

**LONG ISLAND POWER AUTHORITY  
MINUTES OF THE 181st MEETING  
HELD ON APRIL 26, 2007**

Pursuant to notice dated April 23, 2007, the Long Island Power Authority (the "Authority") was convened for the one hundred and eighty-first time at 11:15 AM at Brookhaven Town Hall, in Farmingville, NY.

The following Trustees of the Authority were present:

**Kevin Law, Chairman  
Michael Affrunti  
Anthony Bonomo  
Lawrence Elovich  
John Fabio  
Michael Fragin  
Harriet Gilliam  
Nancy Nugent  
Jonathan Sinnreich  
Suzette Smookler**

Also representing the Authority were Richard Kessel, Chief Executive Officer and President, Lynda Nicolino, Acting General Counsel, Seth Hulkower, Chief Operating Officer, Elizabeth McCarthy, Chief Financial Officer, Richard Bolbrock, Vice President – Power Markets, Bert Cunningham, Vice President – Communications, Michael Hervey, Vice President – Operations, and Patricia Alberti, Secretary to the Board of Trustees.

Upon determining that a quorum was present, Chairman Law called the meeting to order.

A moment of silence was observed for the recent tragedies occurring at Virginia Tech and in Iraq.

The Chairman stated that the first item on the agenda is approval of the minutes of the March 22, 2007 meeting of the Board of Trustees.

Upon a motion duly made and seconded, the following resolution was approved unanimously:

**813. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 22, 2007 MEETING OF THE BOARD OF TRUSTEES OF THE LONG ISLAND POWER AUTHORITY**

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**RESOLVED**, that the Minutes of the meeting of the Authority held on March 22, 2007 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.

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Chairman Law stated that Newsday has published a story concerning LIPA's efforts to adopt a conservation plan. The Chairman continued that he is not sure how the information was obtained by Newsday and that he has not even been briefed on the issue yet. He added that nothing has been approved by the Board, and the release of the information is frustrating to the Board and to himself.

Chairman Law stated that he had a terrific meeting with New York State Attorney General Andrew Cuomo last week, who is interested in partnering with LIPA in defense of litigation matters where his Office has the resources to do so. The Chairman continued that while LIPA will not seek assistance from the Attorney General's Office for every case, since Attorney General Cuomo is open to it, LIPA will move forward with this initiative, and hopefully save some money.

Chairman Law stated that he also had a terrific conversation with New York State Comptroller Thomas DiNapoli, who is also interested in working with LIPA to help provide needed resources where his office can. The Chairman continued that the partnership will be there with the two entities that LIPA needs to deal with the most, and he looks forward to working with them.

Chairman Law stated that the Authority's General Counsel, Stanley Klimberg, retired on April 5<sup>th</sup>, and LIPA has conducted several interviews for his position, which have gone well. The Chairman indicated that there are many talented individuals that have approached the Authority about the position. He added that he will inform the Board when he has information to share and as the Authority gets closer to picking a candidate.

Chairman Law stated that the next item on the agenda is the Chief Executive Officer's Report, to be delivered by CEO Kessel.

CEO Kessel reported that a couple of weeks ago, LIPA experienced a Nor'easter, and LIPA and its employees did a great job responding to it. He

continued that the storm did not hit as hard as anticipated, and that there were approximately 20,000 outages, although LIPA had anticipated between 50,000 to 60,000 outages. He indicated that many of the outages were on the East End of Long Island.

CEO Kessel reported that the employees did a terrific job in restoring service under tough conditions, with wind gusts close to 60 miles per hour in some areas and in pouring rain. He continued that the crews have to work in those conditions. He added that the employees in the Call Center also did a terrific job.

CEO Kessel thanked the employees for their great work, and he commended Mr. Hulkower, Mr. Hervey and LIPA's emergency response team for managing the response, along with KeySpan. He indicated that they restored service quicker than anyone else.

CEO Kessel stated that it is also important to note that there were only 20,000 outages due to LIPA's investment in the infrastructure of the T&D system. He continued that LIPA invested approximately \$2.5 billion toward the T&D system for such items including tree trimming, pole replacement and new wiring. He added that LIPA experienced amongst the fewest outages in New York State, and the investment that LIPA made in the system is really paying off.

CEO Kessel stated that LIPA received one of the best responses from its work force on short notice, and on that Sunday, LIPA had more than five hundred

people working on the storm restoration. He continued that he commends Ms. Redmond, Mr. Daley and all of the employees for their great work. He indicated that the bottom line to the public is to keep the lights on, and the workers do a great job.

CEO Kessel reported that there have been a number of incidents occurring over approximately one month that could impact service this summer, which involve construction contractors who have been digging on behalf of either municipalities or private developers, and who are damaging LIPA's transmission lines. He continued that there was an incident that occurred a few weeks ago in North Hempstead that LIPA was able to contain, which involved a contractor for the Town of North Hempstead who went ahead with work rather than wait for a scheduled meeting with LIPA for a mark out, where LIPA would have showed them where they could and could not dig. He indicated that the contractor damaged a major line and caused an oil leak that LIPA was able to contain.

CEO Kessel reported that earlier this week a contractor damaged two of LIPA's lines without obtaining an appropriate mark out, as far as LIPA is aware. He continued that the result of these incidents could be that LIPA could be facing rolling blackouts this summer, particularly in Western Nassau County, where two transmission lines were lost. He indicated that he is hopeful that LIPA will be able to restore at least one of these lines to service before LIPA reaches the 4,000 MW number, but the analysis, investigation and the full repair work is still being done.

CEO Kessel stated that Mr. Hervey is doing a great job with respect to this matter, but LIPA is not certain as to when repairs are going to be made. He continued that he is somewhat optimistic, but LIPA could face problems if there is an unusually hot spell in May.

CEO Kessel stated that there is an issue regarding LIPA getting the repairs done as quickly as possible, which is very complicated. He continued that one of the two lines damaged this weekend was dented, but not completely damaged, and LIPA is determining whether it can put the dented line back in service or whether LIPA needs to fix it. He indicated that if this happened in the summer there would be customers who would experience service reliability shortages, which is unacceptable.

