in the manufacture, conveying,
28 transportation, distribution or supply of electricity, or in the methods
29 employed by the the service provider as in the department's judgment
30 allows for safe and adequate service.

31 (c) Annually review the emergency response plan of the authority and
32 the service provider in accordance with the following requirements:

33 (i) Examine and determine whether the emergency response plan is
34 consistent with the requirements of paragraph (a) of subdivision twen-
35 ty-one of section sixty-six of this chapter and any regulations or
36 orders promulgated thereto, and to recommend amendments of same; and

37 (ii) Review and make recommendations to the authority with respect to
38 the performance of the service provider in restoring service or other-
39 wise meeting the requirements of the emergency response plan during an
40 emergency event, defined for purposes of this section as an event where
41 widespread outages have occurred in the authority's service territory
42 due to a storm or other causes beyond the control of the authority and
43 its service provider, including making determinations with respect to
44 whether the service provider is reasonably able to implement the emer-
45 gency response plan, whether the length of any outages related to such
46 emergency were materially longer than they would otherwise have been
47 because the service provider failed to reasonably implement the emergen-
48 cy response plan, the reasonableness of costs associated with such emer-
49 gency response, the costs, if any, that were unreasonably and imprudent-
50 ly incurred by the service provider, and whether the service provider
51 would be liable for any such costs pursuant to the terms and conditions
52 of the operations services agreement.

53 (d) Upon notification to the Long Island power authority, undertake a
54 comprehensive and regular management and operations audit of the author-
55 ity and service provider pursuant to subdivision (bb) of section one

1 have discretion to have such an audit performed by its staff, or by an
2 independent contractor. In every case in which an audit is required
3 pursuant to subdivision (bb) of section one thousand twenty-f of the
4 public authorities law performed by an independent auditor, the depart-
5 ment shall have the authority to select the auditor, and to require the
6 authority to enter into a contract with the auditor that is consistent
7 with the contracting-related requirements specified in subdivision nine-
8 teen of section sixty-six of this chapter and the requirements of subdivi-
9 vision (bb) of section one thousand twenty-f of the public authorities
10 law. Such contract shall provide further that the auditor shall work for
11 and under the direction of the department according to such terms as the
12 department may determine are necessary and reasonable.

13 (e) Accept, investigate, mediate to resolve and make recommendations
14 to the Long Island power authority and/or the service provider regarding
15 the resolution of complaints from consumers in the authority's service
16 territory relating to, among other things, the provision of electric
17 service provided by the service provider and/or the authority.

18 (f) Review the net metering program implemented under subdivision (h)
19 of section one thousand twenty-g of the public authorities law and make
20 recommendations designed to ensure consistency with the requirements of
21 sections sixty-six-j and sixty-six-l of this chapter, and any regu-
22 lations and orders adopted thereto.

23 (g) Review and make recommendations with respect to any proposed plan
24 submitted by the Long Island power authority and/or the service provider
25 related to implementation of energy efficiency measures, distributed
26 generation or advanced grid technology programs having the purpose of
27 providing customers with tools to more efficiently and effectively
28 manage their energy usage and utility bills, and improving system reli-
29 ability and power quality.

30 (h) Review the data, information and reports submitted pursuant to
31 subdivision (hh) of section one thousand twenty-f of the public authori-
32 ties law and other pertinent information related to the metrics in the
33 operations services agreement, the Long Island power authority's evalu-
34 ation of such data, information and reports, and make recommendations to
35 the authority with respect to the service provider's annual incentive-
36 based compensation within thirty days of receipt of such evaluation and
37 information.

38 4. Review and inspection. To undertake the requirements of subdivision
39 two of this section, the department shall be authorized to inspect all
40 premises and facilities owned or operated by the authority and the
41 service provider, review all books and records of the authority and the
42 service provider, interview all appropriate personnel, and require annu-
43 al reporting consistent with the requirements of subdivision six of
44 section sixty-six of this chapter and any regulations and orders adopted
45 thereto; provided, however, that this authority shall not extend to
46 affiliates of the service provider.

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

52 1-a. All costs and expenses of the department related to the depart-
53 ment's responsibilities under section three-b of this chapter shall be

54 paid pursuant to appropriation on the certification of the chairman of
55 the department and upon the audit and warrant of the comptroller. For
56 the state fiscal year beginning on April first, two thousand fourteen

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1 and each state fiscal year thereafter, payments are to be made from all
2 moneys collected from the Long Island power authority pursuant to this
3 section. The total of such costs and expenses shall be assessed on such
4 authority in the manner provided in subdivisions two, three and four of
5 this section.

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

19 (b) The bill for each public utility company and the Long Island power
20 authority shall be rendered on or before February first preceding each
21 fiscal year, and shall be for the amount equal to the product of the
22 aforesaid estimated costs and expenses of conducting the department's
23 and commission's total operations during the fiscal year for which bill-
24 ing is being made multiplied by the proportion which compares:

25 (1) the gross operating revenues, over and above five hundred thousand
26 dollars, for that utility company or the authority derived from intra-
27 state utility operations in the last preceding calendar year, or other
28 twelve month period as determined by the chairman, to:

29 (2) the total of the gross operating revenues, derived from intrastate
30 utility operations for all utility companies and the authority in the
31 state which revenues are included under subparagraph one of this para-
32 graph.

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

44 (c) The minimum assessment for any utility company, as well as the
45 Long Island power authority, whose gross revenues from intrastate utili-
46 ty operations are in excess of five hundred thousand dollars in the
47 preceding calendar year shall be two hundred dollars.

48 (d) The amount of such bill for fiscal years beginning on or after
49 April first, nineteen hundred eighty-three so rendered shall be paid by
50 such public utility company and such authority to the department on or
51 before April first; provided, however, that [a] any such utility company

52 or such authority may elect to make partial payments for such costs and
53 expenses on March tenth of the preceding fiscal year and on September
54 tenth of such fiscal year. Each such partial payment shall be a sum
55 equal to fifty percentum of the estimate of costs and expenses to be
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1 assessed against such utility company or authority under the provisions
2 of this subdivision and shall not be less than two hundred dollars.

3 (e) During the course of any state fiscal year, the chairman may
4 increase or decrease the estimate of costs and expenses. In such case,
5 revised bills shall be sent to each public utility company and such
6 authority, and such increase or decrease shall be equally apportioned
7 against the remaining payments for such fiscal year.

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

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

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

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

45 (b) The temporary state energy and utility service conservation
46 assessment shall be based upon the following percentum of the utility
47 entity's gross operating revenues derived from intrastate utility oper-
48 ations in the last preceding calendar year, minus the amount, if any,
49 that such utility entity is assessed pursuant to subdivisions one and
50 two of this section for the corresponding state fiscal year period: (1)

