

**LONG ISLAND POWER AUTHORITY**

**MINUTES OF THE 188th MEETING**

**HELD ON MARCH 27, 2008**

**Pursuant to notice dated March 24, 2008, the Long Island Power Authority (the "Authority") was convened for the one hundred and eighty-eighth time at 11:17 AM at the Omni Teleconference Center, in Uniondale, NY.**

**The following Trustees of the Authority were present:**

**James Larocca, Chairman  
Howard Steinberg, Vice Chairman  
Michael Affrunti  
Cristofer Damianos  
Lawrence Elovich  
John Fabio  
Michael Fragin  
James Herrmann  
Nancy Nugent  
Suzette Smookler**

**Also representing the Authority were Kevin S. Law, President and Chief Executive Officer; Lynda Nicolino, Acting General Counsel, Elizabeth McCarthy, Chief Financial Officer, and Michael Hervey, Vice President-Operations. Also**

present were; Michael Deering, Vice President-Environmental Affairs, Edward Dumas, Vice President-Communications; Bruce Germano, Vice President-Retail Services; James Peterson, Director of Power Markets Contracts; and Patricia Alberti, Acting Secretary to the Board of Trustees.

Chairman Larocca addressed the audience and called the meeting to order.

Chairman Larocca then requested that a moment of reflection be observed in recognition of our status as a nation at war. (A moment of reflection is taken)

After leading the audience in the pledge of allegiance, the Chairman noted the presence of a quorum for the record. The Chairman stated that the first order of business is the minutes of the February 26, 2008 meeting of the Board of Trustees. Chairman Larocca asked for a review of the minutes, after which President Law noted that on page 60 of the minutes a correction should be made to the reference to "Chairman Law". The Chairman noted the correction.

No other comment having been heard, the following resolution was approved unanimously:

**855. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 27, 2008 MEETING OF THE BOARD OF TRUSTEES OF THE LONG ISLAND POWER AUTHORITY**

---

**RESOLVED, that the Minutes of the meeting of the Authority held on March 27, 2008 are hereby approved and all actions taken by the Trustees present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.**

**\* \* \***

**After summarizing the action items on the Board agenda for the day, Chairman Larocca stated that the next item on the agenda is the President's Report, to be delivered by President Law.**

**President Law stated that there have been a number of things that have happened in New York's Capitol over the last couple of weeks, and he will be meeting with the new Governor's staff to go over many issues. He continued that LIPA spent the last year working with Governor Paterson in his Renewable Energy Task Force. He indicated that LIPA has a good working relationship with Governor Paterson and his staff, and the Governor is very attuned to energy issues and the direction that LIPA is looking to head toward. He added that he looks forward to a continued good working relationship with Governor Paterson and his staff.**

**President Law reported that many meetings have taken place over the last month and that he testified before the Nassau and Suffolk County Legislatures, and brought them up to speed on what LIPA is doing. He continued that LIPA received terrific feedback from both legislative bodies. He indicated that LIPA**

made a presentation to the Association for a Better Long Island on proceeding with LIPA's energy efficiency programs and that he also spoke before the leadership group Energia and the Long Island Mid-Suffolk Business Association. He noted that he also met with LISEIA (Long Island Solar Energy Industries Association) to let them know what LIPA is looking to do in terms of expanding its solar programs here on Long Island.

President Law reported that he met with Senator Chuck Fuschillo. He noted that the Senator had received a grant and a member item for the Bellmore and Wantagh school districts, which LIPA had matched with its Clean Energy Initiative for some photovoltaic systems at those schools.

President Law reported that the most substantive meeting that LIPA had over the last month was with the New York State Comptroller to discuss a base line audit that they will be doing with LIPA. He continued that Ms. McCarthy, Ms. Nicolino and he attended the meeting. He noted that he also asked the Comptroller to take a look at the Fuel Power Purchase charge, sometimes referred to incorrectly by many as the "surcharge" and LIPA expressed full cooperation with them. He added that LIPA will provide Comptroller DiNapoli and his staff with information, so LIPA is off to a good start with the Comptroller, and that will be ongoing over the rest of the year.

President Law stated that he was scheduled to meet with the Canadian Consulate and Hydro-Quebec, but due to a new Consulate having been appointed just last week, they asked if they could postpone the meeting for a couple of weeks until the new Consulate gets his feet on the ground. He indicated that the meeting will now be held in April, and both parties are excited about exploring the opportunity of bringing hydropower from Canada down to Long Island.

President Law stated that he previously made a request to National Grid for an audit of LIPA's Clean Energy program. He continued that he sent a letter to Tom King, the President of the United States operations at National Grid. He indicated that Mr. King responded and had taken the request seriously. He further indicated that National Grid is beginning that review under their independent audit functions, so he will keep the Board abreast of the situation, but he did get a prompt and good response from National Grid.

President Law reported that one of the agenda items concerns one of the RFP's that LIPA recently put out. He continued that he briefed the Board at the last meeting that LIPA had an RFP out for a commercial real estate broker. He indicated that LIPA will continue to evaluate those responses and perhaps, LIPA staff will have a recommendation to the Board at the April meeting.

President Law reported that last month he forgot to mention a new addition to LIPA's legal department, Michele Pincus, who was brought on as an Associate

**General Counsel. He continued that Ms. Pincus comes to LIPA after many years at a private law firm, Lazer, Aptheker in Melville, and that she has actually performed some work for LIPA and is very familiar with LIPA operations, and has been a real asset to Ms. Nicolino. He added that Ms. Pincus concentrates on various real estate, SEQRA, and some litigation matters and LIPA is excited to have Ms. Pincus on board.**

**President Law reported that the classified ads are out for a LIPA Compliance Officer, which is a new position, and resumes are beginning to come in. He indicated that LIPA will be screening the resumes and evaluating those individuals and he will report back to the Board at the next meeting regarding LIPA's success.**

**President Law stated that Jim Peterson, who has been with LIPA for a long time, and spent a number of years at NYPA as well, is LIPA's acting department head of Power Markets section. He continued that he has asked Mr. Peterson to consider becoming the Vice President of that department and he is considering that. He noted that LIPA relies on Mr. Peterson tremendously, he has incredible knowledge of power markets and Mr. Peterson is somebody that he has grown to rely on a lot since he has been here. He thanked Mr. Peterson for his service at LIPA.**

President Law reported that everything continues to move along in terms of the repowering efforts, the studies, and the stakeholders group that LIPA put together for Northport and Port Jefferson. He continued that the due diligence that LIPA is doing regarding the options that it has on four plants to possibly purchase from National Grid is also continuing to move along. He added that the master plan that LIPA is preparing is also progressing and LIPA is receiving feedback on its outline. He noted that LIPA will schedule public hearings for April and, as indicated, the due diligence on the options is underway and he hopes to be in a position to report back to the Board at the May meeting.

President Law indicated that at this time he will defer to Chairman Larocca.

Chairman Larocca stated that there is a matter on the Board's agenda which will be discussed in executive session as it relates to potential litigation. He continued that Mr. Harvey Levinson, the distinguished Assessor of Nassau County, is present today and has asked to be heard on the matter, along with the Superintendent of the North Shore School District. He indicated that he is going to ask them to step forward, out of order, in order to accommodate their schedule before the President's Report is completed.

Mr. Levinson stated that he listened to the telecast of the Board's January meeting where the issue was raised about the North Shore School District, the PILOT payments and some related issues. He continued that by way of

background, he was elected in 2003 and came into office in 2004. He indicated that one of the first things that came across his desk was the issue of the taxability of the generators KeySpan built and owned in the North Shore School District. He added that he and his counsel, Carl Laske, one of the experts in New York State on utility valuation, conducted a very thorough review.

Mr. Levinson stated that when they reviewed the property, they believed that the KeySpan facility should have been put on the tax rolls for the 2006-2007 years because the facility was owned and operated then by KeySpan, which is not an exempt organization. He continued that KeySpan is listed on the New York Stock Exchange and they pay property taxes. He indicated that in their opinion KeySpan's facility should have been on the tax roll to pay property taxes.

Mr. Levinson stated that the argument against the property taxes put forth by LIPA's counsel was that LIPA has a power purchase agreement, and therefore, since LIPA is exempt, this facility should be exempt. He continued that it was an issue of first impression and the decision was made by his office and himself to put it on the tax rolls. He indicated that what happened next was that the Assessment Review Commission (ARC), which supervises and reviews his evaluations, took the case because LIPA brought an appeal to it. He further indicated that after much reflection, the ARC decided that the property should be exempt, but they decided to do that with two stipulations between the Commission and LIPA.