CEO Kessel stated that LIPA has to take a harder look at what it can do with respect to contractors and the municipalities who give them permits to make sure that the work is not done without first obtaining an appropriate mark out and information from LIPA. He continued that this effects the safety of LIPA's customers and the workers. He indicated that this is occurring too frequently, and it is the biggest threat to keeping the lights on this summer.

CEO Kessel stated that he has asked Ms. McCarthy and Ms. Nicolino to explore LIPA's options. He continued that Chairman Law has suggested that LIPA talk to the municipalities, which is a good idea since not only are some of the contractors working for the municipalities, but also so that even with respect to a private developer, there can be some guarantee in the permitting process

that they have to seek a mark out. He added that LIPA should also explore whether or not it can assess additional civil penalties or fines to provide greater incentive against this.

Trustee Fabio asked whether the contractor will be reimbursing LIPA for the expenses and remediation. CEO Kessel responded, "Yes, and we will certainly go after them."

Trustee Fabio asked whether there are statutory prohibition against this, or whether LIPA should seek some statutory protection where the contractor would be held significantly liable for actions of this nature. CEO Kessel answered that LIPA is looking into this, including whatever else LIPA can do either statutorily or pursuant to its own tariff to deal with this issue.

CEO Kessel reported that there was a story in the paper today concerning a program that LIPA is working on called "Efficiency Long Island," which would significantly expand the use of energy efficiency on Long Island. He continued that LIPA is seeing a real need to expand its clean energy programs, because the way to meet demand is to lower it. He added that LIPA needs to add megawatts, but LIPA also needs to reduce demand.

CEO Kessel stated that LIPA has been working with the National Resources Defense Council and other environmental groups on a new clean energy program to replace the Clean Energy Initiative that has been so successful on Long Island. He continued that Governor Spitzer announced in a recent speech that he wants

to get to the point where demand around the state is reduced by fifteen percent, which is a high and laudable goal. He indicated that in the long run it is cheaper to subtract megawatts than to add them.

CEO Kessel stated that LIPA is developing a comprehensive program, and that LIPA is constantly evaluating it. He indicated that some of the details that were published are not current. He added that LIPA will have more to say about this very soon.

CEO Kessel stated that both Governor Spitzer and Mayor Bloomberg announced ambitious clean energy programs that recognize that you have to make an up-front investment in anything, including energy efficiency. He continued that there would be an up-front investment for the customer, but the customer's bill would ultimately be lowered because they would be using less electricity. He indicated that the goal is to invest in energy efficiency and then to encourage people to participate in it, so the bill goes down, but that in order to get to that point and to obtain all of the societal benefits of clean energy and the reduction of emissions, this is the kind of program that is necessary.

CEO Kessel stated that as a State Authority with more than one million customers, LIPA should be a leader in reaching the Governors' goal. He commended Nassau and Suffolk County for talking the lead on energy efficiency, and particularly Suffolk County Executive Levy for his great work. He indicated that LIPA needs to get the towns, school districts and villages involved in energy efficiency as well, and that in order to meet the Governor's goal of fifteen percent

by 2015, this cannot all come from LIPA, but LIPA can take a real leadership role not only to lower electric bills over time, but more importantly, to protect the environment and fight off global warming.

Chairman Law stated that he is very supportive of LIPA's effort to pursue green sources of power and to promote conservation. He indicated that LIPA is working closely with Governor Spitzer to help implement his goals of fifteen percent by 2015. He added that he shares the frustration that no one was briefed about this, but he is excited to be working on this and hopefully LIPA will move forward.

Trustee Nugent stated that she is cautiously optimistic that this is achievable because in her observation the next generation is ready to go, and they are in a position to help grow business or to purchase homes, but they will be looking for energy. She continued that they have been talking to schools who have been good about introducing conservation and Green Energy principles to young people. She added that the Green Energy has to be in place for them to access, and it is wonderful to view what needs to be done right now to prepare for this, including a change in mind set.

Chairman Law stated that next week he will be meeting with Congressman Israel who also wants to work with LIPA on this, and he will share the results of the meeting at the next Board meeting.

**Chairman Law stated that the next item on the agenda is the Operations report, to be delivered by Mr. Hulkower.**

**Mr. Hulkower stated that to follow up on CEO Kessel's remarks, there are already dig safe ordinances in all jurisdictions in which LIPA works, and there is a requirement for all contractors to contact our organization called the One Call Center to make sure that they get mark outs before they dig. He continued that many contractors try to take short cuts, since they do not want to wait with their equipment, which leads to these kinds of problems**

**Mr. Hulkower stated that LIPA will talk to the municipalities, as well as the community of contractors to re-emphasize the need to contact the One Call Center and to wait for mark outs to be done. He continued that there is a large risk of the loss of life connected to this and LIPA is fortunate that the recent incident did not lead to electrocutions as has occurred in the past. He added that this is a human safety issue, as much as a liability issue.**

**Trustee Fabio asked what the penalties associated with this are. Mr. Hulkower answered that although he cannot speak to the penalties for not contacting the One Call Center, LIPA has pursued those who have caused such damage for all of the costs. He added that the cost of remediation can run into the millions of dollars, especially for environmental remediation, and the costs associated with the expedited repair work, including splicing crews and the procurement of materials, drive up the cost. He noted that the contractor does**

not win in the long run with a strategy of going ahead without obtaining a mark out.

Trustee Smookler asked where the culpability is for a municipality or other entity that hires the contractor. Mr. Hulkower responded that LIPA may name all parties that are associated with the incident.

Ms. Nicolino stated that municipalities would normally negotiate contracts with those who are performing the work, and there are typically very stringent indemnity agreements that would require the contractor to be on the hook for the costs. She added that usually the contractor is insured for the risks, and LIPA would be reimbursed by the insurance company as well.