51 two percentum for the state fiscal year beginning April first, two thou-
52 sand thirteen and the state fiscal year beginning April first, two thou-
53 sand fourteen; (2) one and three-quarters percentum for the state fiscal
54 year beginning April first, two thousand fifteen; and (3) one and one-
55 half percentum for the state fiscal year beginning April first, two
56 thousand sixteen. With respect to the temporary state energy and utility
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1 service conservation assessment to be paid for the state fiscal year
2 beginning April first, two thousand seventeen and notwithstanding clause
3 (i) of paragraph (d) of this subdivision, on or before March tenth, two
4 thousand seventeen, utility entities shall make a payment equal to one-
5 half of the assessment paid by such entities pursuant to this paragraph
6 for the state fiscal year beginning on April first, two thousand
7 sixteen. With respect to the Long Island power authority, the temporary
8 state energy and utility service conservation assessment shall be based
9 upon the following percentum of such authority's gross operating reven-
10 ues derived from intrastate utility operations in the last preceding
11 calendar year, minus the amount, if any, that such authority is assessed
12 pursuant to subdivisions one-a and two of this section for the corre-
13 sponding state fiscal year period: (1) one percentum for the state
14 fiscal year beginning April first, two thousand thirteen and the state
15 fiscal year beginning April first, two thousand fourteen; (2) three-
16 quarters of one percentum for the state fiscal year beginning April
17 first, two thousand fifteen; and (3) one-half percentum for the state
18 fiscal year beginning April first, two thousand sixteen; provided,
19 however, that should the amount assessed by the department for costs and
20 expenses pursuant to such subdivisions equal or exceed such authority's
21 temporary state energy and utility service conservation assessment for a
22 particular fiscal year, the amount to be paid under this subdivision by
23 such authority shall be zero. With respect to the temporary state ener-
24 gy and utility service conservation assessment to be paid for the state
25 fiscal year beginning April first, two thousand seventeen and notwith-
26 standing clause (i) of paragraph (d) of this subdivision, on or before
27 March tenth, two thousand seventeen, the Long Island power authority
28 shall make a payment equal to one-half of the assessment it paid for the
29 state fiscal year beginning on April first, two thousand sixteen. No
30 corporation or person subject to the jurisdiction of the commission only
31 with respect to safety, or the power authority of the state of New York,
32 shall be subject to the temporary state energy and utility service
33 conservation assessment provided for under this subdivision. Utility
34 entities whose gross operating revenues from intrastate utility oper-
35 ations are five hundred thousand dollars or less in the preceding calen-
36 dar year shall not be subject to the temporary state energy and utility
37 service conservation assessment. The minimum temporary state energy and
38 utility service conservation assessment to be billed to any utility
39 entity whose gross revenues from intrastate utility operations are in
40 excess of five hundred thousand dollars in the preceding calendar year
41 shall be two hundred dollars.

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

44 23. "Service provider" means the entity under contract with the
45 authority to provide management and operation services associated with
46 the authority's electric transmission and distribution system and any
47 subsidiary of such entity that provides such services under contract.

48 24. "Operations services agreement" means an agreement and any amend-

49 ments thereto between the Long Island lighting company dba LIPA or the
50 authority and the service provider to provide management and operation
51 services associated with the authority's electric transmission and
52 distribution system.

53 § 4. Section 1020-d of the public authorities law, as added by chapter
54 506 of the laws of 1995, is amended to read as follows:

55 § 1020-d. ~~Trustees~~ Board of trustees. 1. ~~The~~ Starting on January
56 first, two thousand fourteen, the board of the authority shall be

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1 constituted and consist of ~~fifteen~~ nine trustees all of whom shall be
2 residents of the service area, ~~nine~~ five of whom shall be appointed by
3 the governor, one of whom the governor shall designate as ~~chairman~~
4 chair, and serve at his or her pleasure, ~~three~~ two of whom shall be
5 appointed by the temporary president of the senate, and ~~three~~ two of
6 whom shall be appointed by the speaker of the assembly. ~~Two~~ One of
7 the governor's appointees shall serve an initial term of ~~one-year~~ two
8 years; ~~two~~ one of the governor's appointees shall serve an initial
9 term of ~~two~~ three years; ~~two~~ and three of the governor's appointees
10 shall serve an initial term of ~~three~~ four years~~;- and three of the~~
11 ~~governor's appointees shall serve an initial term of four years~~. ~~Two~~
12 One of the appointees of the temporary president of the senate and ~~two~~
13 one of the appointees of the speaker of the assembly shall serve initial
14 terms of ~~one-year~~ two years; and one appointee of the temporary presi-
15 dent of the senate and one appointee of the speaker of the assembly
16 shall serve initial terms of ~~two~~ three years. Thereafter, all terms
17 shall be for a period of four years. In the event of a vacancy occurring
18 in the office of trustee by death, resignation or otherwise, the respec-
19 tive appointing officer shall appoint a successor who shall hold office
20 for the unexpired portion of the term.

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

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

30 4. All trustees appointed under this section shall have relevant util-
31 ity, corporate board or financial experience.

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

42 § 6. Subdivision (u) of section 1020-f of the public authorities law
43 is REPEALED.

44 § 7. Subdivisions (c) and (bb) of section 1020-f of the public author-
45 ities law, subdivision (c) as amended by chapter 506 of the laws of 2009
46 and subdivision (bb) as added by chapter 8 of the laws of 2012, are

47 amended and seven new subdivisions (u), (cc), (dd), (ee), (ff), (gg) and
48 (hh) are added to read as follows:

49 (c) To appoint officers, agents and employees, without regard to any
50 personnel or civil service law, rule or regulation of the state and in
51 accordance with guidelines adopted by the authority, prescribe their
52 duties and qualifications and fix and pay their compensation~~[, provided,~~
53 ~~however, that the appointment of the chief executive officer shall be~~
54 ~~subject to confirmation by the senate in accordance with section twen-~~
55 ~~ty-eight hundred fifty-two of this chapter;].~~ By January first, two
56 thousand fourteen, the authority, through its governance committee,
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1 shall amend such guidelines to require that staffing at the authority is
2 kept at levels only necessary to ensure that the authority is able to
3 meet obligations with respect to its bonds and notes and all applicable
4 statutes and contracts, and oversee the activities of the service
5 provider;

6 (u) Rate plans. Subject to subdivision six of section one thousand
7 twenty-k of this title to fix rates and charges for the furnishing or
8 rendition of gas or electric power or of any related service at the
9 lowest level consistent with sound fiscal and operating practices of the
10 authority and which provide for safe and adequate service. In implement-
11 ing this power:

12 1. The authority and the service provider shall, on or before February
13 first, two thousand fifteen, submit for review to the department of
14 public service a three-year rate proposal for rates and charges to take
15 effect on or after January first, two thousand sixteen.

16 2. The authority and the service provider shall thereafter submit for
17 review to the department of public service any rate proposal that would
18 increase the rates and charges and thus increase the aggregate revenues
19 of the authority by more than two and one-half percent to be measured on
20 an annual basis; provided, however, that the authority may place such
21 rates and charges into effect on an interim basis, subject to prospec-
22 tive rate adjustment; provided, further, that a final rate plan issued
23 by the authority that would not so increase such rates and charges shall
24 not be subject to the requirements of paragraph four of this subdivision
25 and shall be considered final for the purposes of review under article
26 seventy-eight of the civil practice law and rules. The authority and/or
27 the service provider may otherwise submit for review to such department
28 any rate proposal irrespective of its effect on revenues.

29 3. The authority shall not fix any final rates and charges proposed
30 that would not be subject to review by the department of public service
31 pursuant to paragraphs one and two of this subdivision until after hold-
32 ing public hearings thereon upon reasonable public notice, with at least
33 one such hearing to be held each in the county of Suffolk and the county
34 of Nassau.

35 4. Any recommendations associated with a rate proposal submitted
36 pursuant to paragraphs one and two of this subdivision shall be provided
37 by the department of public service to the board of the authority imme-
38 diately upon their finalization by the department. Unless the board of
39 the authority makes a preliminary determination in its discretion that
40 any particular recommendation is inconsistent with the authority's sound
41 fiscal operating practices, any existing contractual or operating obli-
42 gations, or the provision of safe and adequate service, the board shall
43 implement such recommendations as part of its final rate plan and such
44 final determination shall be deemed to satisfy the requirements of this

45 subdivision and be considered final for the purposes of review under
46 article seventy-eight of the civil practice law and rules. The board
47 shall make any such preliminary determination of inconsistency within
48 thirty days of receipt of such recommendations, with notice and the
49 basis of such determination being provided to the department of public
50 service, and contemporaneously posted on the websites of the authority
51 and its service provider. The board shall thereafter, within thirty days
52 of such posting and with due advance notice to the public, hold a public
53 hearing with respect to its preliminary determination of inconsistency.
54 At such hearing, the department of public service shall present the
55 basis for its recommendations, the board shall present the basis for its
56 determination of inconsistency and the service provider may present its

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1 position. The authority and the service provider may, during the time
2 period before such public hearing reach agreement with the department on
3 disputed issues. Within thirty days after such public hearing, the
4 board of the authority shall announce its final determination and
5 planned implementation with respect to any such recommendations. The
6 authority's final determination of inconsistency shall be subject to any
7 applicable judicial review proceeding, including review available under
8 article seventy-eight of the civil practice law and rules.