Mr. Levinson indicated that, if the property was on the tax rolls, LIPA would presently be paying more than six million dollars in property taxes, because the tax rate in that district is approximately \$600 million dollars and it changes every year. He continued that they put it on at a value of \$63 million, which in his opinion, was below what the real value should be. He indicated that he was not interested in trying to raise the value because they wanted to have a very conservative value. He added that the issue was to be tested not so much on valuation, which is what most people challenge, but whether it should be taxed at all.

Mr. Levinson noted that if the ARC granted the request and put the facility on the tax rolls as he had requested, and if LIPA had sued and won, Nassau County would be responsible for the refund, not the North Shore School District. He continued that the refund that the County would have to pay, if it took two years to be resolved, could have been \$13 million or more. He indicated that the ARC obviously considered that aspect when they made their decision.

Mr. Levinson stated that the stipulation that was signed included an agreement by LIPA to pay \$2 million in PILOT payments and there was a lot of confusion about that. He continued that the North Shore School District was never going to get \$2 million because each level of government gets a piece of the pie. He indicated that the school district would get about 60 percent, which

would be about \$1.2 million dollars. He noted that the school district would obviously rather have the \$6 million than then \$1.2 million.

Mr. Levinson stated that the ARC reviewed all of this and decided to make it exempt, but there were 2 stipulations, including that LIPA would continue with its \$2 million dollar offer and it would be retroactive to the 2003-2004 year, and including 2003-2004 through 2006-2007, so the school district was getting a nice chunk of money as well as Nassau County and some other districts. He added that paragraph nine of the stipulation that was signed states that LIPA will “enter into an agreement with the North Shore School District to provide assistance for energy-conserving capital improvements or other similar assistance in a manner and an amount to be specified in such agreement.” He noted that when the stipulation was signed, there was a purposeful decision made not to include the amount and to leave it to the review of LIPA and the North Shore School District.

Mr. Levinson stated that Mr. Hoefer, who had been negotiating on behalf of LIPA, spoke with the school district. There was an agreement in principal that although the school district was looking for \$1 million dollars, a compromise was struck for a \$700,000 payment for energy conservation. He continued that the ARC’s agreement with LIPA was two-faceted and that they were going to overrule him and make the facility exempt, but there would be two conditions: LIPA would pay the PILOT agreements and LIPA would pay funds to the North Shore School District. He indicated that this is the only reason, in his opinion, those two

factors had to be done, and as a result of that, both LIPA and the ARC signed off on the stipulation.

Mr. Levinson stated that unlike most legal matters, he thinks the facts are not in dispute here. He continued that the North Shore School District would have benefited if the property had been on the tax rolls. He indicated that it came off the tax rolls and the school district would get additional revenue which would be retroactive in the amount of \$700,000. He added that counsel for LIPA, at the January meeting, asked for approval by this Board for \$700,000, and it was not a number just pulled out of a hat; rather, it was a negotiated amount that all of the parties agreed to.

Mr. Levinson stated that he believes that the matter is quite simple and that there was an agreement by LIPA for months that the amount was going to be \$700,000. He continued that he believes that the Board should honor the agreement of Mr. Hoefer and also Mr. Kessel who were involved in the negotiations prior to his involvement as the elected Chairman of the Board of Assessors. He indicated that he is available to answer any questions but simply said, the amount was agreed upon. He noted that the school district will use the money for energy conservation and the money is a fair amount of money for both sides.

**Mr. Levinson stated that the stipulation incorporated the promise of a payment so it is just the amount of money that has to be agreed to, and it is not his goal to say that he is going to put this back on the tax rolls. He indicated that if LIPA does turn down the request, Nassau is going to have to consider that option which he would prefer not to do. He noted that it would be a consideration if the Board did not live up to what he believes is a fair agreement of \$700,000.**

**Chairman Larocca stated that because of the legal posture, the Board may ask factual questions, but should not in any way debate or argue the merits of the proposal. The Chairman asked if there were any questions for the Assessor.**

**Trustee Fragin asked why the agreement was structured with two payments, a PILOT payment and then a separate payment to the school district, rather than just a PILOT payment with a portion going to the school.**

**Mr. Levinson answered that the school district was disappointed in that the PILOT payment was one third of what the taxes would be, so the school district obviously wanted the facility on the tax roll. He continued that in recognition of the fact that LIPA's payments to the school district were only going to be one-third of what the taxes would be, the additional payment was added, which was a unique agreement. He noted that these negotiations had been ongoing for some time between the school board and Mr. Kessel. He added that,**

as he understands it, Mr. Kessel had offered some type of sweetener to encourage the school district to agree to the PILOT, and they were told that in addition to the PILOT payment that there would be some energy conservation money going to the school district and the amount agreed to was \$700,000.

Mr. Levinson stated that he does not think that the facts are in dispute. This was an agreement in principal between LIPA and the school district as negotiated by Mr. Hoefer. He continued that this is the only property like this because normally the ARC is not involved with such PILOTS.

Chairman Larocca asked whether the Superintendent intended to address the board.

Dr. Edward Melnick introduced himself as Superintendent of the North Shore Schools. He continued that he would like to begin by acknowledging the positive atmosphere of the most recent meeting with Mr. Law and Ms. Nicolino. He indicated that they have brought to LIPA a new positive energy and a professionalism that he had not experienced before. He added that it has been a real pleasure to have these conversations with them and to work with them.

Dr. Melnick stated that his purpose in addressing the Board this morning was to make sure that the Board had an accurate understanding of the historical background and context under which the agreement was made with the

North Shore School District. He continued that many years ago, prior to the commencement of the generator project at Glenwood Landing, Mr. Kessel, along with other representatives from LIPA, held a number of hearings and community informational meetings within the school district in which they discussed the potential project. He indicated that members of the North Shore community were informed by LIPA representatives at these meetings that the generators would produce approximately \$2 million dollars in annual revenue to the school district.

He further indicated that as Nassau County and LIPA engaged in ongoing discussion and negotiation pertaining to the tax status of the generators, and specifically as to whether or not the generators would be placed on the tax rolls, it became apparent to the community and the members of the Board of Education that should the generators be placed on the tax rolls, the revenue to the district would have been much greater than \$2 million dollars per year. He added that it became known only at that point to the district and the community that should a proposed PILOT be enacted, the revenue to the district would actually be substantially less than the \$2 million dollars per year that had been represented by Mr. Kessel and LIPA officials in those early meetings.

Dr. Melnick stated that after the generators were built, and as ongoing discussions with LIPA and the County continued, Mr. Kessel met with representatives of the North Shore School Board of Education, as well as himself, his assistant superintendent for business, and counsel for the school district. He

continued that in this meeting, Mr. Kessel stated that, provided that a PILOT agreement payment was reached with the County, LIPA would be happy to donate funds for some capital projects for the improvement of the schools. He indicated that it was during the same period of time that LIPA initially offered to give the school district a piece of property in Glenwood Landing, within the district boundaries, for the purpose of developing a school district transport facility. He added that representatives from LIPA subsequently stated that they could not give the property to the district, but would sell the property for \$25,000 provided the school district did not conduct any environmental testing and did no digging on the property, which eliminated the potential use of the property for any purpose.

Dr. Melnick stated that as negotiations between the County and LIPA continued, a decision was made by the County Assessor's Office to place the generators on the tax rolls, which would have resulted in revenue of much more than \$2 million dollars per year to the school district. He continued that LIPA challenged the decision resulting in the matter being placed before the Nassau County ARC. He indicated that the Chair of the ARC at that time, Glenn Borin, contacted the former president of the North Shore School Board of Education, Thomas Murphy. He further indicated that the Chairman asked Mr. Murphy to call Mr. Walter Hofer to negotiate a deal for additional payment to supplement the PILOT at that time.

**Dr. Melnick stated that when Mr. Murphy had his first conversation with Mr. Hoefer, the amount of \$1 million was discussed, and subsequently a grant of \$700,000 was agreed to. He continued that the amount was known and agreed to by all parties, including members of the ARC. He indicated that in a meeting held at the North Shore School District, with board members and district administrators present, it was discussed that the \$700,000 grant would have to be expended for energy efficiency and conservation matters. He added that the fact that this negotiation did take place is memorialized in the addendum to the stipulation of the PILOT signed by Mr. Hyman for LIPA and the County Attorney's Office, which was approved along with the PILOT, by the New York State Comptroller's Office.**

**Dr. Melnick stated that Mr. Murphy was informed that should LIPA renege on the agreement to provide this grant to the North Shore School District, the Assessor's office could and would, in fact, consider placing the generators back on the tax rolls. He further stated that he believes that the resolution to the situation, namely providing a grant, would be a win-win situation for both LIPA and the North Shore School District. He indicated that the grant will enable the school district to reassure the community that LIPA has, in fact, met its commitment to the residents of the North Shore School District, enabling the district to complete energy efficiency and conservation projects and in the long term, save the residents money. He noted that this has been a long and arduous**

process, and the district appeals to the Board of Trustees to meet LIPA's commitment to the North Shore School District.