Mr. Hulkower reported that with respect to sales and marketing load and growth, LIPA has year-to-date added 9.02 MW with respect to major accounts, against a goal of 8.4 MW. He indicated that LIPA continues to show strength in the major accounts area, and all of the load that is added is efficient growth.

Mr. Hulkower reported that with respect to clean energy initiatives, the lighting and appliances program is still running behind schedule for the year, but he expected there to be very large growth in the next months report due to activity with a number of major retailers. He continued that the HVAC category is also starting to show some new growth, due to the fact that the season is approaching where people make a lot of heating and air conditioning decisions. He added that LIPA is showing various progress in the non-residential portion of

the construction area where LIPA has already reduced peak demand by 1.08 MW, against a goal of .75 MW.

Mr. Hulkower reported that LIPA is on target with its “Manage My Account” program and there are almost 418,000 customers enrolled in the balanced billing program. He indicated that LIPA is ahead on electronic bill payment with almost one-half million transactions to date.

Mr. Hulkower reported that with respect to revenue collections, there has been an upward trend over the last several months concerning LIPA’s arrears greater than 90-days, there has been an upward trend over the last several months. He continued that LIPA has typically run between .45 and .51 percent. He added that LIPA will continue to try to bring this down.

Mr. Hulkower reported that with respect to reliability statistics, there was tough weather in both March and April. He continued that LIPA is looking at staffing levels to make sure that it can continue to maintain its high level of reliability, which is the best for all overhead utilities in New York State. He indicated that relative to the rest of the State, LIPA is doing fine, but not as good in comparison with LIPA’s recent performance.

Trustee Sinnreich asked whether the shortfall in meeting LIPA’s projected load growth or revenue is due to inadequacies in LIPA’s ability to project and whether there are any budgetary implications to the almost fifty percent shortfall. Mr. Hulkower answered that year-to-date load growth is at 10.21 MW, against a

goal of 10.61 MW, and LIPA added revenues of \$4.1 million, against a goal of \$4.3 million. He continued that LIPA is a little behind on the year-to-date numbers, and LIPA only counts committed programs where LIPA is informed that construction is underway. He added that the report does not fully recognize what LIPA expects to achieve.

Mr. Hulkower stated that from historical experience, LIPA sees a jump in its statistics at the end of the year. He continued that some attempt to get their programs done right away while others watch their budgets. He added that a flurry may occur at the end of the year.

Trustee Sinnreich stated that the reports are not very useful in terms of year-end projections, versus year-end budget, and something needs to be addressed because the reports do not show what the expectations are, and since LIPA expects to be more or less on a year-end projection, there are no budget implications. Ms. McCarthy answered that from a budget perspective, LIPA expects to be at its goal or in the range. She continued that with respect to sales for the quarter, they are down for the residential sector, but they are offset by higher-than-expected sales from the industrial sector. She continued that the impact on sales revenue is a result of the reduction of the power supply charge, which was implemented in February. She added that sales are .4 percent below budget for the first quarter, but LIPA has analyzed this, and LIPA expects to be in the range of plus or minus one percent.

CEO Kessel stated that he was concerned about the March SAIFI and CAIDI numbers in connection with staffing, and whether there has been a cutback that has impacted upon LIPA's reliability statistics. He indicated that he would like Mr. Hulkower to report back to the Board about this.

Trustee Fragin stated that with respect to LIPA's infrastructure and the potential of damage to it by contractors, prevention is something that LIPA needs to look at. He indicated that it is good that LIPA can recoup its losses, but LIPA may be put in a situation where it cannot provide the necessary service. He added that in an age where LIPA is concerned about its infrastructure, this may be something that LIPA wants to go ahead and work with the local governments to create some kind of prevention, vis-à-vis individual penalties for contractors.

Trustee Fragin stated recovery through the courts is great as far as recouping losses, but the loss of a vital piece of infrastructure during a peak time will mean that LIPA will take the hit for it, even if LIPA recovers millions of dollars afterwards. He continued that he thinks that the public certainly wants their infrastructure to be reliable, and they do not want people to be able to tamper with it, even if they are willing to roll the dice and sometimes be successful. He added that this might be something that LIPA wants to issue as the only Island-wide jurisdiction to go ahead and work with local governments to create those types of penalties, or to obtain this authority through legislation.

CEO Kessel stated that this is a good point, and he has asked Ms. McCarthy and Ms. Nicolino to look at what more aggressive approaches LIPA can

take, with the help of Mr. Hulkower and Mr. Hervey. He continued that LIPA has invested so much in the system, and LIPA has the best reliability in the State of New York, which has been jeopardized due solely to a contractor's fault. He indicated that such contractor actions may be purposeful rather than error in that the contractor is rushing to get the job done without feeling that they need to see LIPA, although not intending to bring down the line.

CEO Kessel asked that Ms. Nicolino report back to the Board as to what some of LIPA's options are. Ms. Nicolino responded affirmatively.

Trustee Nugent asked whether LIPA tags those who are consistently in arrears on their bills with its program whereby LIPA goes to commercial businesses or residences to see if there are ways to conserve. Mr. Hulkower answered that a lot of the arrears are from a few targeted accounts, and LIPA has focused on some of the biggest offenders, in order to work with them to get them back on schedule. He indicated that LIPA also talks to them about its available programs, but LIPA has not linked them together. He added that it is not so much that they are consuming, but that they are making choices on the bills that they are paying.

Trustee Nugent stated that there may be privacy issues, but it seems that there are solutions.

Chairman Law stated that the next item on the agenda is the Finance Report, to be delivered by Ms. McCarthy.

Ms McCarthy reported that LIPA finished the quarter with a deficit of \$24 million, which was better than budget by approximately \$38 million. She continued that revenues for the first quarter were two percent below budget, predominantly due to the reduction in the power supply charge that became effective February 1, 2007. She added that there was lower than expected residential growth, which was offset.