9 (bb) Comprehensive and regular management and operations audits. 1.
10 The authority and the service provider shall cooperate in the undertak-
11 ing and completion of a regular and comprehensive management and oper-
12 ations audit conducted pursuant to the requirements of this subdivision
13 and [~~subdivision two of section three~~] paragraph (d) of subdivision
14 three of section three-b of the public service law. Such audit shall
15 review and evaluate the [~~authority's~~] overall operations and management
16 of the authority and service provider, including [~~the authority's~~] such
17 operations and management in the context of [~~its~~] the authority's duty
18 to set rates at the lowest level consistent with standards and proce-
19 dures provided in subdivision (u) of this section, and include, but not
20 be limited to: (i) the [~~authority's~~] service provider's construction and
21 capital program planning in relation to the needs of [~~its~~] customers for
22 reliable service; (ii) the overall efficiency of the authority's and
23 service provider's operations; (iii) the manner in which the authority
24 is meeting its debt service obligations; (iv) the authority's Fuel and
25 Purchased Power Cost Adjustment clause and recovery of costs associated
26 with such clause; (v) the authority's and service provider's annual
27 budgeting procedures and process; (vi) the application, if any, of the
28 performance metrics designated in the operations services agreement and
29 the accuracy of the data relied upon with respect to such application;

30 and [~~(vi)~~] (vii) the authority's compliance with debt covenants.
31 2. The department of public service shall notify the authority that
32 said department is in the process of initiating a comprehensive manage-
33 ment and operations audit as described in paragraph one of this subdivi-
34 sion in a manner that ensures the timeliness of such audit, and in
35 accordance with the following timeframe: the first comprehensive manage-
36 ment and operations audit shall be initiated as of the effective date of
37 [~~this subdivision~~] chapter eight of the laws of two thousand twelve and
38 undertaken in a manner and to an extent that is practicable in the
39 context of the authority's transition to a new management service struc-
40 ture; the second comprehensive management and operations audit shall be
41 initiated no later than December fifteenth, two thousand [~~fifteen~~]
42 sixteen; and all additional comprehensive management and operations

43 audits shall be initiated at least once every five years thereafter.
44 Within a reasonable time after such notification to the authority, said
45 department or the independent auditor retained by the authority to
46 undertake such audit shall hold public statement hearings, with proper
47 notice, in both Nassau and Suffolk counties for the purpose of receiving
48 both oral and written comments from the public on matters related to
49 such audit as described in paragraph one of this subdivision.

50 3. Each such audit shall be completed within eighteen months of initi-
51 ation absent an extension for good cause shown by the department of
52 public service or the independent auditor under contract with the
53 authority with notice of such extension to the governor, the temporary
54 president of the senate, the speaker of the assembly, and the chairs of
55 the authority and the department of public service. Such audit shall be
56 provided to the board of the authority immediately upon its completion.

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1 The department of public service shall provide notice of completion of
2 such audit to the governor, the temporary president of the senate, the
3 speaker of the assembly, and the minority leaders of the senate and
4 assembly, and the authority, upon receipt of such audit, shall post a
5 copy of such audit, including findings and recommendations, on its
6 website and the website of the service provider. Unless the board of the
7 authority makes a preliminary determination that any particular finding
8 or recommendation contained in such audit is inconsistent with the
9 authority's sound fiscal operating practices, any existing contractual
10 or operating obligation, or the provision for safe and adequate service,
11 the board shall implement or cause its service provider to implement
12 such findings and recommendations in accordance with the timeframe spec-
13 ified under such audit.

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

35 (cc) To prepare an emergency response plan pursuant to this subdivi-
36 sion. 1. The service provider shall, in consultation with the authority,
37 prepare and maintain an emergency response plan (i) to assure the
38 reasonably prompt restoration of service in the case of an emergency
39 event, defined for purposes of this subdivision as an event where wide-
40 spread outages have occurred in the authority's service territory due to

41 a storm or other causes beyond the control of the authority and the
42 service provider, (ii) consistent with the requirements of paragraph (a)
43 of subdivision twenty-one of section sixty-six of the public service law
44 and any regulations and orders adopted thereto, and (iii) establishing
45 the separate responsibilities of the authority and service provider.
46 2. On or before February third, two thousand fourteen, the authority
47 and service provider shall submit an emergency response plan to the
48 department of public service for review. Contemporaneously with such
49 submission, the authority shall provide notice of such proposed plan to
50 the secretary of state for publication in the state register, the
51 authority and service provider each shall post such plan on their
52 websites and otherwise make such plan available for review in-person,
53 and afford members of the public an opportunity to submit written
54 comments and oral comments pursuant to at least one hearing to be held
55 each in the county of Suffolk and the county of Nassau. Such written
56 comments must be submitted by March fourteenth, two thousand fourteen.

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1 The authority and service provider shall provide a copy of all written
2 comments they receive and a transcript of such public hearings to the
3 department of public service for its consideration in reviewing the
4 emergency response plan. The department shall provide any recommenda-
5 tions to the authority and service provider with respect to such plan on
6 or before April fifteenth, two thousand fourteen. Such plan must be made
7 final by June second, two thousand fourteen. For each year thereafter,
8 the service provider shall submit an emergency response plan to the
9 department of public service, and such department shall provide its
10 recommendations, in accordance with a schedule to be established by such
11 department and that is consistent with the schedule associated with such
12 department's review of similar such plans provided by electric corpo-
13 rations pursuant to subdivision twenty-one of section sixty-six of the
14 public service law.

15 3. By June second, two thousand fourteen, and by June first annually
16 thereafter, the authority and service provider shall jointly certify to
17 the department of homeland security and emergency services that the
18 emergency response plan ensures, to the greatest extent feasible, the
19 timely and safe restoration of energy services after an emergency
20 consistent with the requirements of paragraph (a) of subdivision twen-
21 ty-one of the public service law and the department's recommendations.
22 The filing of such emergency response plan shall also include a copy of
23 all written mutual assistance agreements among utilities. The authority
24 and service provider shall file with the county executives of Nassau and
25 Suffolk county and the mayor of the city of New York the most recent
26 version of the emergency response plan, and make sure that such amended
27 versions are timely filed.

28 4. Starting in calendar year two thousand fourteen, the service
29 provider annually shall undertake at least one drill to implement proce-
30 dures to practice its emergency response plan. The service provider
31 shall notify and allow participation in such drill of all appropriate
32 municipal emergency responders and officials.

33 5. If, during an emergency event, electric service is not restored in
34 three days, the service provider shall within sixty days from the date
35 of full restoration file with the department a report constituting a
36 review of all aspects of the preparation and system restoration perform-
37 ance during the event, and shall thereafter take into consideration any
38 recommendations made by the department associated with such review.