Chairman Larocca asked if there were any questions for the Superintendent. Chairman Larocca thanked Mr. Levinson and Dr. Melnick for addressing the Board of Trustees. He indicated that the Board will consider this matter in its executive session at the end of the regular session.

Chairman Larocca requested that President Law continue with the President's Report.

President Law stated that he wants to thank Mr. Levinson and the representatives from the school district. He continued that he and Ms. Nicolino have had meetings with them and they have been equally professional and courteous in trying to reach a resolution with LIPA, and he thinks that they should continue to discuss this in executive session. He noted that they are trying to reach a resolution and he thanks them for coming down.

President Law stated that the last item that he had on his agenda was an update on Southampton and the transmission line and LIPA's efforts to try to accommodate the Town of Southampton and the local community residents on undergrounding the entire nine miles of that project. He continued that as they discussed at the Board's last meeting, the Board had previously adopted the

Findings Statements for burying 55 percent of the line. He indicated that 45 percent would be overhead. He further indicated that, as promised, LIPA bid out the project both ways as the 55/45 as well as the 100 percent undergrounding. He added that the bids came in lower than LIPA had estimated, in that LIPA had estimated approximately \$10 million dollars and the bids came in at about \$8 million dollars, so that is good news.

Trustee Fragin asked whether there was an \$8 million difference. President Law replied it would be an \$8 million differential to bury 100 percent of the line, and LIPA had estimated that it would be an additional \$10 million, so it came in for \$2 million dollars less. He continued that LIPA had several more discussions with the Town, including both Councilman Nuzzi and Councilwoman Anna Throne-Holst, as well as Assemblyman Thiele, and there were a few exchanges of correspondence as well which was provided to the Trustees. President Law stated that they have been hung up on the issue of indemnification, which is something that the Board had required that they obtain. He continued that the Town has offered an indemnification just to the extent of the collection, but not to cover the expense of any third party litigation. He indicated that the Town proposed another alternative that Ms. Nicolino, Ms. McCarthy and he readily dismissed as just being too administratively cumbersome for LIPA. He added that they had a discussion as recently as Tuesday of this week with Assemblyman Thiele and Councilpersons Nuzzi and Throne-Holst, and the parties are stuck on the indemnification issue.

President Law stated that in between all of this, the Town introduced a resolution and called for a public hearing requiring all utilities, including LIPA, to bury all of their cables. He continued that this was unbeknownst to LIPA and he was a little upset about that. He indicated that LIPA continued to have discussions with the Town. He added that LIPA had heard threats and rumors of litigation by the Town against LIPA, but Councilpersons Nuzzi and Throne-Holst assured that nothing had been filed and that the preference was not to do that.

President Law stated that unfortunately, today, LIPA received a phone call from the Town's outside counsel, asking LIPA to show up in court tomorrow, when they will be bringing an order to show cause in connection with LIPA's project. He continued that if there was litigation, he would lose some interest in all the efforts he has put in trying to reach a resolution. President Law indicated that he had a discussion with Assemblyman Thiele the night before, wherein he actually proposed another option to the Assemblyman. He further continued that he did not have a chance to talk to Councilpersons Nuzzi and Throne-Holst and he does not know if Assemblyman Thiele had shared that with them. He added that it was something along the lines of where they were hoping to be back in the beginning of the year, where the Town could create a district, collect the fees to make up the differential of undergrounding the full line and pay LIPA, rather than LIPA having to collect those monies and Assemblyman Thiele was going to be looking into that option.

President Law continued that he still remains committed to try and work out the indemnification issue, but that this has become the sticking point. He continued that construction is to begin on Monday on the project, and he told the Town that the project would start at both ends and construction in the middle, which is where the proposed overhead portion of the project is slated, would not take place in April. He indicated that this gave them a few more weeks, and if they were able to reach a resolution, they would then come back before the Board at the April 30<sup>th</sup> meeting to address it. He noted that while he would still be interested in doing that, if LIPA is in court tomorrow, he is not sure where that would bring them, and there is still time, at least from LIPA's perspective, to work something out in the month of April.

Chairman Larocca stated that having followed this as close as he has, President Law and Ms. Nicolino and everyone at LIPA has made what he considers to be extraordinary effort to find a solution to this matter. The Chairman continued that it is frustrating that LIPA has not been able to do that, but it has not been for lack of a very strong, good faith effort on the part of President Law and his staff. He indicated that he considers it a failure of the public policy process when one public body sues another, as they are all in one way or another representing the same people, and they ought to be able to resolve a matter like this with a relatively small amount of money, without resorting to the courts.

Chairman Larocca stated that once it reaches the Court, it changes everything from both of their points of view to a certain extent since they lose control of the action and the possibility of reconciliation and resolution. He indicated that he would consider it very regretful if the Town, particularly in the midst of what has been a very good faith effort this week to explore yet another approach to the indemnification problem, takes this matter into Court tomorrow. He added that to the extent it is possible, he would urge the Town not to proceed in litigation because they may, in effect, be precluding the very resolution that they are looking for. Once in Court things get complicated, difficult and beyond reach. He noted that it would introduce, in effect, another branch of government and another set of players.

Chairman Larocca continued that they are on the threshold of a season on the East End in which the demand for power has gone up yet again. He noted that the very government that LIPA is having difficulty reaching an agreement with, on the matter of the small remaining issue of the power line, is the very government that continues to aid, abet and in fact, encourage a level of growth that is unsustainable without additional electric power. The Chairman stated that LIPA gets put in this very difficult position of being painted as the bad guy when its obligation is to provide power as it is presented to LIPA as electric demand. He indicated that demand continues to grow at a rate that is unprecedented anywhere else in the service territory of the metropolitan area, so LIPA is in a

very difficult position. He asked the Town to consider not proceeding with litigation at this stage in the hope that they may yet reach a resolution.

Chairman Larocca stated that there are two representatives of the Town of Southampton to whom he would like to give an opportunity to speak, and he would also like to allow the Board to discuss the matter at this point.

Vice Chairman Steinberg asked whether there would be any additional cost imposed upon LIPA from delays caused by litigation after LIPA begins construction on Monday. Mr. Hervey answered that any day-to-day delays that LIPA experiences because it is in Court does incur a cost, but in the way that LIPA has bid this particular project, that delay has a relatively minor cost in relation to the project as a whole. He continued that perhaps more importantly to the area, is that delays in producing this project by the Fourth of July weekend could have significant reliability cost to the area in terms of system reliability. He indicated that LIPA has tried to acknowledge in the way that it bid this, that it may have delays from time to time, as it does in any sort of job. He added that in this case there would not so much be weather delays which LIPA always plans for, but perhaps litigation delays, and LIPA hopes that would be nonexistent or very minimal.

Vice Chairman Steinberg stated that hopefully the Town will take heed of what the Chairman and the President have said about foregoing litigation in order

to resolve this issue. He continued that because this litigation is a new factor that just apparently came up today, he would ask the staff to at least take a look at what LIPA's construction plans are in light of potential delays to see whether any changes have to be made. Chairman Larocca agreed.

Mr. Hervey stated that he thanks Vice Chairman Steinberg for stating that, but in the past LIPA has looked at alternatives to this project, which actually supports the importance of this project. He continued that there are no reasonable alternatives, and the only available short term alternative, which LIPA dismissed a long time ago, was the installation of temporary generation in the area. He indicated that there is no real open space to be able to do this effectively at this late time.