Ms. McCarthy reported that fuel and purchased power costs are nine percent or \$43 million below budget, due to lower-than-anticipated natural gas costs. She continued that because of LIPA's fuel switching capability in the power plants, LIPA was able to convert its plants from oil to gas earlier than anticipated this year to take advantage of favorable pricing in the natural gas markets.

Ms. McCarthy reported that LIPA's administrative general expenses were eleven percent below budget for the quarter, due to the recovery of some legal fees from prior years that LIPA received in the first quarter. She indicated that other income and deductions are twenty-four percent above budget, due to higher than budgeted income from LIPA's investments, which was predominantly driven by higher investment balances. She added that interest expense is six percent or \$5 million below budget for the quarter, due to lower-than-budgeted variable rates on the Authority's variable rate debt.

Ms. McCarthy stated that at the end of the quarter, the Authority had \$750 million in investments with \$250 million in the Authority's rate stabilization fund, and the remainder in operating balances. She continued that those are invested in a variety of instruments with approximately ninety percent in relatively liquid positions. She added that the investment balance is expected to be managed down over the year as a result of the actions that the Authority has taken with the power supply charge, and the Authority expects to be at \$450 million at the end of the year.

Chairman Law asked how long it takes to switch the fuels used to generate electricity, when it becomes financially attractive for LIPA to switch. Ms. McCarthy responded that it is a short turnaround, depending on the unit, but LIPA can switch in the course of hours or days, as opposed to weeks. She continued that LIPA looks forward to determine where it believes the price of natural gas will be, relative to oil, and on a daily basis, LIPA decides whether it wants the unit to run on oil or natural gas.

Chairman Law asked whether LIPA monitors this and makes sure that the facilities are operating on the cheaper of the two. Ms. McCarthy responded, "Yes."

Trustee Sinnreich asked what the thinking is behind having the Authority's investment in cash in one institution, as opposed to spreading it out among multiple institutions. Ms. McCarthy answered that this is just two percent of the instrument, and that is where the cash is invested. She continued that it is where

**LIPA's primary revenue and expenditures accounts are, so they just keep it, and LIPA does not have a concentration.**

**Chairman Law stated that the next item on the agenda is Board consideration of a resolution appointing Lynda Nicolino as Acting General Counsel of the Authority and LIPA. The Chairman continued that as previously mentioned, Mr. Klimberg retired, effective April 5, 2007, and Ms. Nicolino has been asked to extend her service with LIPA to become Acting General Counsel while the Authority continues its search for a General Counsel.**

**Upon motion duly made and seconded, the following resolution was approved unanimously:**

#### **814. APPOINTMENT OF ACTING GENERAL COUNSEL**

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**RESOLVED, that Lynda Nicolino be, and hereby is, appointed Acting General Counsel, until the earlier of her resignation or removal; and be it further**

**RESOLVED, that the incumbent of the position of Acting General Counsel 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.**

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**Chairman Law stated that the next item on the agenda is Board consideration of a resolution to engage law firms to provide environmental legal services. The Chairman asked that Ms. Nicolino explain the proposed resolution.**

**Ms. Nicolino stated that in order to enhance LIPA's in-house staff, which is limited, LIPA issued an RFP in August 2006 seeking experienced law firms to provide environmental legal services to LIPA. She continued that LIPA was specifically looking for firms with an expertise in new generation, transmission and distribution and alternative energy projects. She added that LIPA is seeking firms to provide services to LIPA for a term of five years.**

**Ms. Nicolino stated that in September 2006, ten firms responded to LIPA's RFP, which was advertised in the New York State Contract Reporter, mailed to eighteen firms that LIPA believed had the expertise required and published on LIPA's website. She continued that LIPA staff members examined each proposal and the Selection Committee reviewed the proposal and measured them against the criteria set forth in the RFP. She indicated that based on the evaluation, the Committee determined that there were certain firms that should be considered more closely.**

**Ms. Nicolino stated that interviews were conducted, and as a result of the combined written responses and the interviews, the Committee determined that two firms were best suited to meet LIPA's needs, namely Carter Ledyard & Milburn and Sive Paget & Riesel. She continued that Carter Ledyard & Millburn has provided legal services to LIPA in the past, and they have done a good job in connection with a number of projects. She indicated that Sive Paget & Riesel would be a new firm to provide service to LIPA, and that they are a well recognized firm with a long history of experience in the environmental sector.**

Ms. Nicolino stated that having both firms on retainer to be used on as-needed basis only, would provide LIPA with a good combined mixture of expertise to pursue future projects. She further stated that based on this, LIPA staff recommends that the Board authorize the CEO or his designee to engage both firms for a five-year term.

Chairman Law stated that he is comfortable with the RFP process. The Chairman continued that he had previously asked that LIPA's legal staff share with the Board a summary of the firms that responded, and a copy of a score sheet or other criteria that assisted LIPA staff to arrive at its decision, which would be useful to the Board for all procurements.

Ms. Nicolino stated that LIPA does a comprehensive evaluation, that the Board members are fully briefed and that they are also entitled to any documentation that they want. She continued that LIPA staff will submit that in the future.

Chairman Law stated that this would be good. The Chairman continued that nothing obligates LIPA to use these firms just because LIPA has put them on the panel.

Chairman Law asked whether to the extent that it makes sense to use the Attorney General's Office in an environmental case, LIPA can do that. Ms. Nicolino answered, "Absolutely." She indicated that the firms are engaged only

on an as-needed basis, and LIPA pays them for the services that they actually provide.

Chairman Law stated that the proposed resolution would authorize the CEO or his designee to engage Carter Ledyard & Milburn, LLP and Sive Paget & Riesel, P.C., to provide environmental legal services to the Authority and LIPA, with the contract term to be five years. The Chairman continued that five years is a lengthy period of time.

Chairman Law asked whether LIPA has the right to terminate services for cause and at any particular point in time. Ms. Nicolino responded that this is a standard provision in all of these contracts.

