

**LONG ISLAND POWER AUTHORITY
MINUTES OF THE 164th MEETING
HELD ON NOVEMBER 18, 2004**

Pursuant to notice dated November 10, 2004, the Long Island Power Authority (the "Authority") was convened for the one hundred and sixty-fourth time at 7:10 PM at the Suffolk Community College in Brentwood, NY.

The following Trustees of the Authority were present:

**Richard M. Kessel, Chairman
Patrick Foye, Deputy Chairman
Michael Affrunti
Nancy A. Akeson
Harvey Auerbach
John Fabio
Robert Maimoni
Nancy Nugent
James M. Shuart
Jonathan Sinnreich**

Also representing the Authority were Stanley Klimberg, General Counsel, Edward Grilli, Chief of Staff, Seth Hulkower, Chief Operating Officer, Elizabeth McCarthy, Chief Financial Officer, Bruce Germano, Vice President – Retail Services, Bert Cunningham, Vice President – Communications, Kenneth Kane, Controller, and Kathleen Stella, Secretary to the Board of Trustees.

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

Chairman Kessel stated that Trustee Auerbach is designated as Deputy Chairman for this meeting.

Chairman Kessel stated that since the last meeting of the Board, former LIPA Trustee Dan Sweeney passed away. The Chairman continued that Mr. Sweeney was an executive at Cablevision, co-founder of Home Box Office and a wonderful man. He indicated that the thoughts and prayers of everyone at LIPA are with the Sweeney family, and he asked for a moment of silence in honor of Mr. Sweeney.

A moment of silence was observed.

Chairman Kessel stated that the first item on the agenda is the adoption of the minutes of the Board's last meeting held on September 29, 2004.

Upon motion duly made and seconded, the following resolution was approved, with Trustee Maimoni abstaining:

713. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE SEPTEMBER 29, 2004 MEETING OF THE BOARD OF TRUSTEES OF THE LONG ISLAND POWER AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held on September 29, 2004 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.

*** * ***

Chairman Kessel stated that he welcomes the Board and members of the public to Suffolk Community College, one of the great community colleges of the State system. The Chairman thanked Suffolk Community College for allowing LIPA to hold its meeting at the Brentwood campus.

Chairman Kessel stated that LIPA released its 2005 operating budget and 2005-2006 capital budgets. The Chairman commended Ms. McCarthy, Mr. Feldman, Mr. Kane and LIPA's budget staff for putting together the best budget that LIPA has ever produced. He indicated that the budget reflects a number of recommendations made previously by New York State Comptroller Alan Hevesi, including the timeliness of the budget.

Chairman Kessel stated that the budget is being presented two months earlier than last year. The Chairman continued that LIPA is able to produce an accurate and timely budget well in advance of the new fiscal year. He indicated that such earlier presentation is difficult in terms of obtaining the necessary numbers due to the processes in place from when LIPA acquired the former Long

Island Lighting Company, but it allows for more timely public comment which contributes to the Board's deliberations.

Chairman Kessel thanked LIPA's staff and State Comptroller Hevesi for helping to improve the budget process. The Chairman indicated that it shows that State Authorities and the State Comptroller's office can work cooperatively.

Chairman Kessel stated that for the first time LIPA's budget exceeds \$3 billion in revenues, which is the highest among municipal electric utilities in the United States. The Chairman continued that LIPA's revenues and budget are driven by usage, unlike other municipal budgets which are driven by expenses. He added that LIPA had not projected there to be a \$3 billion budget until another four to five years, which exemplifies the growth in consumption and revenues.

Chairman Kessel stated that fuel and purchased power costs, including for oil and natural gas, now represent 56 percent of LIPA's total operating budget, compared to 39 percent of LIPA's first budget in 1999. The Chairman continued that those costs together with property taxes represent close to \$1.8 billion or two-thirds of LIPA's budget. He added that LIPA's budget is extremely sensitive to fuel costs.

Chairman Kessel stated that absent an unexpected energy crisis next year, LIPA intends to hold its bills, including the fuel surcharge, at the current level until at least the fiscal year 2006. The Chairman indicated that the national core producer index showed 1.7 percent growth in October, which includes a 6.8

percent growth in energy costs. He added that this winter will be devastating in terms of energy costs, and it is an extraordinary accomplishment for LIPA to hold bills stable for the next year.