Trustee Fragin asked whether there is any type of contingency that LIPA could offer to the East End, and if an injunction does come about, at what point does LIPA have to start planning for the Fourth of July weekend to prevent a potential failure of the electric grid out past Southampton. Mr. Hervey answered that there are a few actions that LIPA can take that will mitigate the problem, which he has described before. He continued that LIPA will reconfigure the distribution system east of Jamesport on the North Fork and east of Southampton on the South Fork to carry more load from those areas further east. He indicated that in other words, the Bridgehampton load would tend to be served more from the Southampton substation. He added that Southold and

**Mattituck would be served more from the Jamesport substation, and that allows LIPA to take East End load and pull it back into the main part of LIPA's system a little bit better. Mr. Hervey stated that LIPA will mitigate a problem, if it happens, by doing this. He continued that LIPA will reduce the number of customers that would see a blackout in the event that a problem occurred. He noted that this will not eliminate it completely, and LIPA would still have an event that would affect several thousand customers if LIPA does have transmission problems during the summer.**

**Trustee Fragin stated that he would hope that the East End public officials would at least take this into account, and he does not know whether LIPA has heard from some of the North Fork officials who would be affected by this. He added that at a certain point, should litigation commence and LIPA be faced with these types of issues, LIPA will certainly have to start advising them to prepare the public for the event of brownouts and blackouts.**

**Chairman Larocca invited Councilpersons Nuzzi and Throne-Holst of the Town of Southampton to address the Board. The Chairman indicated that he appreciates them coming in, as always.**

**Councilman Nuzzi stated that their intent on being present today was not to take an adversarial approach, but just to address the issue of litigation. He continued that he is unfamiliar with Town-initiated action at this point. He noted**

that there may be something involving outside interests, but to the best of their knowledge, they are not aware that the Town has actually initiated litigation. Councilman Nuzzi stated that they were notified by LIPA that effective today, things were going to start and construction would commence on Monday. He continued that they are not here to take an adversarial position. He indicated that about a month ago they came in with several busloads of people, and hopefully they showed that there was a groundswell of support to bury the lines completely. He further indicated that the Board saw the difference in the individuals who were present, as opposed to what the community has been represented as. He added that they talked about something that is as important to them as it is to any community throughout Long Island.

Councilman Nuzzi stated that they recognize that the Board does its job by balancing the interests, community by community, but they want the Board to recognize that they feel that they are no different than any other and that they understand LIPA's concerns in that regard. He indicated that moving forward as they have through this process, and getting to the point where they realize that there are time constraints that have been repeated over and over again, they are still here to talk. He further indicated that he imagines that LIPA could do so with or without formal litigation, but hopefully without.

Councilman Nuzzi stated that a month ago, they did not want it to end there, in offering Southampton willingness to pay and in listening to LIPA's

response about indemnification. He continued that they have since responded, and President Law detailed this a little bit, in offering limited indemnification. He indicated that it is a bit of a reach for them and it is somewhat unprecedented, as it is for LIPA. He added that somewhere, somehow they recognize that they have to meet in the middle, and they are as hopeful that LIPA, whether now or in the final moments, will do the same.

Councilman Nuzzi stated that if the greatest concern is with collection of costs associated with the burial of the outstanding lines, the Town has come forward and indicated by letter from the Supervisor, that they are willing to do so. He continued that there is some continued discussion about indemnification beyond that, but there is a general feeling, and there has to be a consensus among the Town Board as well, that they need to meet in the middle, and they hope that LIPA is willing to do the same.

Councilman Nuzzi stated that he does not think this is the end, but they are reaching that point. He continued that they are here to say that they are still open to ongoing discussions, and hopefully, each and every individual member of the Board is. He added that they are close and that is the bottom line.

Councilman Nuzzi stated that in the end he thinks that LIPA and the Town can come to terms on what really is a creative and visionary solution to an issue that does not just impact the Town of Southampton, but impacts every

community within the service area and ultimately is something that has been addressed in the past and will have to continue to be addressed by LIPA moving forward. He thanked the Board for the opportunity to speak briefly before them.

Chairman Larocca thanked Councilman Nuzzi for his comments.

President Law also thanked Councilman Nuzzi. He continued that the Councilman has been nothing but a gentleman throughout the whole process, and very professional. He asked Ms. Nicolino what law firm it was that called her today and who they said they were representing. Ms. Nicolino responded that she was left a message by Charlotte Biblow, of the law firm of Farrel Fritz, who has been engaged by the Town of Southampton to challenge LIPA's SEQRA findings. She continued that Ms. Biblow notified her that tomorrow morning at 10:00 a.m., they will be filing their complaint and seeking injunctive relief by way of order to show cause in the Riverhead Supreme Court.

Councilwoman Throne-Holst stated that this was news to them. President Law stated that perhaps it was directed by the Supervisor's office.

Councilwoman Throne-Holst stated that they do not know the answer to that either, but when they leave here they will go right back to the Supervisor's office and address this issue because it is certainly news to them. She continued

that it was something that they did not want to resort to, so they will address that as soon as they get back.

Councilwoman Throne-Holst stated that she does not want to repeat everything that Councilman Nuzzi said, but they are here with only the best of intentions, and they are trying to underscore how important this issue is to them and to their community. She continued that they prevented two busloads of people from coming with them this time in order to give LIPA a break. She added that it is such an important issue to them because it is a community that has gone to great lengths, both financially and in every other way, to try to preserve what remains out there of the scenic farmland, and they have their self-taxation to try to preserve that.

Councilwoman Throne-Holst stated that the idea that these huge poles would come in and interfere with that hard work and the commitment that this community has put to preserving what it still has out there, is such a big and important one to them, and that is why they feel so strongly about this. She continued that this is also why they want to continue to meet with LIPA and to carry the costs to fully underground the line. She indicated that she thinks that it is really good news that the bids have come in lower, which means that the surcharge will be lower. She further indicated that this speaks to the issue of socioeconomic justice in that it will continue to be a usage-based tax which will allow individual homeowners to have some control over the burden that they

carry here. She added that it would tax the bigger users which does address a socioeconomic justice problem even more so than instances where private developers and large homeowners have been given the opportunity to carry the cost of burying the lines. She added that this is an entire community with a broad base of socioeconomic differences voicing that they are willing to carry the cost, and willing to carry it to the degree that they are individually able to do so. Councilwoman Throne-Holst added that she believes this sets a wonderful precedent for how LIPA and other utilities can address these issues going forward.

Councilwoman Throne-Holst stated that the issue of indemnification is a problematic issue, and they beg LIPA to see it from their perspective, and that they stand here as elected officials with both outside and in-house counsel telling them that it is something that they simply responsibly cannot do and which there is no precedence for. She indicated that they need to heed that advice, but on the other hand, they have tried to do what they can and offer limited indemnification. She added that they are continuing to work on creative solutions and they are certainly willing to offer indemnification as far as the uncollected surcharge.

Councilwoman Throne-Holst stated that she also wanted to answer Chairman Larocca's concern regarding the development rate in Southampton. She continued that it is a dramatically different Board that serves the Town today as opposed to the past, and they are all very committed to limiting that

development. She noted that they are beginning to see the fruits of that, and the number of new homes are actually quite significantly reduced in the months past, as well as for the projections for the months going forward. She indicated that they are hoping both in terms of their preservation efforts and for LIPA not having to provide so much energy, that this will bear fruit. She added that they really hope to continue this, and she thanked President Law as he has been a wonderful person to deal with.

Chairman Larocca thanked Councilwoman Throne-Holst for her comments. The Chairman stated that he understands that one of the predicates for the position that the Town will be taking in Court tomorrow, is in LIPA's view utterly outside the statute in terms of what authority may exist in the Town in a matter like this, where a utility is advancing power lines. He indicated that there is clearly some lack of communication within the Town that they could be here today without the knowledge that someone has made a decision to go to Court tomorrow. He pointed out that there may be a gap in communication between the lawyers and all of the members of the Town Board. He added that he has found that in these kinds of matters the council people can go back to the lawyers and say that they want a solution here and that they need to find the way, and he does not know whether that is going on here yet, but that maybe they can all get in a room and realize they can figure this out after all.

Councilwoman Throne-Holst stated that they will keep trying. She continued that Councilman Nuzzi and she will continue to push the envelope as best they can on their end, but they are getting to the point where the lawyers shudder when they see them coming. She indicated that they will certainly go back in light of today's news and look into what is going on at that level.

President Law thanked Councilwoman Throne-Holst. He indicated that he told Assemblyman Thiele that he would track him down in Albany tomorrow and meet with him. He indicated that he will call Councilman Nuzzi and Councilwoman Throne-Holst on Monday.

Trustee Hermann asked whether Southampton has agreed to pay the \$8 million and agreed to collect it and indemnify LIPA for the collection of the \$8 million but that they just will not indemnify LIPA for third party claims against LIPA for allowing them to pay and collect it. President Law stated that Southampton is not collecting it, but there would be an assessment on LIPA's bill that LIPA would collect from its customers.

Trustee Herrmann asked whether LIPA wants that. President Law answered no but indicated that they are heading in that direction. He explained that LIPA wants indemnification from the Town for people who withhold paying the assessment, and for any challenges to it. He noted that LIPA wants to be indemnified on the third party litigation risks as well. Trustee Herrmann asked

whether that was just about the collection of the \$8 million. President Law answered affirmatively.