Upon motion duly made and seconded, the following resolution was approved unanimously:

**815. ENGAGEMENT OF FIRMS TO PROVIDE ENVIRONMENTAL LEGAL SERVICES**

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**RESOLVED**, that the Chief Executive Officer or his designee be, and hereby is, authorized to engage Carter Ledyard & Milburn, LLP and Sive Paget & Reisel, P.C. to provide environmental legal services to the Authority and LIPA, with the contract term to be five years.

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Chairman Law stated that the next item on the agenda is a briefing concerning the proposed National Grid and KeySpan transaction to be delivered by Ms. McCarthy.

Ms. McCarthy stated that LIPA has three primary operating agreements with KeySpan: the Management Service Agreement, under which they provide operation and maintenance services related to LIPA's T&D system; the Power Supply Agreement, which provides LIPA with access to the generating capacity on Long Island, and as needed, energy from those plants; an Energy Management Agreement, whereby they do fuel procurement on LIPA's behalf, and help LIPA to participate in the various energy markets. She continued that each one of those contracts has a "change of control" provision that gives LIPA the right to terminate those contracts in the event of a change of control over KeySpan. She indicated that the proposed acquisition of KeySpan by National Grid would be such a change of control, so as a result, LIPA has conducted substantial due diligence on National Grid, and negotiated a benefits package.

Ms. McCarthy stated that LIPA wanted to be sure to determine that National Grid would be able to step into KeySpan's position and continue to provide services under those contracts in a reliable and cost effective manner. She continued that LIPA also got them to negotiate appropriate benefits for its customers, and as a result, LIPA reached agreement with National Grid and KeySpan, related to the three agreements whereby LIPA's customers would receive a series of benefits. She added that most importantly, from a reliability

perspective, LIPA has evaluated National Grid, and particularly in light of the performance that they had in upstate New York with Niagara Mohawk.

Ms. McCarthy stated that LIPA has put together a package that LIPA believes protects its customers from a reliability perspective. She continued that LIPA has added to its eighteen performance metrics that exist in the contract that the Board approved in 2006 with KeySpan to protect reliability. She indicated that those include guarantees of maintenance of the on-island workforce at a level sufficient to meet LIPA's reliability targets.

Ms. McCarthy stated that KeySpan has also entered an agreement with the unions that contains a "no layoff" provision. She further stated that the combination will ensure that the workforce that has done so well will continue to be available to LIPA to maintain the reliability of the system. She added that National Grid will also provide \$6 million towards LIPA's storm hardening initiative, which will be given to LIPA over the next six years. She noted that there are provisions that require the Customer Call Center to be retained on Long Island, and that the Customer Walk-In Center cannot be relocated or closed without prior approval.

Ms. McCarthy stated that it is important to note that from an Upstate and Downstate perspective, National Grid has agreed to treat LIPA as an affiliate in the event of a storm, so LIPA will get first call opportunity in terms of having National Grid respond to a storm on Long Island, to the extent that they are going to need it in the operating areas where they are currently located. She continued

that National Grid has been working on their reliability programs, so they have been working with the Public Service Commission in terms of setting forth a plan for capital investment into their system. She added that from a reliability perspective, LIPA will receive good benefits and protection for its customers.

Ms. McCarthy stated that with respect to repowering initiatives, LIPA has a commitment from National Grid that enhances its repowering opportunities. She indicated that in the 2006 agreement, LIPA obtained an option from KeySpan to potentially acquire either the Island Park Barrett facility or the Far Rockaway facilities at book value for the purpose of repowering. She added that LIPA has added to that book value purchase option the combustion turbines at the Barrett site, since LIPA believes that enhances the opportunity to repower that site.

Ms. McCarthy stated that the purchase options are open to LIPA, generally speaking from the effective date of the agreement for six months. She further stated that LIPA added a 1.25 times book value purchase option for the combustion turbines at the Shoreham and Wading River sites, where there is space for future repowering opportunities. She added that LIPA has committed to do a detailed engineering and economic analysis, including impacts on transmission operations for both the Northport and Port Jefferson facilities, which will be detailed and which will go beyond the Phase I studies that have already been done, in order to determine what opportunities for repowering exist.

Ms. McCarthy stated that with respect to efficiency and emissions, KeySpan and National Grid have committed to invest as much as \$100 million

towards improvements. She continued that there will be a combination of efficiency and emission credit improvement at the Northport plant and emission credit improvement at the Port Jefferson plant.

Ms. McCarthy stated that the most important thing for LIPA's customers is that the cost recovery of those capital investments in those plants will be neutral to them. She continued that LIPA's commitment to pay for cost recovery of that capital under the Power Supply Agreement will be limited to any fuel savings obtained from the efficiency upgrades or emission credit savings that are generated from the reduction investment. She added that from a ratepayers economic perspective, one of the things that LIPA wants to do is to ensure that its customers receive their fair share of the synergies generated by the acquisition.

Ms. McCarthy stated that LIPA has negotiated with KeySpan and National Grid for an allocation of a pool of dollars that LIPA would receive, consisting of 20.4 percent of the net synergy savings, which is determined as a relationship of LIPA's net revenues to the other operating companies which National Grid and KeySpan have. She indicated that those are shared 50/50 between LIPA and National Grid's shareholders, which would be approximately \$91 million for LIPA's customers, and which would be paid annually or at LIPA's discretion, a lesser amount in one lump sum.

Ms. McCarthy stated that in addition, LIPA has obtained a commitment from KeySpan and National Grid to funding in the amount of \$12 million towards

a co-branded gas and electric energy efficiency program that would be administered by LIPA. She continued that LIPA has also obtained a commitment to a payment of \$7 million in cash for its customers as well.

Chairman Law stated that he wants to thank Ms. McCarthy, Mr. Klimberg and their staffs for the yeoman's work on this matter and for looking out for the ratepayers interests with respect to the proposed merger. The Chairman continued that he feels good about the transaction based upon what he has heard. He indicated that LIPA announced the agreement in principal, which LIPA wanted to air publicly last week, and LIPA staff met with a delegation from the New York State Assembly and Senate this week. He further indicated that rather than to digest all of that and to have to make a decision today, LIPA thought it best to put this on the agenda for discussion purposes and hear public comments.