Chairman Kessel stated that LIPA is able to hold bills stable because it has changed its fuel cost collection practices. The Chairman continued that there are now in place real-time collections practices instead of the prior deferral of collections. He indicated that LIPA will come close this year to reaching its \$20 million net income target and the budget for 2005 also includes that \$20 million target.

Chairman Kessel stated that many good fiscal management practices have enabled LIPA to develop a budget to the Board that contains no bill increase for next year, which will avoid inflationary effects. The Chairman continued that LIPA has reduced and postponed a number of programs and lowered administrative expenses. He indicated that some programs planned for 2005 were deferred to 2006. He added that LIPA has hired only essential personnel.

Chairman Kessel stated that LIPA will have two budget hearings, and public comment is welcomed. The Chairman indicated that he will report back to the Board regarding public comments. He further indicated that this is one of the rare times that the Board will be able to adopt a budget prior to the start of the fiscal year.

Chairman Kessel stated that LIPA's staff and department heads did a great job in reducing LIPA's operating, legal and consulting costs. The Chairman continued that LIPA cannot do some of the things it was capable of a few years ago, due partly to the fact that LIPA has kept down its expenses. He added that LIPA must maintain strict expenditure levels next year.

Chairman Kessel stated that LIPA is proposing a five-year budget plan for the second time to give some indication of revenues, expenses and possible bill changes for 2006 through 2009. The Chairman continued that LIPA currently projects a bill increase of 1.5 percent for 2006, and then decreases of 2.1, 1.2 and 2 percent for the following three years. He noted that these numbers are preliminary and very sensitive to fuel costs.

Chairman Kessel stated that LIPA will monitor closely fuel costs and he intends to report to the Board on a quarterly basis in 2005. The Chairman indicated that LIPA is in a strong position.

Chairman Kessel stated that the capital budgets for 2005 and 2006 have also been prepared for presentation to the Board. The Chairman continued that the capital budget is \$277.9 million for 2005 and \$315.5 million for 2006. He added that the 2005 budget is an 18 percent increase from 2004, and the 2006 budget is a \$38 million increase from 2005.

Chairman Kessel stated that it is important to note that LIPA has invested \$1.3 billion in the system and has the best reliability record since thirty-five years

ago, when there were approximately 350,000 fewer customers. The Chairman continued that LIPA is one of the most reliable overhead utilities in the state and the country. He added that the capital budgets will be driven largely by interconnections for the projects required to keep the lights on.

Chairman Kessel stated that at the time of LIPA's acquisition of LILCO, LIPA estimated its capital budget would be \$125 million, but the actual cost in subsequent years was approximately twice that amount, even when LIPA had no interconnection projects. The Chairman continued that the amounts of the capital budgets indicate the state of the system that LIPA inherited, but LIPA's investment in the system has paid off for its customers.

Chairman Kessel stated that LIPA has engaged a group of professionals, both internal and external, to examine LIPA's strategic alternatives. The Chairman indicated that this is an important and comprehensive assessment of what LIPA will be going forward, and the process is moving along well. He stated that the steering committee consists of himself, Frank Zarb, Lou Tomson, Elizabeth McCarthy, and Robert Foran of Bear Stearns, and they have been meeting and gathering information. He continued that LIPA's Trustee Advisory Group has been meeting monthly. The Chairman added that he has met with a number of utilities and they have offered many good ideas.

Chairman Kessel stated he anticipates that several significant options on both the public and private sides and different from LIPA's current structure will be presented to the Board. The Chairman continued that his expectation is that

the Board will be presented with these options in the first quarter of next year, due the large quantity of information and the amount of patience and analysis involved. He thanked the Trustee Advisory Group and Trustees Affrunti, Akeson, Auerbach, Sinnreich who have helped LIPA through this process.

Chairman Kessel stated that the next item on the agenda is the Operations Report, to be delivered by Mr. Hulkower.

Mr. Hulkower reported that LIPA's current year-end projection for Sales and Marketing Load and Revenue Growth and Retention is 42.8 MW, against a goal of 41 MW. He continued that from this LIPA projects additional revenues of \$17.05 million, against a goal of \$16.8 million.

Mr. Hulkower reported that LIPA customer arrears on a 30, 60 and 90 day basis are at \$85.8 million through the end of October. He continued that commercial arrears are slightly higher than in 2003, and residential arrears are considerably higher. He added that LIPA has managed to bring down the commercial arrears since January of this year, but the residential arrears have persisted, and LIPA will continue to work on this matter.