39 (dd) On or before January first, two thousand fifteen, and by January
40 first of each calendar year thereafter, to submit for review to the
41 department of public service a report detailing the service provider's
42 planned capital expenditures.
43 (ee) On or before July first, two thousand fourteen, and annually
44 thereafter, to submit for review to the department of public service any
45 proposed plan related to implementing energy efficiency measures,
46 distributed generation or advanced grid technology programs for the
47 purpose provided pursuant to paragraph (g) of subdivision three of
48 section three-b of the public service law.
49 (ff) To assist and cooperate with the department of public service
50 with respect to any review undertaken pursuant to section three-b of the
51 public service law, including providing the department with reasonable
52 access to all facilities and premises owned or operated by the authority
53 or its service provider, allowing review of all books and records of the
54 authority and its service provider, providing copies of requested docu-
55 ments, allowing interviews of all appropriate personnel, and responding
56 in a reasonable and timely manner to any inquiries or reporting requests

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1 made by the department; provided, however, that the obligations set
2 forth in this subdivision shall not extend to affiliates of the service
3 provider.
4 (gg) Renewable generation and energy efficiency programs. 1. The
5 authority in coordination with the service provider, the power authority
6 of the state of New York and the New York state energy research and
7 development authority shall, to the extent the authority's rates are
8 sufficient to provide safe and adequate transmission and distribution
9 service, and the measures herein, undertake actions to design and admin-
10 ister renewable energy and energy efficiency measures in the service
11 area, with the goal of continuing and expanding such measures that cost-
12 effectively reduce system-wide peak demand, minimize long-term fuel
13 price risk to rate payers, lower emissions, improve environmental quali-
14 ty, and seek to meet New York state climate change and environmental
15 goals. Such actions shall also include implementation of any renewable
16 energy competitive procurement or feed-in-tariff programs that were
17 approved by the authority as of the effective date of the chapter of the
18 laws of two thousand thirteen which added this subdivision.
19 2. The service provider shall consider, consistent with maintaining
20 system reliability, renewable generation and energy efficiency program
21 results and options in establishing capital plans.
22 (hh) Starting in calendar year two thousand fifteen, the authority and
23 the service provider shall submit to the department of public service
24 for review, any and all data, information and reports which set forth
25 the service provider's actual performance related to the metrics in the
26 operations services agreement, including the authority's evaluation
27 thereof, no less than forty-five days prior to the authority's determi-
28 nation of the service provider's annual incentive compensation.
29 § 8. Section 1020-q of the public authorities law, as added by chapter
30 517 of the laws of 1986 and subdivision 2 as amended by section 19 of
31 part Y of chapter 63 of the laws of 2000, is amended to read as follows:
32 § 1020-q. Payments in lieu of taxes. 1. Each year after property ther-
33 etofore owned by LILCO is acquired by the authority by any means author-
34 ized by this title and, as a consequence, is removed from the tax rolls,
35 the authority shall make payments in lieu of taxes to municipalities and
36 school districts equal to the taxes and assessments which would have

37 been received from year to year by each such jurisdiction if such acqui-
38 sition had not occurred, ~~[except for such taxing jurisdictions which tax~~
39 ~~the Shoreham plant, in which case the in lieu of tax payments shall in~~
40 ~~the first year after the acquisition be equal to one hundred percent of~~
41 ~~the taxes and assessments which would have been received by such taxing~~
42 ~~jurisdictions. In each succeeding year such in lieu of tax payments~~
43 ~~shall be decreased by ten percent until such time as such payments equal~~
44 ~~taxes and assessments which would have been levied on such plant in a~~
45 ~~nonoperative state]~~ provided, however, that for the calendar year start-
46 ing on January first, two thousand fifteen, and for each calendar year
47 thereafter, such payments in lieu of taxes shall not exceed the in lieu
48 of tax payments made to such municipalities and school districts in the
49 immediately preceding year by more than two percent.

50 2. The authority shall also make payments in lieu of taxes for those
51 taxes which would otherwise be imposed ~~[upon LILCO, if LILCO were to~~
52 ~~continue in operation,]~~ pursuant to sections one hundred eighty-six-a
53 and one hundred eighty-six-c of the tax law, and to former ~~[sections one~~
54 ~~hundred eighty-six and]~~ section one hundred eighty-six-b of the tax law
55 as such ~~[sections one hundred eighty-six and one hundred eighty-six b~~
56 ~~were]~~ section was in effect on December thirty-first, nineteen hundred
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1 ninety-nine, ~~[paragraph (b) of subdivision four of section one hundred~~
2 ~~seventy-four of the navigation law,]~~ and any taxes imposed by a city
3 pursuant to the authorization granted by section twenty-b of the general
4 city law.

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

16 § 9. Subdivision 1 of section 1020-s of the public authorities law, as
17 amended by chapter 388 of the laws of 2011, is amended to read as
18 follows:

19 1. The rates, services and practices relating to the electricity
20 generated by facilities owned or operated by the authority shall not be
21 subject to the provisions of the public service law or to regulation by,
22 or the jurisdiction of, the public service commission, except to the
23 extent (a) article seven of the public service law applies to the siting
24 and operation of a major utility transmission facility as defined there-
25 in, (b) article ten of such law applies to the siting of a generating
26 facility as defined therein, ~~and]~~ (c) section eighteen-a of such law
27 provides for assessment for certain costs, property or operations, and
28 (d) to the extent that the department of public service reviews and
29 makes recommendations with respect to the operations and provision of
30 services of, and rates and budgets established by, the authority pursu-
31 ant to section three-b of such law.

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

34 § 1020-w. Audit and annual reports. The accounts of the authority

35 shall be subject to the supervision of the state comptroller and an
36 annual audit shall be performed by an independent certified accountant
37 selected by the [~~state division of the budget~~] authority, upon recommen-
38 dation of its finance and audit committee. The authority shall submit
39 annually to the governor, the state comptroller, the temporary president
40 of the senate, the speaker of the assembly and the county executives and
41 governing bodies of the counties of Suffolk and Nassau, a detailed
42 report pursuant to the provisions of section two thousand eight hundred
43 of [~~title one of article nine of~~] this chapter, which report shall be
44 verified by the chairman of the authority. The authority shall comply
45 with the provisions of sections two thousand eight hundred one, two
46 thousand eight hundred two and two thousand eight hundred three of
47 [~~title one of article nine of~~] this chapter.

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

50 § 1020-cc. Authority subject to certain provisions contained in the
51 state finance law, the public service law, the social services law and
52 the general municipal law. 1. All contracts of the authority shall be
53 subject to the provisions of the state finance law relating to contracts
54 made by the state. The authority shall also establish rules and regu-
55 lations with respect to providing to its residential gas, electric and
56 steam utility customers those rights and protections provided in article
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1 two and sections one hundred seventeen and one hundred eighteen of the
2 public service law and section one hundred thirty-one-s of the social
3 services law. The authority shall conform to any safety standards
4 regarding manual lockable disconnect switches for solar electric gener-
5 ating equipment established by the public service commission pursuant to
6 subparagraph (ii) of paragraph (a) of subdivision five and subparagraph
7 (ii) of paragraph (a) of subdivision five-a of section sixty-six-j of
8 the public service law. The authority shall let contracts for
9 construction or purchase of supplies, materials, or equipment pursuant
10 to section one hundred three and paragraph (e) of subdivision four of
11 section one hundred twenty-w of the general municipal law.

12 2. The authority and service provider shall provide to the state comp-
13 troller on March thirty-first and September thirtieth of each year a
14 report documenting each contract in excess of two hundred fifty thousand
15 dollars per year entered into with a third party and related to manage-
16 ment and operation services associated with the authority's electric
17 transmission and distribution system, including the name of the third
18 party, the contract term and a description of services or goods to be
19 procured, and post such report on each of their websites. All contracts
20 entered into between the service provider and third parties are not
21 subject to the requirements of subdivision one of this section.