President Law continued that LIPA needs to amend its tariff to implement the collection and so, to the extent somebody is going to challenge that, LIPA was looking for indemnification on both ends. He indicated that the other proposal LIPA had sought, which he resurrected with Assemblyman Thiele again yesterday, was whether there was a way for the Town to create a boundary district and collect the money itself and pay LIPA. He noted that it would certainly be cleaner and neater for LIPA and LIPA is still willing to explore the first option. As to the second option, there was a debate as to whether or not State legislation was required, and that is why they started heading down the other path, as there would not be time to get the legislation approved if it was required.

Councilwoman Throne-Holst stated that President Law speaks about an issue that they have dealt with on the Town Board and with their State Assemblyman, in that there is a good chance that even if they worked to put this forth in Albany that it would not pass, and that the timeline was well beyond what they needed to meet here. She continued that if they were to do a special taxing district it would impose a tax that takes away the whole socioeconomic issue since everyone would be taxed at the same rate regardless of what their energy usage is. She indicated that they felt that the usage based charge addressed the socioeconomic justice issue here in that people then could have some control

over it, and even if they used less, they would not be taxed at the same rate as the much higher users. She added that this was a way to address that issue most effectively.

Trustee Herrmann asked whether LIPA is willing to collect the money at this point if the Town of Southampton indemnifies LIPA for the people who refuse to pay. President Law answered that the Town of Southampton must also indemnify LIPA for anybody who may challenge the collection. He continued that they have offered LIPA a limited indemnification for the first, but not the second. He indicated that he communicated back to the Town that this was unacceptable to LIPA, so that is where they are right now.

President Law stated that he does not want to get into much more, depending upon where all this goes, although he remains committed to working both with Councilman Nuzzi and Councilwoman Throne-Holst to see what can be done to resolve it. He continued that time is running out and LIPA needs to do this in the month of April. He indicated that he appreciates the fact that they made a counter-proposal but it is unacceptable to LIPA at this point, so they are going to have to figure something else out, and they are close to a resolution.

Trustee Fragin stated that it is his understanding that Assemblyman Thiele and Senator LaValle were both on board with the possibility, should the Town request it, of creating the special taxing district. He asked whether this was the

case. Councilman Nuzzi stated that one of the issues of the taxing district was the socioeconomic one.

Trustee Fragin stated that is an issue across the board as far as any tax is concerned. Councilman Nuzzi stated that this was perhaps the case, or as they understood from LIPA's perspective, it was also the issue of timing. He continued that if this project were to be moved along in the timeframe that LIPA is moving it along, they are not sure that the State legislation would be in place in time for the Town to create the district, and so it would have left them in the same place. He indicated that there are other creative solutions coming back.

President Law stated that this is accurate. He continued that when they met in January with Senator LaValle's staff, that was the direction that they were originally heading in. He indicated that they would introduce the legislation but they needed to be realistic as well, as they are hoping to get a budget done this weekend and it was unlikely that any bill would have been passed in time for LIPA to continue with its schedule. He added that was when they started to look at other alternatives and that is when the Senator, the Assemblyman and the Town asked LIPA if it would consider it.

President Law stated that yesterday, he asked Assemblyman Thiele whether they were absolutely certain that State legislation is required to create a district, since they are not looking to create a governmental district or a

governmental entity with a board of commissioners or staff, but rather to create a boundary. He continued that he offered the Assemblyman an example of work that he did in the private sector for the Town of Babylon when they created another type of district. He indicated that the Assemblyman thought that was interesting and he was going to look into it. He added that to the extent that State legislation is not required and the Town could create a district, collect the money and pay LIPA twice a year when they collect their taxes, that would be the neatest and best for LIPA. But if State legislation is indeed required, that is why LIPA is trying to be cooperative, as a public utility and as a neighbor, to try to work with the Town on the other alternatives.

Chairman Larocca stated that the next item on the agenda is the Operating Report, to be delivered by Mr. Hervey.

Mr. Hervey stated that he just briefly wants to go over some reliability statistics for LIPA's electric system and talk on something having to do with the frequency of interruptions that may not have been pointed out before. He continued that the frequency of interruptions that customers are seeing has been increasing over the past year. He indicated that this is a trend that LIPA has been watching, and he thinks that LIPA knows the reason that this has been increasing. He further indicated that this means that LIPA's customers have seen a change from about one outage every sixteen to seventeen months down to about every thirteen months at this point in time.

Mr. Hervey reported that this is mostly due to a good reason- the nature of the weather that LIPA saw last year. He continued that LIPA fared quite well, in that many of the outages that otherwise would have been taken out of the metric, are in this metric. He indicated that overall, even though this particular metric is going the wrong way, LIPA's customers did see fewer total outages last year. He added that LIPA expected this to level out in January and February, and it has in fact leveled out, although LIPA will be watching to see if it levels out and turns back.

Mr. Hervey reported that LIPA tries to operate within two long bands, one at .71 and one at 1.0. He continued that as long as this particular metric is between these two lines, it is not a condition of much concern to LIPA. He indicated that LIPA likes to try to keep these long term trends from going in the wrong direction.

Mr. Hervey reported that he wishes to point out a long term trend that LIPA witnessed in the past year and continues to witness. He continued that the long term trend is that the average number of minutes for customer interruptions has gone from approximately eighty-three minutes down to about seventy minutes. He indicated that LIPA trimmed about thirteen minutes off the average outage, and that this is quite an improvement that LIPA's customers have seen.

President Law asked what the industry average is if LIPA is down to about seventy. Mr. Hervey answered that the State average is about one hundred and

twenty minutes, so LIPA continues to be about half of the State average and that is typical of where LIPA operates. He noted that the frequency metric and the length of time of interruptions metric are in the first quartile, meaning the top twenty-five percent nationwide.

Mr. Hervey reported that with respect to LIPA's tree trim program, LIPA's actual tree trim for this year has accelerated past what it was formerly in its plan for tree trim. He continued that this is basically a reaction to that SAIFI number that, in order to try to bring the frequency of interruptions down, LIPA went back and accelerated the tree trim program. He indicated that about two-thirds of the program for this particular year will be done in the first half of the year in order to manage that number a little better.

Mr. Hervey reported that so far this year, LIPA has seen five storms in total, with two of them in March. He indicated that on March 6<sup>th</sup> and 7<sup>th</sup> LIPA was surprised by wind gusts of above fifty to sixty miles an hour when the weather service had predicated thirty to forty miles per hour. He further indicated that this happened at approximately five o'clock in the morning. He added that as a result, LIPA had about 28,000 customers out of service.

Mr. Hervey reported that the way that storm played out, LIPA saw an opportunity to look at what it might do better with such an event, where there are early morning storms and LIPA is not particularly well staffed. He continued that

he has a group of people at National Grid looking at process improvements that LIPA may do. He noted that more than seventy percent of the outages during that storm were, in fact, restored in less than four hours. He added that a few days later, over the weekend of March 8<sup>th</sup> and 9<sup>th</sup>, LIPA also saw a storm that affected about 26,000 customers, and LIPA was well staffed for that particular storm. About eighty-three percent of the outages in that storm were restored in four hours or less.

Mr. Hervey reported that with respect to LIPA's capital program, LIPA hit some milestones in the past couple of weeks. He continued that LIPA started construction on two critical substations, one in the Town of Huntington at Bagatelle Road started just this week, and one in the Town of Riverhead at Edwards Avenue.

Mr. Hervey reported that at the last meeting of the Board of Trustees, he advised that a fire had occurred at the Port Jefferson generating plant. He continued that the fire occurred on February 13<sup>th</sup>, and at the time, unit number four at Port Jefferson was off-line. He indicated that unit number three was operating, and it began to experience some electrical problems that were due to heavy rains that were ongoing that day. He further indicated that at that point, that particular generator tripped off and there was a subsequent failure of a pipe in the oil pumping system, which sprayed some oil. He added that the oil was ignited by a nearby heater.

Mr. Hervey reported that the fire that resulted was put out in about an hour. He continued that there was no environmental damage and the reliability of the electric system was unaffected by the problem. He indicated that unit number three was not damaged and it was returned to service on February 16<sup>th</sup> as a natural gas fired unit only. He added that there was extensive damage to the oil pumping system for both units three and four, and right now LIPA expects that unit number four is going to be returned to service in mid-May as a natural gas fired unit only. Mr. Hervey reported that the oil will be returned in mid-June. He continued that the repair for that generating plant is coming along on schedule. He indicated that National Grid has worked with LIPA to implement an investigation team and come up with lessons learned from that incident.