Mr. Hulkower reported that LIPA's SAIFI is approximately 15 months between outages and LIPA briefly reached 15.5 months in August. He continued that there were a considerable number of outages this October, which accounts for the recent dip. He added that LIPA is 17 percent higher than the average for the previous five years.

Mr. Hulkower reported that LIPA's CAIDI is down to 63 minutes for restoring sustained outages, which is LIPA's best time in years. He continued that LIPA's MAIFI, which indicates the number of momentary interruptions, is slightly more than five per customer per year. He added that this reflects a terrific downward trend since this metric was first followed in 1995, and LIPA is focusing its tree trimming effort for next year on those circuits currently having extreme problems.

Chairman Kessel stated that Long Island has seen some tough weather since the Board's last meeting in September, including devastating wind storms. The Chairman thanked the IBEW 1049 crews and the Call Center staff for their great work.

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

Ms. McCarthy reported that for the period ended September 20, 2004, LIPA had an excess of revenues over expenses of \$17 million, which is approximately \$14 million under budget. She continued that the primary drivers are higher fuel and purchased power costs of approximately \$60 million related to higher commodity prices and some sales growth; and higher operation and maintenance expenses related to the mobile generating units installed this summer. She added that the increased costs were offset by increased revenues of

approximately \$75 million, due primarily to the increases in the fuel surcharge during the year.

Ms. McCarthy stated that LIPA continues to see strong growth in the commercial and residential sales area, but commercial revenues will be reduced by an increasing number of customers participating in Long Island Choice. She continued that this will not impact the bottom line, since LIPA will avoid the fuel costs to serve them. She added that on September 30, LIPA had approximately \$465 million in cash, including LIPA's Rate Stabilization Fund, and the cash was invested in relatively short term investments.

Chairman Kessel asked whether the loss of revenues due to Long Island Choice tracks the reduced amount that LIPA otherwise would have spent relative to those customers. Ms. McCarthy responded affirmatively.

Chairman Kessel asked whether financial problems could be created for LIPA from lower revenues than expense reductions. Ms. McCarthy answered that the processes in place are designed to prevent that, and LIPA is in the process of confirming that such a shortfall will not occur.

Deputy Chairman Foye stated that the Finance and Audit Committee met for an hour and a half prior to the Board meeting. He indicated that the Committee has been thoroughly briefed on all matters, including hedging.

Turning to the next agenda item, Chairman Kessel stated that he is proud to promote and formally introduce a resolution authorizing the Chairman or his designee to enter into Energy Efficiency Purchase Agreements (EEPA) with six contractors whose proposals were selected following LIPA's October 2003 Energy Efficiency RFP. The Chairman continued that the Board adopted a resolution at its June 2004 meeting that approved the selection of six contractors' proposals for energy efficiency programs to be developed over a period of up to ten years. He added that the Board authorized the Chairman or his designee to negotiate the terms of these EEPAs, and if fair and reasonable terms were negotiated, the Board would be asked to authorize execution of the EEPAs.

Chairman Kessel stated that since the June Board meeting LIPA's staff has negotiated the terms of the EEPAs, which will collectively achieve approximately 73 MW of long-term electricity savings, and will implement a wide range of energy efficiency programs targeting both small and large commercial and industrial customers, publicly owned buildings and multi-family dwellings. The Chairman continued that selected firms will target various areas including measures for common areas and individual units of multi-family dwellings; refrigeration in convenience stores, restaurants and supermarkets; comprehensive lighting, heating, ventilation and air conditioning (HVAC) for small commercial and industrial customers; lighting and HVAC measures marketed in conjunction with Long Island-based contractors and distributors; financial packages encouraging the installation of a comprehensive set of energy efficiency measures; financial packages tailored to individual customers; and chiller retrofits and lighting redesign. He noted that under the EEPAs, the energy and capacity savings may

be developed over a period of up to ten years with the initial savings to be delivered in 2005.

Chairman Kessel stated that the contractors will install, maintain, repair and as necessary replace energy efficiency measures and guarantee certain levels of electric load reduction. The Chairman continued that the firms are responsible for recruiting and contracting with their customers to complete projects yielding the guaranteed energy and capacity savings. He emphasized that an important element of the EEPAs is that LIPA's payments to the contractors will be made only after the verification of energy and capacity savings, and LIPA will have the right to terminate or adjust the agreements based on performance.