22 § 12. Paragraph (b) of subdivision 4 of section 94-a of the executive
23 law, as amended by chapter 8 of the laws of 2012, is amended to read as
24 follows:

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

26 (i) on behalf of the secretary, initiate, intervene in, or participate
27 in any proceedings before the public service commission or the depart-
28 ment of public service, to the extent authorized by sections three-b,
29 twenty-four-a, seventy-one, eighty-four or ninety-six of the public
30 service law or any other applicable provision of law, where he or she
31 deems such initiation, intervention or participation to be necessary or
32 appropriate;

33 (ii) represent the interests of consumers of the state before federal,
34 state and local administrative and regulatory agencies engaged in the
35 regulation of energy services; **[and]**
36 (iii) accept and investigate complaints of any kind from Long Island
37 power authority consumers, attempt to mediate such complaints where
38 appropriate directly with such authority and refer complaints to the
39 appropriate state or local agency authorized by law to take action with
40 respect to such complaints~~];~~ **and**
41 **(iv) hold regular forums in each of the service territories of the**
42 **combination gas and electric corporations, as defined under section two**
43 **of the public service law, and the Long Island power authority to**
44 **educate consumers about utility-related matters and the regulatory proc-**
45 **ess, opportunities to lower energy costs, including through energy effi-**
46 **ciency and distributed generation, and other matters affecting consum-**
47 **ers.**
48 § 13. Notwithstanding section 112 of the state finance law and
49 notwithstanding any other provision of law to the contrary, including
50 but not limited to any provision of law related to rebidding, letting or
51 amending contracts of any amount, the Long Island Lighting Company dba
52 LIPA is authorized to amend the operations services agreement, dated
53 December 28, 2011, entered into with PSEG Long Island LLC, including
54 Amendment Nos. 1 and 2 thereto, approved on June 27, 2012, solely by the
55 following: (1) upon review and written recommendations made by the
56 department of public service to the board of trustees of the Long Island
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1 power authority ("authority"), setting forth the reasons for and find-
2 ings underlying such recommendations; and (2) adoption of a resolution
3 by a majority of the authority's board of trustees.

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

7 § 15. Subdivision I of section 7208 of the education law, as amended
8 by chapter 994 of the laws of 1971, is amended to read as follows:

9 I. The practice of engineering or land surveying, or using the title
10 "engineer" or "surveyor" **(i)** exclusively as an officer or employee of a
11 public service corporation by rendering to such corporation such
12 services in connection with its lines and property which are subject to
13 supervision with respect to the safety and security thereof by the
14 public service commission of this state, the interstate commerce commis-
15 sion or other federal regulatory body and so long as such person is thus
16 actually and exclusively employed and no longer, **or (ii) exclusively as**
17 **an officer or employee of the Long Island power authority or its service**
18 **provider, as defined under section three-b of the public service law, by**
19 **rendering to such authority or provider such services in connection with**
20 **its lines and property which are located in such authority's service**
21 **area and so long as such person is thus actually and exclusively**
22 **employed and no longer;**

23 § 16. Repowering. If after the Long Island power authority, or its
24 successor, determines, in accordance with the terms and conditions
25 contained in the amended and restated power supply agreement ("A&R
26 PSA"), dated October 10, 2012, between the authority and the owner of
27 the legacy LILCO power generating facilities, that repowering any such
28 generating facility is in the best interests of its ratepayers and will
29 enhance the authority's ability to provide a more efficient, reliable
30 and economical supply of electric energy in its service territory,

31 consistent with the goal of improving environmental quality, the author-
32 ity will exercise its rights under the A&R PSA related to repowering
33 such facility, and shall enter into an agreement related to payments in
34 lieu-of-taxes for a term commensurate with any power purchase agreement
35 entered into related to such repowered facility, consistent with other
36 such agreements related to generating facilities under contract to the
37 authority in the service territory.

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

47

PART B

48 Section 1. Legislative findings. The legislature hereby finds and
49 determines:

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

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

27 3. High costs of electric utility service poses a serious threat to
28 the economic well-being, health and safety of the residents of and the

29 commerce and industry in the service area. High costs of electric util-
30 ity service deter commerce and industry from locating in the service
31 area and have caused existing commerce and industry to consider serious-
32 ly moving out of the service area.

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

39 5. As of December 31, 2012, the three major rating agencies generally
40 rated the authority's debt in the single-A range, though Moody's Inves-
41 tors Services assigns approximately seven hundred million dollars of the
42 authority's debt slightly lower ratings of Baa1 and Baa2.

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

49 7. Securitized restructuring bonds are likely to be most attractive to
50 the investing public and result in the lowest possible yields if they
51 are issued by a newly organized, special purpose public benefit corpo-
52 ration or other corporate municipal instrumentality of the state.

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

20 9. Accordingly, the issuance of securitized restructuring bonds is
21 expected to result in lower aggregate distribution and transmission
22 charges and transition charges, compared to other available alterna-
23 tives.

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

26 1. "Ancillary agreement" means any bond insurance policy, letter of

27 credit, reserve account, surety bond, swap arrangement, hedging arrange-
28 ment, liquidity or credit support arrangement or other similar agreement
29 or arrangement entered into in connection with the issuance of restruc-
30 turing bonds that is designed to promote the credit quality and marketa-
31 bility of such restructuring bonds or to mitigate the risk of an
32 increase in interest rates.

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

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

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

53 5. "Consumer" means any individual, governmental body, trust, business
54 entity, nonprofit organization or other legally-recognized entity that
55 takes electric delivery service within the service area by means of
56 electric transmission or distribution facilities, whether those electric

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1 transmission or distribution facilities are owned by LIPA or any other
2 entity.

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

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

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

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

17 (d) any cost related to issuing restructuring bonds, administering the
18 restructuring bond issuer and servicing restructuring property and
19 restructuring bonds, or related to the efforts to prepare or obtain
20 approval of a restructuring cost financing order, including, without
21 limitation, costs of calculating adjustments of transition charges,
22 servicing fees and expenses, trustee fees and expenses, legal fees and
23 expenses, accounting fees and expenses, administrative fees and
24 expenses, placement fees, underwriting fees, fees and expenses of the

25 authority's advisors and outside counsel, if any, rating agency fees and
26 any other related cost that is approved for recovery in the restructur-
27 ing cost financing order.

28 7. "Financing entity" means the restructuring bond issuer, the author-
29 ity or any servicer, trustee, collateral agent, and other person or
30 entity acting for the benefit of owners of the restructuring bonds, the
31 restructuring bond issuer or the authority that may own restructuring
32 property or have rights to receive proceeds of restructuring bonds or to
33 receive proceeds from the sale of restructuring property.

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

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

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

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

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

18 13. "Restructuring property" means the property rights and interests
19 created pursuant to this act, including, without limitation, the right,
20 title, and interest: (a) in and to the transition charges established
21 pursuant to a restructuring cost financing order, as adjusted from time
22 to time in accordance with the restructuring cost financing order; (b)
23 in and to all revenues, collections, claims, payments, money, or

24 proceeds of or arising from the transition charges or constituting tran-
25 sition charges that are the subject of a restructuring cost financing
26 order, regardless of whether such revenues, collections, claims,
27 payments, money, or proceeds are imposed, billed, received, collected or
28 maintained together with or commingled with other revenues, collections,
29 claims, payments, money or proceeds; and (c) in and to all rights to
30 obtain adjustments to the transition charges pursuant to the terms of
31 the restructuring cost financing order. Restructuring property shall
32 constitute a vested, presently existing property right notwithstanding
33 the fact that the value of the property right will depend on further
34 acts that have not yet occurred, including but not limited to, consumers
35 remaining or becoming connected to the T&D system assets and taking
36 electric delivery service, the imposition and billing of transition
37 charges, or, in those instances where consumers are customers of LIPA or
38 any successor owner of the T&D system assets, such owner performing
39 certain services.