Trustee Fabio asked whether with respect to the tree trimming program, there is a cost breakdown in terms of what circuits and what costs are associated with tree trimming in the various areas, however they are determined. Mr. Hervey answered that tree trimming is an operations and maintenance expense, and therefore, is covered under the operations and maintenance fee that LIPA pays to National Grid. He continued that this is a cost that is not directly passed onto LIPA, so what LIPA has done here is it just moved work from one part of the year to the other part of the year. He indicated that, on average, it costs about \$4,000 a mile throughout LIPA's system to trim trees and LIPA does track that on a circuit by circuit basis. He noted that LIPA trims about 1,800 miles of circuits per year.

Trustee Fabio asked whether with regard to the matter before the Board regarding the Southampton project, Mr. Hervey could provide the cost associated with the tree trimming in that particular geographic area or circuit. Mr. Hervey responded that he can get that information for the Board.

Chairman Larocca stated that the next item on the agenda is the Financial Report to be delivered by Ms. McCarthy.

Ms. McCarthy reported that she is just going to give a brief update on financial matters. She continued that the external audit of the basic financial statement for LIPA for the year ended 2007 and 2006 has been completed by KMPG, LIPA's external auditors. She indicated that they have issued their unqualified opinion on the financial statements and, in addition, they have issued their report on their internal controls which indicated that they had found no material weakness in the internal controls of LIPA's financial reporting. She indicated that copies of the basic financial statements have been provided to the Trustees and LIPA will also be posting those financial statements to its website by the end of this month.

Ms. McCarthy reported that as LIPA has been focused on the completion of the audit, and she can provide only some preliminary information with respect to February. She continued that from a revenue perspective, LIPA is about four percent or \$21 million below budget with respect to revenue year-to-date through

February 29<sup>th</sup>. She indicated that this reflects predominately lower-than-budgeted growth and average customer consumption, but about seven million dollars of it relates to milder than normal weather.

Ms. McCarthy reported that from a fuel and purchase power perspective, obviously low sales also show up in LIPA's fuel and purchase power costs, but LIPA did have some lower-than-budgeted commodity costs as well. She indicated that the purchased power costs for the two months was also below budget. She indicated that from a cash and cash investment perspective, LIPA has about \$860 million dollars on hand, \$250 million dollars of that in LIPA's rate stabilization fund and the remainder in LIPA's operating funds. She added that LIPA did redeem some of its auction rate securities, so \$200 million dollars of that was used in the early part of March to redeem some auction rate securities that LIPA felt it should do.

Trustee Fragin asked whether Ms. McCarthy would mind discussing any difficulties that LIPA may have with regard to Bear Sterns, both from a counter-party perspective and also as LIPA's financial advisor. Ms. McCarthy answered that LIPA has one swap with Bear Sterns that does have collateral posting requirements based on their credit rating. She continued that the mark to market of that swap is in Bear Stern's favor at this time. Therefore, LIPA does not have a collateral demand currently. She added that this is the only financial instrument

that LIPA has with Bear Sterns, because they are LIPA's financial advisors, not a re-marketer of any of LIPA's bonds.

Ms. McCarthy reported that LIPA is in the process of doing some contingency planning around the possibility of their acquisition by JP Morgan, which would potentially create some conflict for them to continue as LIPA's financial advisor, and LIPA is working on that at this time.

President Law stated that he had advised the finance and audit committee this morning that he has asked Ms. McCarthy to reach out and solicit some bids from some financial advisors. He continued that to the extent that LIPA is in a position of requiring some additional resources, LIPA will have them in place and that will be something that he will report back to the Board on next month.

Chairman Larocca stated that the next item on the agenda is consideration of approval of the selection of proposed projects in response to a Request for Proposals for Renewable Energy and authorization to negotiate and execute Power Purchase Agreements in connection with those, to be presented by Ms. Nicolino.

Ms. Nicolino stated that the Trustees are being requested to adopt two resolutions approving the selection of a proposal from Brookfield Energy Marketing, Inc., and PPL Energy Plus, LLC in response to LIPA's Request for

**Proposals to provide renewable energy. She continued that the Trustees are also being requested to authorize the President and Chief Executive Officer or his designee to execute Power Purchase Agreements with both Brookfield and PPL, and to further authorize the New York Power Authority to execute a PPA with Brookfield on LIPA's behalf. She indicated that the New York State Public Service Commission (PSC) requires investor-owned electric utilities subject to its jurisdiction to participate in a renewable portfolio standard (RPS) program that has the goal of meeting twenty-five percent of the State's energy requirements with renewable energy by the year 2013. She added that this program is administered by the New York State Energy Research and Development Authority, and that renewable resources included in that program are wind power, hydropower, solar, bio-mass and land fill gas, among other things.**

**Ms. Nicolino stated that since LIPA is not subject to PSC jurisdiction, it is not required to participate in the RPS program; however, as discussed in LIPA's Energy Plan, which was adopted by the Trustees in June of 2004, LIPA has voluntarily implemented its own RPS program intended to meet the same general targets, goals and objectives set by the PSC. She continued that LIPA's RPS program, in fact, is more comprehensive than the one administered by NYSERDA. She indicated that the NYSERDA program entails purchasing only renewable energy credits or "RECs." She noted that LIPA's RPS program entails securing both renewable energy and the related RECs. She added that LIPA requires that**

the renewable energy be delivered to Long Island which would result in a direct reduction in the amount of fossil fuel burned on Long Island.

Ms. Nicolino stated that while LIPA has meet its RPS program targets through 2007, a shortfall was projected during the 2008 calendar year. She continued that to meet this projected shortfall, LIPA issued the RFP in November 2007, seeking to purchase two ten-year blocks of renewable energy and the associated renewable energy credits. She indicated that each block would be up to 150 gigawatt hours per year with the first block commencing on July 1, 2008 and the second commencing on July 1, 2009.

Ms. Nicolino stated that the RFP required that energy be delivered to Long Island at the Connecticut terminus of the Cross Sound Cable or the NJ terminus of the Neptune Cable. She continued that proposers were required to provide fixed and separate pricing for the renewable energy and for renewable energy credits. She indicated that on January 11, 2008, LIPA received eleven proposals from six respondents, and after the initial evaluation, six proposals from three proposers were short-listed and evaluated in greater detail.

Ms. Nicolino stated that Brookfield Energy had a portfolio of small hydro resources that are located in Pennsylvania, Maryland, Maine and Canada. She continued that Brookfield Energy was the only proposer that would provide renewable energy in 2008 and that offered the full 150 gigawatt hours a year

sought by LIPA for each block. She indicated that the short-list of proposals consisted of three options for Brookfield, two options from PPL and one from a company called PPM Energy. She further indicated that the short-listed proposals were thoroughly evaluated on both a qualitative and quantitative basis by a selection committee comprised of LIPA's staff and consultants.

Ms. Nicolino stated that based on the committee's analysis, which included a review of written submissions, responses to interrogatories and interviews, as well as the quantitative evaluation and assessment of LIPA's RPS needs, it has been determined that Brookfield's third option and one of PPL's options involving its Cumberland facility would provide the best value for renewable resources as sought by LIPA. She continued that the Brookfield Energy proposal includes resources from its Canadian company, and while LIPA is precluded from negotiating directly with Canadian entities, NYPA is, by LIPA statute, able to do so on LIPA's behalf. She indicated that the Trustees authorized the President and CEO or his designee last month to execute a memorandum of understanding with NYPA for the purpose of entering into such PPA's with Canadian entities. She further indicated that LIPA staff is proposing that the Trustees authorize the President to do so now in connection with the Brookfield proposal. She noted that at the same time, LIPA would be negotiating and seeking to execute a mirror PPA with Brookfield's US subsidiary for the renewable energy credit proposed in its US resources, and based on that

recommendation from the selection committee, LIPA staff is asking for such authorization at this time.

Chairman Larocca called for a motion on the resolution, which was seconded, after which comment from the Trustees was heard on the matter.

Vice Chairman Steinberg asked whether it is correct that Brookfield is a subsidiary of Brookfield Properties in New York. Ms. Nicolino answered in the affirmative.

Vice Chairman Steinberg asked whether PPL is a subsidiary of a Spanish company. Ms Nicolino said it was not. Mr. Peterson, LIPA Director of Power Markets Contracts, stated that PPM, which is not one of the bidders selected, is a subsidiary of Iberdrola, which is a Spanish company. He added that PPL, which was selected, is a US company, Pennsylvania Power.

Vice Chairman Steinberg asked whether LIPA has done the usual conflict checks to make sure that there is no conflict with either company. Mr. Peterson responded in the affirmative.

Trustee Fabio asked if there were some nonperformance issues regarding Brookfield, since this has been negotiated by NYPA, what recourse does LIPA have through NYPA. Mr. Peterson answered that LIPA would have recourse

through the contract that NYPA is going to negotiate and execute as LIPA's agent.