Chairman Kessel stated that this is a groundbreaking project, not just for Long Island, but the entire country. The Chairman continued that in effect, LIPA is requesting authorization not to purchase power, but to save electricity. He added that once the programs are fully in effect, LIPA will be saving enough electricity for approximately 75,000 homes, and LIPA will avoid the construction of one major 79.9 MW project.

Chairman Kessel stated that the project is good for the economy, since many of the companies have committed to hire contractors on Long Island to do the work. The Chairman continued that it will reduce demand, especially during peak times, especially the HVAC programs. He indicated that the program is also

good for the environment, since it ultimately results in fewer megawatts produced and fewer emissions from power plants.

Chairman Kessel stated that this is a groundbreaking project that Governor Pataki requested, and these programs are a common sense approach to providing economical electricity on Long Island. The Chairman continued that the project is significant because rather than producing more power for use, LIPA is reducing demand. He commended Mr. Grilli, Mr. Zaweski and the LIPA Clean Energy staff for their terrific job.

Trustee Auerbach asked how the energy savings will be verified. Mr. Zaweski answered that there will be third party independent contractors hired by LIPA who will be selected to verify the savings after an RFP process is completed. Chairman Kessel asked whether the selection of the measurement firms will be submitted to the Board. Mr. Zaweski answered yes.

Deputy Chairman Foye asked whether LIPA could increase the energy savings by expanding the program. Mr. Zaweski stated that LIPA believes that there is potential for more savings. He continued that LIPA has taken advantage of some of the low-hanging fruit, and LIPA expects to revisit this in the future.

Chairman Kessel stated that there is potential for more to be done, and the Governor has asked LIPA to consider the possibility of issuing another RFP, but LIPA wants to first get these contractors started and the measurement process working.

Deputy Chairman Foye asked when the 73 MW savings level will be attained. Mr. Zaweski responded that the final 73 MW savings level should be reached in year nine of the program, and that the majority of the savings should be attained within the first three years. Deputy Chairman Foye asked whether steps can be taken to accelerate this. Mr. Zaweski answered that there could be, and noted that LIPA currently has cost ceilings within the contracts for budgeting purposes.

Trustee Fabio asked whether LIPA has an idea as to what the cost for the programs will be, as opposed to what the cost would have been to generate the same amount of electricity. Mr. Zaweski responded that a cost-benefit analysis was performed earlier this year. He continued that the program is expected to save approximately \$80 million in comparison to building generation. Trustee Fabio asked for what time period the cost savings were projected. Mr. Zaweski answered that it was projected over the ten-year duration of the project.

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

714. AUTHORIZATION FOR CHAIRMAN TO ENTER INTO ENERGY EFFICIENCY PURCHASE AGREEMENTS WITH SIX SELECTED CONTRACTORS

WHEREAS, at its June 2004 meeting, the Board approved the selection of six contractors' proposals for energy efficiency programs in response to LIPA's October 2003 Energy Efficiency Request for Proposals (Ameresco, Aspen Systems Corporation, CSG Services, Inc., Custom Energy, Honeywell and

Johnson Controls), and authorized the negotiation of terms of energy efficiency purchase agreements (“EEPA”) with those contractors; and

WHEREAS, LIPA staff has negotiated the terms of the EEPAs under which, among other things, the selected firms would carry out a variety of energy efficiency programs that would collectively yield approximately 73 MW of long term electricity savings over a period of up to 10 years, and LIPA’s payments would be based on verified savings achieved; and

WHEREAS, for the reasons discussed in the preceding Memorandum, the proposed EEPAs for energy efficiency programs are in LIPA’s best interest;

NOW, THEREFORE, BE IT RESOLVED, that the Chairman or his designee be and hereby are authorized to execute and effect EEPAs for energy efficiency programs with the six contractors as referenced above, and other related agreements and arrangements, and to perform such further acts and deeds as may be necessary, convenient or appropriate, in the judgment of the Chairman or his designee, to carry out the EEPAs.