40 14. "Service area" means the geographical area within which LIPA
41 provided electric distribution services as of the implementation date of
42 this act.

43 15. "Servicer" means an entity authorized and required, by contract or
44 otherwise, to impose, bill and collect transition charges, to prepare
45 periodic reports regarding billings and collections of transition charg-
46 es, to remit collections to the appropriate financing entity, and to
47 provide other services contemplated by the restructuring cost financing
48 order, which may include calculation of periodic adjustments to the
49 transition charges or providing other services related to the restruc-
50 turing property. Without limitation, LIPA or any successor owner of the
51 T&D system assets, their agents or subcontractors, or any entity author-
52 ized to bill and collect T&D rates may be a servicer.

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

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

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

21 19. "T&D rates" means rates and charges for electric transmission and

22 distribution services in the service area. "T&D rates" shall not include
23 charges for the generation or resale of electricity or any charges
24 imposed to fund public purpose programs.

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

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

42 22. "Upfront financing costs" means the fees and expenses to issue
43 restructuring bonds, including, without limitation, expenses associated
44 with the efforts to prepare or obtain approval of a restructuring cost
45 financing order, as well as the fees and expenses associated with the
46 structuring, marketing, and issuance of restructuring bonds, including,
47 without limitation, counsel fees, structural advisory fees, underwriting
48 fees and original issue discount, rating agency and trustee fees
49 (including fees of trustee's counsel), accounting and auditing fees,
50 printing and marketing expenses, stock exchange listing fees and compli-
51 ance fees, filing fees, any applicable taxes, payments in lieu of taxes,
52 the amount required to fund a debt service reserve account or other
53 account established under any indenture, ancillary agreement or other
54 financing document relating to the restructuring bonds, and fees and
55 expenses of the authority's advisors and outside counsel, if any.

56 Upfront financing costs include reimbursement to any person of amounts
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1 advanced for payment of such costs. Upfront financing costs do not
2 include scheduled debt service or other ongoing financing costs, to the
3 extent such ongoing financing costs are payable from transition charge
4 revenues. If any upfront financing costs cannot be reasonably determined
5 before the principal amount of restructuring bonds is fixed, such
6 financing costs shall be estimated and the aggregate of such estimates
7 shall be included as an upfront financing cost for purposes of determin-
8 ing the principal amount of restructuring bonds to be issued. If the
9 actual upfront financing costs are greater than the estimated upfront
10 financing costs, the difference shall be deemed to be an ongoing financ-
11 ing cost; if the actual upfront financing costs are less than the esti-
12 mated upfront financing costs, the proceeds corresponding to such
13 difference shall be used to pay ongoing financing costs.

14 § 3. Procedure; judicial review. 1. Standard. The authority may
15 prepare a restructuring cost financing order for the purpose of issuing
16 restructuring bonds to refinance outstanding debt of the authority based
17 on a finding that such bond issuance is expected to result in savings to
18 consumers of electric transmission and distribution services in the
19 service area on a net present value basis.

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

42 3. Appeals. Because delay in the final determination of the petition
43 will delay the issuance of restructuring bonds, thereby diminishing
44 savings to consumers that might be achieved if the restructuring bonds
45 were issued promptly after the issuance of the restructuring cost
46 financing order, notwithstanding any other law to the contrary, any
47 action, suit or proceeding to which the authority or the restructuring
48 bond issuer may be a party, in which any question arises as to the
49 validity of this act or any restructuring cost financing order, shall be
50 preferred over all other civil causes in all courts of the state, except
51 election matters, and shall be heard and determined in preference to all
52 other civil business pending therein, except election matters, irrespec-
53 tive of position on the calendar. Such preference shall also be granted
54 upon application of counsel to the authority in any action or proceeding
55 questioning the validity of this act or any restructuring cost financing
56 order in which such counsel may be allowed to intervene. Notwithstanding

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1 any other provision of law to the contrary, the validity of this act may
2 only be challenged by an aggrieved party pursuant to an action, suit or
3 proceeding filed within thirty days of the effective date of this act,
4 and the validity of any restructuring cost financing order may only be
5 challenged by an aggrieved party pursuant to an action, suit or proceed-
6 ing filed within thirty days after such restructuring cost financing
7 order becomes a final rate order by the authority; provided, however,
8 that any such action, suit or proceeding and all supporting papers shall
9 be filed directly to the Supreme Court, Appellate Division, Second Judi-
10 cial Department.

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

18 expired.

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

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

46 7. Irrevocability. Upon the issuance of the restructuring bonds, the
47 transition charges, including any adjustments thereof as provided in the
48 restructuring cost financing order, shall be deemed established by the
49 authority as irrevocable, final and effective without further action by
50 the authority, or any other entity. The state, including the authority
51 or any successor regulator, thereafter may not in any way take or permit
52 any action to reduce, impair, postpone or terminate the transition
53 charges approved in the restructuring cost financing order, as the same
54 may be adjusted from time to time pursuant to subdivision 3 of section
55 five of this act, or impair the restructuring property or the collection
56 or recovery of transition charge revenues, including, but not limited

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1 to, either directly or indirectly by taking transition charges into
2 account when setting other rates for any owner of the T&D system assets;
3 nor shall the amount of revenues arising with respect to restructuring
4 property be subject in any way to reduction, impairment, postponement,
5 or termination.

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

16 practical.

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

30 2. Activities limited to issuing restructuring bonds and related
31 activities.

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

33 (i) issue the restructuring bonds contemplated by a restructuring cost
34 financing order, and use the proceeds thereof to purchase or acquire,
35 and to own, hold and use restructuring property or to pay or fund
36 upfront financing costs provided, however, that the restructuring bond
37 issuer shall only issue and sell restructuring bonds once;

38 (ii) contract for servicing of restructuring property and restruc-
39 turing bonds and for administrative services; and

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

43 (b) So long as any restructuring bonds remain outstanding, the
44 restructuring bond issuer shall not be authorized to merge or consol-
45 idate, directly or indirectly, with any person or entity. Additionally,
46 the restructuring bond issuer shall not have the power or authority to
47 incur, guarantee or otherwise become obligated to pay any debt or other
48 obligations other than the restructuring bonds and financing costs
49 unless otherwise permitted by the restructuring cost financing order.
50 The restructuring bond issuer shall keep its assets and liabilities
51 separate and distinct from those of any other entity.

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

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1 (i) sue and be sued;

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

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

5 (iv) make and execute contracts and all other instruments necessary or
6 convenient for the exercise of its powers and functions under this act
7 and to commence any action to protect or enforce any right conferred
8 upon it by any law, contract or other agreement, including, without
9 limitation, make and execute contracts with the authority, LIPA or any
10 successor owner of the T&D system assets, any servicers, any financing
11 entity or any other public or private entities to service restructuring
12 property owned by restructuring bond issuer, to service restructuring
13 bonds issued by restructuring bond issuer, and to provide services in

14 administering the restructuring bond issuer, and to pay compensation for
15 such services;
16 (v) appoint officers, agents and employees, prescribe their duties and
17 qualifications, fix their compensation and engage the services of
18 private consultants, accountants, counsel and others on a contract basis
19 for rendering professional and technical assistance and advice;
20 (vi) pay its operating expenses, scheduled debt service on the
21 restructuring bonds and other ongoing financing costs;
22 (vii) issue restructuring bonds and provide for the rights of the
23 holders thereof;
24 (viii) procure insurance against any loss in connection with its
25 activities, properties and assets in such amount and from such insurers
26 as it deems desirable;
27 (ix) invest any funds or other moneys under its custody and control in
28 investment securities or under any ancillary agreement;
29 (x) establish and maintain such reserves, special funds and accounts,
30 to be held in trust or otherwise, as may be required by agreements made
31 in connection with the restructuring bonds, or any agreement between
32 itself and third parties;
33 (xi) as security for the payment of the principal of and interest on
34 any restructuring bonds issued by it pursuant to this act, and any
35 agreement made in connection therewith, pledge all or any part of its
36 revenues or assets, including, without limitation, restructuring proper-
37 ty, unspent proceeds of its restructuring bonds, transition charge
38 revenues, and earnings from the investment and reinvestment of unspent
39 proceeds of its restructuring bonds and transition charge revenues; and
40 (xii) do any and all things necessary or convenient to carry out its
41 purposes and exercise the powers expressly given and granted in this
42 section.