Chairman Larocca asked whether LIPA would have recourse to Brookfield. Mr. Peterson responded that it would.

Trustee Fabio asked whether NYPA would carry LIPA's water, if there was some nonperformance issue. Mr. Peterson stated that it would, for the Canadian resource.

President Law stated that in terms of LIPA's process, he just wanted the Board to know that he stays out of the procurement issues, and he lets LIPA staff do what they need to do and then they come and make a recommendation to him, and then they all make the recommendation to the Board. He continued that he thinks that Jim Peterson and the other staff are doing a terrific job with this, and that is just a start. He indicated that hopefully, LIPA will be getting more of this power to the region, and this is a small start but it is a significant start in the right direction.

Chairman Larocca asked whether the agency through NYPA is due to LIPA's statute. President Law responded that it was. He continued that as LIPA moves forward with its legislation, that is one of the things that LIPA expects to

clean up, to eliminate that prohibition on LIPA dealing directly with Canada and other entities in Canada.

No other comments having been heard, the following resolution was approved unanimously:

**856. APPROVAL OF SELECTION OF BROOKFIELD ENERGY MARKETING INC. TO PROVIDE RENEWABLE ENERGY AND AUTHORIZATIONS RELATED TO THE PURCHASE OF POWER FOR SUCH RENEWABLE ENERGY**

---

WHEREAS, the Long Island Power Authority (“LIPA”) has implemented a Renewable Portfolio Standard (“RPS”) program under which LIPA purchases Renewable Energy Credits (“RECs”) and equivalent amounts of renewable energy delivered to Long Island; and

WHEREAS, LIPA through its RPS program has voluntarily agreed to meet its share of the Statewide renewable energy targets established by the New York State Energy Research & Development Authority (“NYSERDA”); and

WHEREAS, to meet its allocation of the targets set by NYSERDA, LIPA issued a Request for Proposals to Provide Renewable Energy (“Renewable Energy RFP”) on November 5, 2007, for specified quantities of renewable energy; and

WHEREAS, based on a thorough evaluation of all of the proposals submitted in response to the Renewable Energy RFP, LIPA’s Selection Committee recommends the selection of Brookfield Energy Marketing Inc.’s (“Brookfield”) Option 3 proposal to provide two 150 gWh/yr. blocks of hydro energy, each block for a 10 year term, the first beginning on July 1, 2008 and the second beginning on July 1, 2009;

NOW, THEREFORE, BE IT RESOLVED, that the Trustees hereby approve the selection of Brookfield’s Option 3 in response to the Renewable Energy RFP and further authorize (a) the President and Chief Executive Officer or his designee to execute a Power Purchase Agreement with the United States marketing subsidiary of Brookfield for the renewable energy and RECs provided by Brookfield from its U.S. resources; and (b) the New York Power Authority, as LIPA’s agent, to execute a Power Purchase Agreement with Brookfield for the purchase of renewable energy and RECs provided by Brookfield from its Canadian resources.

\*\*\*

Chairman Larocca stated that the next item on the agenda is a consideration of approval of the engagement of a firm to provide energy risk management services, to be presented by Ms. McCarthy.

Ms. McCarthy stated that the Trustees are being requested to approve a resolution authorizing the President and CEO, or his designee, to engage Pace Global Energy Risk Management, LLC to provide energy risk management advisory and system services for a term of four years. She continued that as the Board is aware, fuel and purchase power comprises fifty-five or more percent of LIPA's annual budget, and LIPA had a comprehensive energy risk management program designed to address volatility in those markets. She indicated that as such, LIPA requires energy risk management advisory and system services in support of that ongoing effort. She further indicated that the Authority specifically requires a license for the use of an established energy risk management software system to measure and monitor the Authority's risk exposure as a result of price volatility and fuels, as well as LIPA's open and hedged positions. She added that LIPA requires complimentary energy risk management advisory services for the energy and power markets, compliance issues, procedural recommendations, strategies, etc.

Ms. McCarthy stated that LIPA has an existing contract with Pace Global Energy Risk Management that is set to expire in May of this year. She continued

that on February 5<sup>th</sup> of this year, LIPA issued a Request for Proposal seeking experienced firms to provide these services on an as-needed basis. She added that the RFP was advertised in New York State Contract Reporter, posted on LIPA's website and sent to an affirmative list of seventeen potential vendors.

Ms. McCarthy stated that two firms responded to LIPA's Request for Proposals, namely Pace Global, and Towers Perrin. She continued that a selection committee comprised of internal staff evaluated each of the proposals and conducted oral interviews of both firms, and on the basis of those evaluations, they determined that Pace Global is best suited to fill LIPA's needs based on its qualifications and experience. She indicated that some of their specific strengths included: their familiarity with LIPA's present and future risk management needs; their extensive knowledge and experience in specialization in the energy and utility fields; the risk management software system that it has available for use, as well as the reasonableness of the costs that were set forth in their proposal. She added that based upon the foregoing, she recommends that the Board adopt the above resolution.

Chairman Larocca called for a motion on the resolution which was seconded, after which comment from the Trustees was heard on the matter.

Trustee Nugent asked whether there is any reason why such a low number responded to LIPA's RFP, because LIPA identified firms that might be interested

in the RFP. Ms. McCarthy answered that the response is about consistent with the last time LIPA went out with an RFP for this service. She continued that there was one other firm that responded in the last round of proposals and that firm did not qualify. She indicated that LIPA is getting about the same level of responses as in prior periods. She noted that there is always some consolidation in the industry as well.

Trustee Nugent asked whether she had any sense that it is because other firms do not feel that they are qualified and whether LIPA is a very specific entity that requires special expertise or whether the firms are doing such good business that there is no need for LIPA's business. Ms. McCarthy indicated that she does not have an answer to that.

No other comments having been heard, the following resolution was approved unanimously:

**857. ENGAGEMENT OF FIRM TO PROVIDE ENERGY RISK MANAGEMENT  
ADVISORY AND SYSTEM SERVICES**

---

**RESOLVED**, that the President and CEO be, and hereby is, authorized to engage Pace Global Energy Risk Management LLC to provide energy risk management advisory and system services to the Authority and LIPA, with the contract term to be four years.

\*\*\*

Chairman Larocca stated that the next item on the agenda is Board consideration of approval of the financial report in LIPA's 2007 Annual Report. The Chairman continued that this is a statutory requirement that LIPA is meeting. He indicated that the matter will be presented by Ms. McCarthy.

Ms. McCarthy stated that the Trustees are being asked to approve the summary financial information that is a component of an annual filing requirement that LIPA has pursuant to the Public Authorities Accountability Act. She continued that this Act requires that LIPA prepare and submit to the Governor, the Chairman and the ranking minority members of the Senate Finance Committee, the Chairman and ranking minority members of the Assembly Ways and Means Committee and the State Comptroller, within ninety days of the end of each year, an annual report that includes, as a component part, summary financial information that is both certified by the CEO and CFO and approved by the Board of Trustees. She indicated that in addition to that summary financial information, the report contains other information including a summary of its operations and accomplishments, some debt issuance schedules, compensation schedules, projects undertaken, listing of real property to be disposed of or already disposed of, a copy of LIPA's Code of Ethics and an assessment of the effectiveness of the controls.

Ms. McCarthy indicated that LIPA staff has attached as an exhibit in the Trustees' books, the summary financial information and the two certifications

that LIPA is asking the Trustees to adopt. She continued that these are prepared out of the basic audited financial statements, but they are simply summary information from that report. She indicated that based on this, LIPA staff is asking the Board to adopt this summary financial information. She noted that the Finance and Audit Committee at its meeting, adopted a resolution to recommend to the full Board that this be adopted.

Chairman Larocca called for a motion on the resolution which was seconded, after which comment from the Trustees was heard on the matter.

Vice Chairman Steinberg stated that as Chairman of the Finance and Audit Committee, he notes for the record that the Committee has met with Ms. McCarthy, the LIPA staff and with KPMG, LIPA's outside auditors, and reviewed the financial statements for 2007. He continued that the Committee recommends to the Trustees that the financial report for 2007 be approved. He also noted that the Finance and Audit Committee met in executive session with KPMG, LIPA's outside auditors, to discuss personnel and other issues and the adequacy of controls and related issues, and he thinks the Committee is satisfied that, based on advice from KPMG, that the organization is well controlled.

Trustee Fabio asked whether the Board had before it just a component part of this full report. Ms. McCarthy answered affirmatively.