Chairman Kessel stated that the next item on the agenda is a resolution designating LIPA to serve as the lead agency under SEQRA for the Caithness Bellport Energy Center Project, determining that the project might have a significant impact on the environment, and authorizing a Positive Declaration with respect to the project, which would require the preparation of an Environmental Impact Statement. The Chairman continued that the resolution further authorizes the Chairman or his designee to release for public review a “Draft Scope” document which describes the types of studies that LIPA as lead agency would undertake to prepare a DEIS, hold public hearings and receive public comment on such Draft Scope, prepare a “Final Scope” for the DEIS under SEQRA, and prepare the DEIS for consideration by the Trustees. He indicated that LIPA had previously approved the selection of this proposed project based on the need for additional generation on Long Island.

Chairman Kessel stated that in response to LIPA's May 2003 RFP, Caithness Bellport, LLC proposed the siting, installation and operation of a combined cycle combustion turbine generator with a maximum output of approximately 350 MW and other associated equipment and structures to be located on 15 acres within a 96 acre parcel in the Town of Brookhaven's North Bellport Empire Development Zone. The Chairman continued that in accordance with the RFP specifications, LIPA would undertake to negotiate a Power Purchase Agreement for 277 MW of the plant's output, leaving the remainder available for merchant transmission. He indicated that LIPA has determined that the project is a Type I matter under SEQRA, and it has the potential to result in one or more significant adverse impacts on the environment.

Chairman Kessel stated that LIPA staff recommends the issuance of a Positive Declaration for the project. The Chairman indicated that LIPA has advised all potentially involved agencies that LIPA intends to serve as the lead agency for environmental review of the project, and all such agencies have consented or failed to object to LIPA serving in that capacity.

Chairman Kessel stated that although not required, LIPA is going the additional step to publicly air this project so that the public is fully aware of the entire process. The Chairman continued that while a number of public officials and community leaders are supportive of the project, there will be people who have concerns about it, which is why LIPA will also go forward with a scoping review on the process in addition to the normal SEQRA process which involves preparing a draft Environmental Impact Statement.

Mr. Grilli stated that LIPA expects that the draft Environmental Impact Statement will be presented to the Board early next year. He continued that this is an important project for LIPA, and LIPA has worked closely with Caithness Bellport and with the regulatory agencies to develop a plan going forward.

Trustee Fabio inquired as to the timing of this project in regard to being impacted by a possible change in LIPA's governance structure, which may also affect expenditures on consultants. Chairman Kessel answered that the governance issue is not going to impact the need for electricity, and LIPA must continue to conduct its business even if there is a change in governance, particularly with respect to projects that provide resources for LIPA's customers. The Chairman continued that if there is a change in governance, LIPA's agreements will still have to be honored. Trustee Fabio indicated that the environmental impact study may show that this is not a prudent decision. Chairman Kessel stated that this is a matter LIPA ultimately will have to decide.

Trustee Sinnreich noted that by adopting this resolution the Board is not making a finding that there is an adverse effect on the environment, but only that there is the possibility of such effect which warrants investigation. Chairman Kessel agreed.

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

715. APPROVAL OF POSITIVE DECLARATION UNDER SEQRA AND AUTHORITY TO RELEASE FOR PUBLIC REVIEW A DRAFT AND FINAL SCOPE OF THE ENVIRONMENTAL REVIEW UNDER SEQRA OF THE CAITHNESS BELLPORT ENERGY CENTER PROJECT

WHEREAS, the Long Island Power Authority (“LIPA”) is committed to providing reliable electric service to its customers on Long Island; and

WHEREAS, the growing Long Island economy and other factors have resulted in an increasing demand for electricity that is projected to continue into the foreseeable future; and

WHEREAS, in order to meet the electricity needs of LIPA’s customers and statewide and locational generation requirements established by the New York Independent System Operator (“NYISO”) and the New York State Reliability Council, it is necessary to secure additional sources of power supply from generation located within LIPA’s service area, to be in operation by the summer of 2008; and

WHEREAS, the maintenance of a continuous and reliable supply of dependable electric power and energy is an essential matter of urgent public concern and requires action at this time; and

WHEREAS, LIPA selected the Caithness Bellport Energy Center proposed by Caithness Bellport, LLC (the “Project”) in response to its May 30, 2003 Request For Proposals (“Baseload RFP”) to supply LIPA with power from a new generating facility on Long Island, and/or a new transmission line to Long Island, and/or a new or existing generating facility located off-Island using a new or existing transmission line to Long Island; and