43 3. No authority to file for bankruptcy protection. The restructuring
44 bond issuer shall not be authorized to be a debtor under chapter 9 of
45 the United States Bankruptcy Code or any other provision of the United
46 States Bankruptcy Code. No governmental officer or organization is
47 empowered to authorize, whether by executive order or otherwise,
48 restructuring bond issuer to be a debtor under chapter 9 of the United
49 States Bankruptcy Code or any other provision of the United States Bank-
50 ruptcy Code. Until at least one year and one day after all restructuring
51 bonds issued by restructuring bond issuer have ceased to be outstanding
52 and all unpaid financing costs have been paid, the state hereby pledges,
53 contracts and agrees with owners of restructuring bonds issued by
54 restructuring bond issuer that the state will not limit or alter the
55 denial of authority to the restructuring bond issuer to be a debtor

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1 under chapter 9 of the United States Bankruptcy Code or any other
2 provision of the United States Bankruptcy Code.

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

7 (a) One of the trustees first appointed shall serve for a term ending
8 four years from January first next succeeding his appointment; one of
9 such trustees shall serve for a term ending five years from such date;
10 and one of such trustees shall serve for a term ending six years from
11 such date. Their successors shall serve for terms of six years each.
12 Trustees shall continue in office until their successors have been

13 appointed and qualified and the provisions of section 39 of the public
14 officers law shall apply. In the event of a vacancy occurring in the
15 office of a trustee by death, removal, resignation or otherwise, the
16 Governor shall appoint a successor to serve for the balance of the unex-
17 pired term.

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

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

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

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

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

47 (g) Each trustee shall have a fiduciary duty to act in the best inter-
48 ests of the restructuring bond issuer, including its creditors, the
49 owners of the restructuring bonds, and such other duties as may be spec-
50 ified in the organizational documents or other agreements of the
51 restructuring bond issuer.

52 (h) The restructuring bond issuer and its corporate existence shall
53 continue until one year and one day after all restructuring bonds and
54 ongoing financing costs and other indebtedness of restructuring bond
55 issuer have been actually paid and all its other liabilities and obli-
56 gations have been paid, met or otherwise discharged. Upon termination of
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1 the existence of restructuring bond issuer, all of its rights and prop-
2 erty shall pass to and be vested in the state.

3 § 5. Restructuring cost financing orders. 1. Content of restructuring
4 cost financing orders. The restructuring cost financing order shall
5 include the following: (i) a description of the approved restructuring
6 costs; (ii) the amount of approved restructuring costs that the authori-
7 ty proposes to pay through the sale of the restructuring property and
8 the issuance of the restructuring bonds; (iii) designation of the
9 authority as the entity in which initial ownership of restructuring
10 property will vest; (iv) an estimate of the date on which restructuring

11 bonds will be issued and the expected scheduled term to maturity of the
12 restructuring bonds; (v) a description of the estimated debt service on
13 the restructuring bonds and other ongoing financing costs that may be
14 recovered through transition charges; as part of this description, the
15 restructuring cost financing order may include qualitative or quantita-
16 tive limitations on financing costs approved to be recovered provided
17 that no such limitation on financing costs shall impair the ability of
18 the restructuring bond issuer to pay and service the restructuring bonds
19 in accordance with their terms; (vi) a proposed methodology for allocat-
20 ing transition charges on an equal percentage basis among customer
21 service classifications and among volumetric (kWh) and demand (kW)
22 charges within those customer service classifications, along with an
23 associated bill impact analysis of the proposed methodology; (vii) a
24 description of the proposed adjustment mechanism to reconcile actual
25 collections with forecasted collection on at least an annual basis and a
26 finding that the adjustment mechanism is just and reasonable; (viii) a
27 description of the benefits to consumers in the service area that are
28 expected to result from the sale of the restructuring property and the
29 issuance of restructuring bonds as opposed to traditional alternative
30 financing mechanisms; (ix) specifying the entity that will contract to
31 act as servicer with respect to the restructuring property and the
32 restructuring bonds on terms and conditions mutually acceptable to such
33 servicer and the restructuring bond issuer; (x) specifying the entity or
34 entities that will contract to provide administrative or other services
35 to the restructuring bond issuer; (xi) specifying when the restructuring
36 property will be created and vest and addressing such other matters as
37 may be necessary or desirable for the marketing or servicing of the
38 restructuring bonds or the servicing of the restructuring property;
39 (xii) authorizing the imposition, billing and collection of transition
40 charges to pay debt service on the restructuring bonds and other ongoing
41 financing costs; (xiii) a description of the restructuring property that
42 will be created and that may be used to pay and secure the payment of
43 the restructuring bonds approved to be issued in the restructuring cost
44 financing order; (xiv) a requirement that the amounts in the debt
45 service reserve accounts or other accounts funded with the proceeds of
46 restructuring bonds or transition charges be fully used, to the extent
47 practical, to make the final payments of principal and interest on the
48 restructuring bonds and other ongoing financing costs or to make refunds
49 to consumers on the same basis as such consumers would have then been
50 obligated to pay transition costs; and (xv) the finding required by
51 subdivision 1 of section 3 of this act.

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

4 3. Adjustment mechanism.

5 (a) Each restructuring cost financing order shall include a mathemat-
6 ical formula for making periodic adjustments to the transition charges.

7 The mathematical formula shall apply the following principles:

8 (i) The transition charges will be adjusted at least annually to

9 ensure that the collections of transition charges are adequate to pay
10 principal and interest on the associated restructuring bonds when due
11 pursuant to the expected amortization schedule, to fund all debt service
12 reserve accounts to the required levels and to pay when due all other
13 expected ongoing financing costs.

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

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

23 (iv) The adjustments of transition charges will take into account any
24 over-collection or under-collection of transition charges so that, to
25 the extent practical, the outstanding balance of restructuring bonds is
26 equal to the scheduled balance on the expected amortization schedule,
27 the amounts in the debt service reserve accounts are equal to the
28 required reserve level, and all ongoing financing costs are paid when
29 due.

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

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

46 (c) Each adjustment to the transition charge, in amounts as calculated
47 by or on behalf of the owner of restructuring property, shall automat-
48 ically become effective sixty days following the date on which the
49 notice of periodic adjustment is filed with the authority unless the
50 authority approves an earlier effective date requested by the restruc-
51 turing bond issuer.

52 (d) Notwithstanding any other provision of law to the contrary, the
53 authority shall allow interested parties thirty days from the date of
54 filing of the notice for adjustment within which to make comments. Such
55 comments shall be limited to the mathematical accuracy of the calcu-
56 lations of the amount of the adjustments. If the authority determines

1 that the calculation of the transition charge adjustment in the notice
2 was mathematically inaccurate, the transition charge adjustment shall be
3 changed as soon as it is reasonably practical to do so, but estimated
4 overcollections or undercollections resulting from the mathematical
5 error shall be taken into account in the next succeeding periodic
6 adjustment.

7 (e) No adjustment pursuant to this section shall in any way affect the
8 irrevocability of the restructuring cost financing order as specified in
9 subdivision 4 of section five of this act. No adjustment pursuant to
10 this section shall require any approvals or action under any other law
11 or shall be deemed to be the establishment of a new charge, fee or rate
12 under any law.