Chairman Law stated that he also does not want to take action on this today, primarily because the Suffolk and Nassau County Legislatures are holding hearings next week, and out of respect, LIPA does not want to take action before the hearings. The Chairman continued that he is very troubled with the manufactured gas plant ("MGP") problems, and various agencies are making sure that the MGP sites are properly dealt with, including the New York State Department of Environmental Conservation ("DEC") and the New York State Department of Health, which are serving as the lead agencies. He indicated that the PSC will determine who pays for what in the review of the proposed merger between National Grid and KeySpan.

Chairman Law stated that he has questions that he wants resolved before LIPA takes action, and he specifically wants to receive a detailed written plan of action. The Chairman continued that he is going to wait to see a full disclosure of all of the sites, and there may be additional sites, so they need to get a handle on them. He added that all of the sites should be properly investigated with plans drawn up for them including timetables for action to remediate the sites, and there should be public participation and the acceptance of comments from concerned residents, environmental groups and civic groups.

Chairman Law stated that he requests that KeySpan copy the Nassau and Suffolk County Health Departments, since they share similar concerns and they may have valuable input. The Chairman indicated that he will give KeySpan an opportunity to comment during the public participation process.

Chairman Law asked CEO Kessel to comment further on the proposed deal, as well as the result of the public meeting held last week and the meetings in Albany this week.

CEO Kessel stated that he wants to commend Ms. McCarthy, Ms. Nicolino, Mr. Klimberg, Mr. Grilli and the LIPA staff who were a big part of this. He continued that this negotiation took more than one year, and LIPA did an extreme amount of complicated work on it. He indicated that the agreement that LIPA reached in principal with KeySpan and National Grid is an extraordinary package

for LIPA's customers, and it answers questions relating to reliability, the ratepayers and repowering.

CEO Kessel stated that the agreement contains significant protections to guarantee LIPA's customers at least the same level, if not better reliability than LIPA currently receives through the public/private partnership between LIPA and KeySpan. He continued that the ability to protect the workforce is critical to LIPA, not only in terms of preventing layoffs. He noted that LIPA mediated with respect to the union's agreement with KeySpan.

CEO Kessel stated that this is important, because the workers do such a tremendous job, but the number of employees is also important. He continued that there are difficult matrixes that have to be met under this agreement, and there is a right to terminate the contract if certain service levels and significant standards are not met, as in the case of NIMO's service territory in upstate New York.

CEO Kessel stated that one major difference between Long Island and Upstate is that National Grid is acquiring KeySpan, not LIPA. He continued that LIPA has a great relationship with KeySpan, but LIPA directs the reliability issues, and when there is a storm, LIPA makes the ultimate decision with tremendous input and commitment from KeySpan. He added that the Authority decides how much money to spend in capital budgets, and where that money goes, so the lack of investment problem in upstate New York will not happen here as long as the Authority continues in its role of directing policy.

CEO Kessel stated that from a repowering perspective, it gives LIPA an opportunity to purchase, at book value, or with respect to the units at Wading River and Shoreham, 1.25 times book value, facilities that could be potential sites for repowering. He continued that LIPA must take a hard look at how this is done, since repowering is not a simple and cheap process. He indicated that LIPA must get more facts out about repowering, energy efficiency and the economics, which is important, as LIPA does not want to step into another Shoreham, particularly since LIPA would own the plants for the time period required to repower.

CEO Kessel stated that there is a lot of work to be done, but this gives LIPA an opportunity to purchase some of the facilities with greater potential for repowering. He continued that LIPA had an option to purchase all of the plants at once at fair market value, which LIPA could not know until after the option was exercised. He indicated that this repowering option is a benefit to LIPA.

CEO Kessel stated that LIPA is getting an extraordinary benefit for the customer from the combination of the KeySpan deal and the \$120 million settlement, as well as the \$91 million in synergy savings, the contributions to efficiency and repowering. He continued that this also allows LIPA to direct money that it was already going to spend toward some of these programs. He added that there will be additional money utilized by the Board to either stabilize bills, to accelerate the Shoreham debt and/or to give credits to customers on a combination of any of those things.

CEO Kessel stated that LIPA is moving in the other direction with respect to rates and bills, and LIPA's bills have gone down three times within the last year while most others are going up significantly. He further stated that with this deal, LIPA's rates may be in the mid-range for the state, and LIPA is no longer the highest, as under LILCO. He indicated that Con Ed is the highest, and they may apply for a rate increase shortly.

CEO Kessel stated that LIPA held a public hearing and laid out to the public what has just been explained. He indicated that LIPA received some very thoughtful comments from the unions, who are supportive of the agreement, and also from several elected officials. He noted that the most significant issue to the public is the MGP issue, and he supports getting involved, even though LIPA is not financially responsible, since LIPA represents the public.

CEO Kessel stated that there is some discomfort with a new company coming in, since people do not like change and because this is a foreign company, although the British are great allies. He continued that LIPA's insertion as a public protector is reassuring to many. He added that there were many questions raised, most of which have been answered, and LIPA will answer all of them.

CEO Kessel stated that last Tuesday, LIPA briefed the delegation from the State Legislature, and he thanks all who attended. He indicated that it was a good meeting, and most people expressed interest and stayed close to the end. He

added that most questions concerned the wind project and Broadwater, but there were some thoughtful questions about the deal, and LIPA will answer them.

CEO Kessel stated that Assemblyman Alessi and some of his colleagues wrote a letter raising some questions, which LIPA will also answer. He continued that several legislators have indicated to him that it would be a good idea if LIPA deliberated more. He added that, as Chairman Law previously stated, LIPA will be going before the Nassau and Suffolk Energy Committees on May 9<sup>th</sup>, and it would be precipitous to move on this agreement today.