WHEREAS, given the size and scope of the Project, LIPA staff has determined that the Project might result in one or more significant adverse impacts on the environment, and accordingly recommends that LIPA release a Positive Declaration under the State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, LIPA has advised all other potentially involved agencies that LIPA proposes to serve as “lead agency” under SEQRA in connection with the environmental review of the Project, and all such agencies have consented (or failed to object) to LIPA’s serving in such capacity; and

WHEREAS, to ensure adequate public participation, LIPA staff recommends that prior to the release of a Draft Environmental Impact Statement (“DEIS”) for the Project under SEQRA, LIPA should release for public review and comment a Draft Scope for the DEIS, hold public hearings and receive public comment on such Draft Scope, and prepare a Final Scope for the DEIS;

NOW, THEREFORE, BE IT RESOLVED, that LIPA hereby (a) confirms that it is the “lead agency” for the review of the Project under SEQRA, (b) determines that the Project might have a potentially significant adverse impact on the environment and authorizes and directs the preparation of a Positive Declaration for the Project under SEQRA, and (c) authorizes the Chairman or his designee to release for public review a Draft Scope for the DEIS, hold public hearings and receive public comment on such Draft Scope, prepare a Final Scope for the DEIS, and prepare the DEIS for consideration by the Trustees.

Chairman Kessel stated that the next item on the agenda is Board consideration of a resolution adopting a determination that the construction and operation of the Riverhead to Jamesport Transmission System Upgrade Project will not have a significant adverse impact on the environment and will not require the preparation of an Environmental Impact Statement, and authorizing the issuance of a Negative Declaration. The Chairman continued that this project was approved previously by the Board previously, and was completed and is in operation. He added that the project included an upgrade of an overhead double-circuit 23 kV transmission line to a single-circuit 69 kV transmission line and improvements to the Riverhead and Tuthill substations.

Chairman Kessel stated that the project was approved after reviewing a number of alternatives, and the Board decided ultimately to carry out the project with approximately one-half of the line underground and one-half above ground. The Chairman continued that the six alternatives for the project were the subject of three separate environmental assessments prepared under SEQRA. He indicated that the environmental assessments all concluded that the six options

would not have significant environmental impacts, and the Board ultimately adopted Option F.

Chairman Kessel stated that on October 7, 2003, the Town of Riverhead filed an Article 78 proceeding challenging LIPA's approval of Option F on a variety of grounds, including an allegation that LIPA failed to take a hard look at the project's environmental impact under SEQRA. The Chairman continued that after allowing construction to proceed to completion, Justice Cohalan issued a decision on September 29, 2004, ruling in favor of LIPA on most issues, but finding that LIPA had failed to take the required hard look at the impact of the project on the Town's Open Space Acquisition Program and on aesthetic resources. He added that the decision annulled LIPA's September 25, 2003 issuance of a Negative Declaration and approval of the project, and remanded the matter to LIPA for reconsideration.

Chairman Kessel stated that a Supplemental Environmental Assessment (SEA) was prepared by LIPA's consultants and staff that addresses the aesthetic and open space issues. The Chairman continued that the SEA builds on the previous assessment and presents a comprehensive assessment of open space and aesthetic issues. He indicated that the SEA concludes that the project will not have significant adverse environmental impact, and no environmental impact statement is necessary.

Deputy Chairman Foye asked whether LIPA is being charged for the additional work. He indicated that Justice Cohalan's decision was a result of the

consultants initially dropping the ball, and he disagrees that LIPA should pay for additional work where LIPA relied on the legal and environmental consultants. He stated this is a serious matter.

Mr. Kass of Carter Ledyard & Milburn, LIPA's environmental counsel in this matter, stated that LIPA is being charged for the additional work, and he believes that LIPA was exceedingly well represented.

Deputy Chairman Foye inquired as to why LIPA has agreed to pay a second time. Mr. Grilli stated that after the court's decision was issued, LIPA measured and weighed the various options with LIPA's legal team to decide whether or not to appeal the decision or to address the court's concerns, although LIPA did not totally agree that it was remiss in addressing the matter initially. He continued that as a strategic decision considering costs and timing, LIPA decided to address the court's concerns.

Deputy Chairman Foye stated that he does not question the decision to go forward, but the decisions to use the same consultants and to pay a second time.