Trustee Fabio asked whether it is possible for the Board to receive the entire report. Ms. McCarthy answered that they have a copy of the report at their seats. Ms. Nicolino indicated that the Annual Report has been provided to the Trustees with their materials. She noted that under the statute, only financial information required under the Accountability Act is required to be approved by the full Board.

Chairman Larocca asked if there are any other comments or questions.

No other comments having been heard, the following resolution was approved unanimously:

**858. APPROVAL OF FINANCIAL REPORT OF LONG ISLAND POWER  
AUTHORITY 2007 ANNUAL REPORT**

---

**WHEREAS, the Public Authorities Accountability Act of 2005 (the "Act") requires public authorities including the Long Island Power Authority (the "Authority") to prepare an annual report; and**

**WHEREAS, the Act requires that the summary financial information contained in the annual report (the "Financial Report") be certified in writing by the Authority's President and Chief Executive Officer and Chief Financial Officer and approved by the Board of Trustees; and**

**WHEREAS, the summary financial information submitted in accordance with Section 2800(1) of the Act, referred to therein as the "Financial Report," has been reviewed by the Finance and Audit Committee of the Board, and so certified in writing by the Authority's President and Chief Executive Officer and Chief Financial Officer:**

**NOW, THEREFORE, BE IT RESOLVED, that upon recommendation of the Finance and Audit Committee of the Board, the Trustees hereby approve the Financial Report in the 2007 Annual Report in the form presented at this meeting.**

\*\*\*

Chairman Larocca stated that the next item on the agenda is the appointment of a new General Counsel and Secretary to the Authority, to be presented by President Law.

President Law stated that a couple of months after he was appointed as Chairman last year, LIPA's General Counsel, Stanley Klimberg, announced that he was retiring. He continued that he realized that one of the first tasks that he had at hand was to find a General Counsel. He indicated that he began to search and found somebody early on, and reached an agreement with the individual who then reneged in December of this past year. He further indicated that in between that time, from the time that Mr. Klimberg announced his resignation to the time when the reneging took place, he had the opportunity to work with Lynda Nicolino, who this Board had approved as Acting General Counsel. He added that the more he got to work with her, the more he began to appreciate what an outstanding attorney and individual she is and a resource for LIPA.

President Law stated that he was leaning towards her late last year, but he felt an obligation to see who else was out there. He continued that he shared that information with Ms. Nicolino with respect. He indicated that he told the Board that LIPA was going to advertise for the position, which LIPA did through the New York Law Journal, New York Times, monster.com, Newsday, and the Wall Street Journal, and that LIPA received over one hundred resumes. He interviewed

several individuals, but none of them rose to the level where he thought that they would be better for this organization than Ms. Nicolino. He indicated that he relies on her everyday for guidance on a lot of issues and he tries to take his lawyer hat off and defer to her on issues. He noted that she is good and fair and that he pushes her sometimes and she pushes back. He added that she is not afraid to tell him what he may not want to hear and he respected that as well.

President Law stated that it was during the holidays when LIPA began the search and by the end of January he thought that she really deserved to be the General Counsel. He continued that she had not only nine years plus service at LIPA, but she knows the agency inside and out. He noted that the role of General Counsel is not just as his General Counsel, but it is also the counsel to the Board, and Secretary to the Board. He added that he had wholeheartedly recommended her to the Personnel and Compensation Committee to be LIPA's General Counsel and he recommends her to this entire Board.

President Law indicated that he would defer to the Chairman of the Personnel and Compensation Committee, Trustee Elovich, for any additional comments.

Trustee Elovich stated that the Board wholeheartedly endorses President Law's recommendation for Ms. Nicolino to be appointed as General Counsel. He continued that he spoke on a couple of occasions with Trustees Sinnreich,

Herrmann, Chairman Larocca, and Vice Chairman Steinberg, all of whom used only the finest and highest compliments about Ms. Nicolino and all felt that she would be a great addition and the person who should serve as General Counsel. He indicated that he has had the privilege of following Ms. Nicolino's career since the time she graduated from law school and she has excelled and been outstanding in every position she has held. He indicated that she led the Attorney General's Office in Suffolk County for four years, and came to LIPA to serve with great distinction for nine years. He noted that the committee feels that President Law has done an outstanding thing by hiring Ms. Nicolino and they wholeheartedly endorse his recommendation.

Chairman Larocca asked for a motion on the matter which was seconded.

Chairman Larocca stated that this is a statutory office. The Chairman continued that certain of the officers of the Authority are appointed by the Board, and others by the President. He noted that this is one appointed by the Board. He added that this is a very good, very timely and very strong appointment and he was very pleased in talking to everybody on just how strong the support was for this appointment.

No other comment having been heard, the following resolution was approved unanimously:

**859. APPOINTMENT OF GENERAL COUNSEL AND SECRETARY**

**RESOLVED**, that Lynda Nicolino be, and hereby is, appointed to the office of General Counsel and Secretary, effective March 27, 2008, until the earlier of her resignation or removal; and be it further

**RESOLVED**, that the incumbent of the position of General Counsel and Secretary shall be an officer of the Long Island Power Authority (“Authority”) and its subsidiary, LIPA, within the meaning of the Authority’s enabling legislation (Chapter 517 of the Laws of 1986), as amended, including Section 1020-bb of the Public Authorities Law, and all other applicable laws.

**\*\*\***

**Ms. Nicolino thanked President Law and the Board for the opportunity to serve as General Counsel and noted that it has been a privilege and honor to serve LIPA over the past nine years and that she is very grateful for the opportunity to continue to do so.**

**Chairman Larocca then moved to the public portion of the meeting, at which time numerous comments were heard from the public. After hearing such public comment, Chairman Larocca then opened the floor for any other matters for discussion.**

**Trustee Smookler asked whether LIPA has an identification program for any patients that are bed-bound at home that require medical equipment that needs electricity to properly function in the event of some kind of terrible outage or even a brownout. Mr. Hervey answered that LIPA has a critical customer process where a customer can apply and get a doctor’s written notification of that**

and then LIPA puts them on a critical care list. He continued that the critical case list does not guarantee that they will not have an outage, but when LIPA does have a planned outage, there is an additional notification process. He indicated that, for example, if LIPA does have a tight spot during the summer, LIPA will reach out ahead of time when it anticipates any problems, and LIPA will try to reach out to that customer to let them know what is going on. He noted that it is still always the customer's responsibility to take care of their own health and needs, but LIPA tries to be as communicative as possible with that. He added that for other critical facilities, not just individual residential customers, but police, fire and hospital, all of those customers know on what circuits they are fed, and in the event that LIPA has a restoration process, LIPA keeps that priority in mind and it is also kept in mind for priority in the event LIPA needs to deliberately shut off power.

Trustee Smookler asked whether LIPA has contingency plans based on a health care issue, not necessarily a LIPA issue, and if emergency power does not go on, whether LIPA has any way to assist a hospital, especially with those on respirators.

Chairman Larocca stated that LIPA is not in isolation. The Chairman continued that as the operating utility, LIPA's emergency process involves the counties, and it involves now a hopefully more streamlined state emergency

response in a security area. He indicated that there is a much more integrated emergency response system, of which this is an element.

Mr. Hervey stated that if one of those particular facilities has a problem, they would coordinate that through the respective County Office of Emergency Management which would contact LIPA. He continued that LIPA has, in fact, done extraordinary things in the past to help them out. He indicated that the major health care facilities also have a direct contact with an account executive who is a person that works for LIPA through National Grid. He added that the account executive can expedite any issue.

Trustee Smookler asked whether in the event that there is a failure of emergency power in a hospital, does each hospital have a contact person with LIPA that they could reach to expedite resolution. Mr. Hervey answered in the affirmative.

Chairman Larocca stated that this concludes the Board of Trustees regular meeting.

Chairman Larocca then entertained a motion to go into executive session to discuss litigation and personnel issues.

Upon motion duly made and seconded, the following resolution was

approved unanimously:

**860. EXECUTIVE SESSION - PURSUANT TO SECTION 105 OF THE PUBLIC OFFICERS LAW**

---

**RESOLVED**, that pursuant to Section 105 of the Public Officers Law, the Trustees of the Long Island Power Authority shall convene in Executive Session for the purpose of discussing litigation and personnel matters.

\* \* \*

At 1:39 p.m. the open session of the Board of Trustees was temporarily adjourned and an executive session of the Board of Trustees was convened.

At 2:05 p.m. the executive session was adjourned and the open session was reconvened.

After noting that no votes were taken in the executive session, Chairman Larocca entertained a motion to adjourn. Upon motion duly made and seconded, the Board voted unanimously to adjourn the meeting at 2:06 p.m.

Respectfully submitted,

Lynda Nicolino