CEO Kessel stated that one of the issues raised concerns why LIPA did not put this out to bid. He continued that LIPA looked at this issue where LIPA was considering the acquisition of LILCO in 1996 and 1997, and LIPA interviewed a number of companies several years ago about their interest in either privatizing LIPA or running the day-to-day operations. He indicated that LIPA came to the conclusion that while it may sound like a good idea to put this out to bid, the multi-millions in cost to evaluate this would not give anywhere near the package that LIPA received.

CEO Kessel stated that there are security issues with respect to the workforce, and many of the people who worked for LIPA expressed their desire not to go through with this, and that it may ultimately impact upon their productivity and LIPA's reliability, which is a consideration. He continued that LIPA does not believe that it would get anywhere near the benefits that LIPA receives from this deal. He added that companies would also be unlikely to bid

for this if LIPA included a prohibition in the RFP against lay-offs, because companies need to make a profit.

CEO Kessel stated that it is important to understand that whoever manages the company is still under LIPA's direction, and for the most part, LIPA would continue to run the system with the same employees. He continued that to "jimmy" with that would be a big mistake. He added that LIPA will continue to answer all questions, and then concluded his presentation.

Trustee Fabio stated that it is important to highlight the fact that all of the provisions that were secured in the 2006 agreement with KeySpan have now been incorporated into this new agreement, and, in addition, it obtains concessions from National Grid, which is important. He continued that when National Grid acquired Niagra Mohawk, there were certain reliability issues that resulted, and concerns have been raised that LIPA will experience the same problems. He asked whether Ms. McCarthy would address the different circumstances. Ms. McCarthy stated that the primary difference between the Niagra Mohawk situation and the LIPA situation is who is responsible for making capital investment in the system. She continued that as CEO Kessel pointed out, National Grid is not acquiring LIPA, and LIPA is responsible for making capital investment in the system.

Ms. McCarthy stated that LIPA faced a similar situation when LIPA acquired LILCO, and National Grid faced a similar situation when it purchased Niagara Mohawk. She continued that both systems were run by companies that had

financial challenges and which were not making the investment in the system to maintain reliability. She indicated that while they can get away with that for a few years, it ultimately catches up.

Ms. McCarthy stated that LIPA has invested \$2.5 billion dollars in the system since it took over LILCO, which is why it has the reliability that it does, and LIPA continues to be responsible for the ongoing capital investment into the system and allocating the dollars for the capital investment. She indicated that the performance metrics are all designed toward maintaining LIPA's reliability, while balancing its capital investment, and that is part of the comfort with respect to reliability. She added that LIPA does not have that issue, in addition to the workforce protections to be put in place.

CEO Kessel stated that a key component of the agreement, is that National Grid cannot move LIPA's Call Center or the Customer Service offices without LIPA's authority to do so, and LIPA may terminate the contract if the service falls below a certain level, which is important. He continued that LIPA may also terminate the contract if there was another change of control and LIPA was not satisfied with the new entity that came in.

Trustee Sinnreich stated that LIPA did not exercise its option to buy all of the generation, and LIPA would not be facing these questions if it had exercised the option, since LIPA would be in total control of its own energy system. He continued that at this point, LIPA is joined at the hip with whomever the Management Services Contract is with. He indicated that LIPA will never exercise

the termination right, and LIPA never has from the day that he has been on the Board.

Trustee Sinnreich stated that LIPA has had a number of legal rights, and the reality is that those kinds of options sound good, but in his opinion, they are not realistic. He indicated that LIPA better have other protections in the agreement that do not require LIPA to exercise the option to terminate, because LIPA will never go there.

Trustee Sinnreich stated that what has been lost in the debate and the Assemblyman's letter are what the consequences to LIPA and Long Island would be other than the lost benefits, if LIPA does not enter into this agreement, and what KeySpan would be like if the merger did not go through. He indicated that unless one looks at the alternative, one has not really looked at the issues.

Trustee Sinnreich stated that he will ask the LIPA staff at the next briefing, not only what are the advantages to making the deal, but what are the realistic consequences of not acting.

CEO Kessel stated that LIPA has looked at it, and LIPA will look at it further. He indicated that LIPA is a key component to the National Grid deal, and they could back out of their deal with KeySpan with very limited financial penalties this summer, so the time period is important. He added that if the deal were to fall through, there would be tremendous confusion and chaos at the

worker level which would impact reliability, and one of the reasons that LIPA has high reliability is because of its dedicated and secure workforce.

CEO Kessel stated that KeySpan would be an instant takeover target from another company, and possibly a company that LIPA would not be comfortable with. He continued that while there are a lot of good utilities, there are many that are not so good who may have the ability to acquire KeySpan. He added that LIPA would be in a worse position, and might not get the benefits that LIPA would receive from this deal.

CEO Kessel stated that another possibility is that KeySpan may be acquired by a private equity firm. He continued that if LIPA did not have an experienced utility as manager, LIPA would not want a private equity firm running utilities on Long Island, with whom LIPA is a partner. He indicated that it is a real possibility, and this is happening all over the country and the world right now.

CEO Kessel stated that LIPA always has the option, if necessary, to terminate the contract and bring the workforce over to LIPA. He indicated that under the prior administration LIPA had to compromise with KeySpan on the generation and workforce issues, but that brings out huge complications in its own in terms of pension, contracts and other issues.

CEO Kessel stated that the deal must stand on its own merits. He indicated that LIPA has to be convinced that LIPA could not match the benefits that it has anywhere else.

CEO Kessel stated that ultimately the decision about whether the National Grid deal happens with KeySpan is not up to LIPA, but rather the PSC. He indicated that LIPA is an important factor but if LIPA decided not to go through with the deal, National Grid would have to decide whether or not it wants to continue its partnership with KeySpan. He added that the PSC would have to decide whether the merger is in the public interest, based on the issues that they raised, which are primarily related to gas service.

Trustee Fragin stated that he feels that LIPA's responsibility is to extract the best MSA possible, and LIPA's staff has done a great job to do that. He continued that as far as the larger view, LIPA is looking at what interest it sees for its customers, which is really LIPA's responsibility on a day-to-day basis. He added that as far as who may buy KeySpan, it is less LIPA's responsibility than the PSC's, and the fact that LIPA is a factor in their thinking, this should not be LIPA's sole factor as to what those eventualities are.