Trustee Nugent asked why it would be considered a duplication of fees if the additional action is to cover ground that had not been covered. Mr. Grilli responded that it is definitely additional work that was necessitated by the decision. Mr. Klimberg stated that there was additional work done, and one of the points that Judge Cohalan raised was that there was a new Open Space Program established by the Town of Riverhead, which created a requirement for further

review. He added that LIPA does not agree with the decision of Justice Cohalan that LIPA had not taken a sufficient look, and that LIPA believes it did take a hard look.

Mr. Klimberg stated that given the fact that Justice Cohalan had reached his decision, LIPA had a strategic decision to make to either appeal the decision or to do further work that LIPA did not think was necessary, although useful. He continued that LIPA conducted the additional reviews in light of the actual construction. He added that LIPA analyzed the aesthetic impacts not simply on the basis of projections of what the facilities would look like and their potential impact on aesthetic and visual matters, but LIPA examined the project's actual impact.

Deputy Chairman Foye stated that unlike a business or a financial decision in which the Board is involved, LIPA properly relies on the consultants and their advice for an environmental report. He continued that the advice was wrong in the eyes of the Supreme Court, and he has a problem with the ratepayers of LIPA paying for it again.

Chairman Kessel asked what the estimated additional cost is. Mr. Kass responded that the cost of the work for the revised Supplemental Environmental Assessment is in the neighborhood of \$50,000 for both legal and environmental consultants. He continued that there were several sets of negative declarations and assessments issued for Options A through E which were prepared by other consultants and which were less comprehensive than for Option F. He indicated

that Option F was known to be somewhat controversial, and it received a far more comprehensive assessment.

Mr. Kass stated that because the assessment for Option F was more comprehensive, the court sustained almost everything LIPA did and declined to enjoin the project. He continued that when the Town of Riverhead first commenced the action on an essentially ex parte basis, it received a temporary restraining order (TRO) stopping work for a period of days for a project having an urgent construction timeline. He added that his firm appeared in court and the TRO was vacated, and the work was permitted to go forward, which was greatly needed. Mr. Kass stated that the court at that time also looked at the comprehensive assessment prepared by Allee King Rosen & Fleming (AKRF), LIPA's environmental consultant. He indicated that he is confident that had the assessment not been so extensive, the courts' remedy might not have been to order LIPA to go back and reconsider, but possibly to require LIPA to deconstruct part of the line. He added that he believes the court's decision was wrong and that it would be reversed on appeal, but the cost of pursuing an appeal would be far greater than the cost of compliance.

Trustee Maimoni asked whether the Town's Open Space law was in effect at the time that the environmental assessment was done. Mr. Rosen answered that the Town's comprehensive plan was adopted in November 2003 and the Environmental Assessment was completed in September 2003. Mr. Kass stated that the court cited a number of comments made by LIPA Board members in support of the position that certain issues had not been examined in detail.

Chairman Kessel stated that the project is complete and LIPA ought to try to move on, but he respects the points made. The Chairman continued that he also respects Justice Cohalan.

Mr. Klimberg stated that LIPA has relied on Carter Ledyard as environmental counsel and AKRF as environmental consultant in connection with the projects that LIPA has gone forward with since 2002, which were all successful. He continued that it is particularly noteworthy that there was litigation in connection with the project that KeySpan constructed at Port Jefferson. He indicated that this litigation, which was initiated by the Village of Poquott, was successfully defended by LIPA, which was led by the same environmental team.

Deputy Chairman Foye stated that the lawyers and consultants are highly paid, and it is not enough that they have successfully defended a prior lawsuit. Mr. Kass stated that LIPA will not be better represented by other counsel. He indicated that LIPA recently won a major decision in the Appellate Division on another matter.

Chairman Kessel requested that Mr. Rosen of AKRF explain the Supplemental Environmental Assessment. Mr. Rosen stated that the SEA focuses on two issues, the Open Space issue and the aesthetics regarding visual quality. He continued that in terms of Open Space, five policies are examined, including the Town of Riverhead's Comprehensive Plan that was adopted in

November 2003, the Peconic Bay Regional Community Preservation Act, the Town of Riverhead Community Preservation Project Plan, and the Suffolk County Master Plan and maps of the proposed County open space acquisitions. He added that the SEA concludes that the project is in compliance with all of these open space acquisition plans.

Mr. Rosen stated that a detailed visual assessment was conducted following the New York State Department of Environmental Conservation guidelines. He continued that the analysis was done based on actual photographs as opposed to the simulations used in the September 2003 Environmental Assessment. He added that the conclusions were the same, that there is no significant aesthetic impact, and the SEA adopts the previous findings in terms of land use, zoning, community facilities, cultural resources, natural resources and a host of other environmental subjects.