13 4. Irrevocability of restructuring cost financing orders.

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

18 (b) A restructuring cost financing order may be amended on or after
19 the date of issuance of restructuring bonds approved thereunder only:

20 (i) at the request of the authority; (ii) in accordance with any
21 restrictions and limitations on amendment set forth in the restructuring
22 cost financing order; (iii) subject to the limitations set forth in
23 subdivision 7 of section three of this act; and (iv) upon approval by
24 the PACB within thirty days of receipt of such amendment; provided,
25 however, that if no approval or disapproval is made within such time,
26 the amendment shall be deemed approved.

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

32 5. Effect of restructuring cost financing order.

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

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

43 (c) For so long as restructuring bonds issued pursuant to a restruc-
44 turing cost financing order are outstanding, and the related approved
45 restructuring costs have not been paid in full, the transition charges
46 authorized in the restructuring cost financing order shall be non-by-
47 passable and shall apply to all consumers connected to the T&D system
48 assets and taking electric delivery service located within the service
49 area, whether or not the consumers produce their own electricity or
50 purchase electric generation services from a provider of electric gener-
51 ation services other than the owner of the T&D system assets and whether
52 or not the T&D system assets continue to be owned by LIPA.

53 § 6. Restructuring bonds. 1. No recourse. Restructuring bonds shall
54 be without recourse to the credit or any assets of the authority, LIPA
55 and the restructuring bond issuer, other than the restructuring property

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1 and other assets and revenues of restructuring bond issuer as specified
2 in the pertinent restructuring cost financing order.

3 2. Exemption from taxation.

4 (a) It is hereby found and declared that the activities of the
5 restructuring bond issuer are primarily for the benefit of the people of

6 the state of New York, for the improvement of their welfare and prosper-
7 ity, and is a public purpose, and the restructuring bond issuer shall be
8 regarded as performing an essential governmental function in carrying
9 out the provisions of this act.

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

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

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

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

49 § 7. Restructuring property. 1. (a) Restructuring property that is
50 created pursuant to a restructuring cost financing order shall consti-
51 tute an existing, present property right, notwithstanding the fact that
52 the imposition and collection of transition charges will depend on
53 further acts that have not yet occurred, including but not limited to:
54 (i) LIPA or any successor owner of the T&D system assets delivering
55 electric energy or related services, (ii) a servicer performing servic-
56 ing functions relating to the collection of transition charges, or (iii)

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1 the level of future consumption of electric energy. Restructuring prop-
2 erty shall exist whether or not transition charges have been imposed,
3 billed, accrued or collected and notwithstanding the fact that the value

4 or amount of the restructuring property is dependent on the future
5 provision of service to customers by LIPA or any successor owner of the
6 T&D system assets.

7 (b) All restructuring property created pursuant to a restructuring
8 cost financing order shall continue to exist until the restructuring
9 bonds issued pursuant to such restructuring cost financing order are
10 paid in full and all ongoing financing costs relating to the restructur-
11 ing bonds have been paid in full.

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

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

41 (e) Restructuring property, transition charges, transition charge
42 revenues, and the interests of an assignee, bondholder, financing party
43 or any other person in restructuring property or in transition charge
44 revenues, are not subject to setoff, counterclaim, surcharge or defense
45 by a servicer, any consumer, the authority, LIPA or any successor owner
46 of the T&D system assets or any other person or in connection with any
47 default, bankruptcy, reorganization or other insolvency proceeding of
48 the authority, LIPA or any successor owner of the T&D system assets, any
49 affiliate thereof or any other entity or otherwise. To the extent that
50 any consumer makes a partial payment of a bill containing both transi-
51 tion charges and any other charges, such payment shall be allocated pro
52 rata between the transition charges and the other charges unless the
53 consumer specifies that a greater proportion of such payment is to be
54 allocated to the transition charges, except that the other charges shall
55 be reduced by the amount of any claims of setoff, counterclaim,
56 surcharge or defense for purposes of such allocation.

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1 (f) Any successor owner of the T&D system assets and any successor

2 servicer shall be bound by the requirements of this act and shall
3 perform and satisfy all obligations of a servicer in the same manner and
4 to the same extent under a restructuring cost financing order as did
5 LIPA and the initial servicer, including, without limitation, the obli-
6 gation to impose, bill and collect the transition charges and to pay
7 such collections to the person entitled to receive the transition charge
8 revenues.

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

52 3. Sales of restructuring property.

53 (a) A transfer of all or any portion of restructuring property, which
54 the parties in the governing documentation have expressly stated to be a
55 sale or other absolute transfer, in a transaction approved in a restruc-
56 turing cost financing order, shall be treated as an absolute transfer of

1 all of the transferor's right, title, and interest (as in a true sale),
2 and not as a pledge or other financing, of the restructuring property,
3 other than for federal, state and local income and franchise tax
4 purposes.

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

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

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

52 § 8. Rights and duties while restructuring bonds are outstanding. 1.
53 Responsibilities of the authority. (a) For the purpose of investigating
54 compliance with the provisions of this act and the applicable restructur-
55 ing cost financing order, the authority shall have the right, juris-

1 any successor owner of the T&D system assets, the restructuring bond
2 issuer, any other financing entity, any servicer, any third-party biller
3 and any other person or entity that owns restructuring property or has
4 the right to impose, bill or collect transition charges until the
5 restructuring bonds issued pursuant to the restructuring cost financing
6 order have been paid in full and all financing costs relating to such
7 restructuring bonds have been paid in full.

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

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

46 (a) Any failure of any financing entity to apply the proceeds of
47 restructuring bonds, or proceeds from the sale of restructuring proper-
48 ty, in a reasonable, prudent and appropriate manner or otherwise comply
49 with any provision of this act shall not invalidate, impair or affect
50 any restructuring cost financing order, restructuring property, transi-
51 tion charge, or restructuring bonds.

52 (b) Any owner of T&D system assets, any servicer, any third-party
53 biller and any other entity that bills or collects T&D rates shall

54 simultaneously impose, bill and collect any transition charges applica-
55 ble to consumers in the service area, including all consumers connected
56 to the T&D system assets and taking electric delivery service located
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1 within the service area, shall allocate partial payments by consumers as
2 provided in this act, shall terminate service to non-paying consumers on
3 the same basis as termination of service is permitted for non-payment of
4 T&D rates, shall exercise all enforcement rights of the owner or pledgee
5 of the restructuring property for the benefit of such owner or pledgee,
6 and shall remit any transition charge revenue to the owner or pledgee of
7 the restructuring property.

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

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

24 § 10. Choice of law. The law governing, as applicable, the validity,
25 enforceability, attachment, perfection, priority and exercise of reme-
26 dies with respect to the transfer of an interest or right or creation of
27 a security interest in any restructuring property, transition charge or
28 restructuring cost financing order, shall be the laws of the state of
29 New York.

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

47 § 12. Effect of invalidity on actions. Effective on the date that
48 restructuring bonds are first issued under this act, if any provision of
49 this act is held to be invalid or is invalidated, superseded, replaced,
50 repealed or expires for any reason, that occurrence shall not affect any
51 action allowed under this act that is taken by the authority, LIPA, the

52 restructuring bond issuer, any owner of T&D system assets, an assignee,
53 a collection agent, a financing party, a holder of restructuring bonds
54 or a party to an ancillary agreement and any such action shall remain in
55 full force and effect.

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1 § 13. Effectiveness of the act. The authority may not adopt its first
2 restructuring cost financing order after the five year period after the
3 effective date of this act.

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

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

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

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

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

9 § 17. This act shall take effect immediately.

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

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

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