Trustee Fragin stated that with respect to National Grid reliability Upstate and in Massachusetts, he feels comfortable that LIPA, being the buffer in there, is sufficient to fulfill the mandate to LIPA's customers, and he would not want to have a situation where KeySpan is a wounded and independent entity. He continued that if the MSA that LIPA is extracting from them has significant improvements over what LIPA has presently, then it is in LIPA's interest and mandate to support it.

Chairman Law opened the meeting to public participation.

Chairman Law stated that Assemblyman Alessi wishes to address the Board. The Chairman indicated that he is in receipt of a copy of the Assemblyman's letter, and LIPA will provide a detailed, written response.

Assemblyman Alessi stated that he intended to put it on the record and to submit it formally, as well as praise LIPA for postponing the vote. He continued that the elected officials of Long Island were originally against the deal, but it seems that LIPA started to move this deal forward.

Assemblyman Alessi stated that the delegation from both the Assembly and Senate met with LIPA representatives, and many felt that some of the statements that were made were promising, but they wanted to see the actual written agreement between LIPA and National Grid. He continued that he asked whether LIPA would move forward if the Long Island representatives were uncertain of the deal, and a commitment was made that LIPA would not. He indicated that it was represented that individual conversations were had with each legislator, and each was okay with this deal, which many said was not true, so they felt it was important to put this letter together, signed by seventeen legislators who represent more than two million Long Island ratepayers. He added that if certain false statements were made at that meeting, they would want to see the written agreement.

Assemblyman Alessi stated they felt that it was too soon to vote, and they were elated to see that LIPA amended the agenda to make this a matter of

discussion and not a vote. He indicated that he came to praise LIPA, but the misinformation that ensued over the past half hour changed the tone of what his remarks would be.

Assemblyman Alessi stated that the seventeen legislators want LIPA to forward the written agreement or Memorandum of Understanding, in order to see the stipulation that LIPA has the ability to cancel the MSA with National Grid, should they fall below minimum service levels. He continued that they felt that the fines that were announced were not enough, because the PSC has fined National Grid millions of dollars in the past three years for performing below minimum service standards, leaving hundreds of thousands of people in the dark for over a week. He added that they are also requesting a list of the performance metrics used to measure service quality and for LIPA to identify who will get the first priority should a major storm wipe out all of National Grid's service territory extending beyond LIPA's service territory as they have had low staffing levels and they are taking over Massachusetts, Upstate New York and Long Island.

Assemblyman Alessi stated that in addition, they want to know when the purchase option of the power plant expires which he hopes is written in the agreement, and that they further request explanations of where the \$91 million in synergy savings comes from, the contract management auditing plan associated with the proposed contracts and the specific repowering plan for the Long Island region including proposed reductions in plant emissions, and the estimated cost and the distribution of that cost between National Grid shareholders and Long Island ratepayers. He further stated that they wish to know the specific cleanup

and timeline plan for the MGP contaminated sites on Long Island and what the cost distribution is between National Grid and LIPA.

Assemblyman Alessi stated they would also like to know more about staffing levels and thresholds. He continued that although there is a no layoff clause, this does not protect Long Island from National Grid reducing the workforce here to disastrous levels, as they did Upstate. He indicated that the median age of the current KeySpan employee is fifty years, and this is a major concern if they retire, especially since National Grid has made promises to other locals Upstate in exchange for their support that all attrition losses associated with this deal would be made on Long Island.

Assemblyman Alessi stated that the seventeen legislators have some concerns that the New York State procurement law stipulates that contracts of this magnitude need to go through a procurement process, with the exception of the single source vendor contracts, which exception was used last time when it was done with KeySpan, and which rely on there being no other contractor who can provide these possible services. He continued that at the time, there were detractors of that deal who stated that KeySpan and Brooklyn Union before it, had absolutely no experience in transmission and distribution, but they took over the workforce and the institutional knowledge. He indicated that National Grid has absolutely no experience worldwide in electric generation, and they own no power plants, yet LIPA is deeming that they are the only ones that can provide service under this contract, so the legislators want, in writing, what the cost of the RFP would have been.

Assemblyman Alessi stated that the legislators also want to know should this deal be approved, what the transition period is for dealing with the current turnover from the changes made. He continued that they hope to have answers in writing and to see the written agreement. He added that he gets very upset when officials of LIPA go in public and play the fear factor, as if nobody else would be interested in bidding on this specific agreement.

Assemblyman Alessi stated that LIPA could write into an RFP exactly what was negotiated, so all can see if there is another provider that can do it cheaper. He indicated that there are 3,000 utilities across the United States, not two or three, and most have lower rates. He added that they may be able to do it cheaper and in a more cost efficient fashion, and that is part of an RFP process.

Trustee Nugent stated that she would like to see the names of the other legislators who signed the letter. She indicated that she admires the Assemblyman's passion for the representation of his constituents, but in taking a look at the positive and negative factors in this deal, it is an investigation for evaluation, not a use of a fear factor to get this agreement.

Assemblyman Alessi, stated that he thinks that it is inflammatory and perhaps misinformative when ratepayers are told that if this deal does not go through, the integrity of the lights being on may be comprised or that an insurance company is one of the only other alternatives.

**Trustee Sinnreich stated that he thinks that Assemblyman Alessi misunderstood his remarks, as he was not criticizing the letter, but as a Trustee who ultimately does have under the legislation, the obligation to vote on this, he thought that in addition to Assemblyman Alessi's questions, he felt that LIPA needs to know the answer to what the consequences of this will be.**

**After indicating that there was no further comment and no need to adjourn to Executive Session, Chairman Law noted that the next Board meeting would be held on May 22, 2007. Upon motion duly made and seconded, the Board voted unanimously to adjourn the meeting at 2:06 p.m.**

**Respectfully submitted,**

**Lynda Nicolino**