Trustee Sinnreich asked whether the order of the Administrative Law Judge of the Public Service Commission issued twenty years ago in connection with the proposed Jamesport power lines was accounted for in the assessment. Mr. Kass indicated that the order was raised in the litigation and the court held that it was not relevant to the issues under consideration. Mr. Rosen stated that it was not explicitly considered.

Trustee Sinnreich stated that the only matter before the Board is whether to issue a positive or negative declaration. Mr. Kass stated that it is the reconsideration of the issuance of a negative declaration.

Trustee Sinnreich stated that a positive declaration is warranted. He continued that there is no question in his mind that, given the fast disappearing open space left on Long Island, LIPA is passing up an enormously important opportunity to preserve and enhance such space. He added that he thought a positive declaration was warranted last time, and it is again.

Trustee Sinnreich stated that he will not comment on the litigation, but he believes the analysis of it is wrong. He continued that although the judge did not think so, this is inherently a political decision where the lack of political clout of the North Fork is depriving them of the same treatment given to the South Fork.

Trustee Nugent stated that she found it enlightening that apparently Justice Cohalan used the statements made at a LIPA Board meeting, and she assumes that most of the comments came from Trustee Sinnreich, who abstained in the matter. She expressed caution to the Board that what is said at Board meetings could turn up later to haunt LIPA.

Trustee Sinnreich stated that he is opposed to the resolution, and he is free to vote because he no longer represents the Town.

An initial vote taken on the resolution resulted in opposition by Deputy Chairman Foye and Trustees Maimoni and Sinnreich. Chairman Kessel urged that someone should change their opposition in order to avoid defeat of this resolution which could result in LIPA having to bring a costly court appeal.

Deputy Chairman Foye indicated that he will change his vote, although he is not happy doing it and he urges Mr. Klimberg to issue a RFP for environmental counsel and consultants. Deputy Chairman Foye indicated that he is not happy with the results, nor the fact that LIPA will be paying again. Chairman Kessel stated that he appreciates Deputy Chairman Foye's decision in the best interest of moving on. The Chairman requested that Mr. Klimberg discuss the issue of counsel with Deputy Chairman Foye and report to the Board on the cost of the additional work when it is completed.

Upon motion duly made and seconded, the following resolution was approved, with Trustees Maimoni and Sinnreich opposing:

716. APPROVAL OF NEGATIVE DECLARATION FOR RIVERHEAD TO JAMESPORT TRANSMISSION SYSTEM UPGRADE PROJECT UNDER SEQRA

WHEREAS, the Riverhead to Jamesport Transmission System Upgrade Project (the "Project") is a badly needed upgrade to a pre-existing transmission line serving the North Fork of Long Island; and

WHEREAS, the Project replaced a pre-existing, 75-year old 23 kV line and associated substation equipment with a 69 kV line; and

WHEREAS, the Project replaced an all-overhead transmission line with a line that is approximately one-half underground and one-half aboveground; and

WHEREAS, on September 25, 2003, LIPA issued a Negative Declaration under the State Environmental Quality Review Act ("SEQRA") for the Project and approved its implementation; and

WHEREAS, the Town of Riverhead filed an Article 78 proceeding challenging that approval on a variety of grounds; and

WHEREAS, on September 29, 2004, Justice Peter Fox Cohalan issued a memorandum decision annulling LIPA's September 25, 2003 approval of the Project and Negative Declaration, and remanding the matter to LIPA for further

consideration of the Project's potential impact on the Town of Riverhead's Open Space Acquisition Program and aesthetic resources; and

WHEREAS, LIPA staff has prepared, with the assistance of environmental consultants and counsel, a Supplemental Environmental Assessment of the potential environmental impacts of the Project in order to comply with Justice Cohalan's decision and to determine, under SEQRA, whether the Project would or might have any significant adverse environmental impacts; and

WHEREAS, the Supplemental Environmental Assessment finds that no significant adverse environmental impacts will result from the Project and, accordingly, that no environmental impact statement is required under SEQRA;

NOW, THEREFORE, BE IT RESOLVED, that LIPA hereby (a) confirms that it is the "lead agency" for the review of the Project under SEQRA, (b) approves and adopts the Supplemental Environmental Assessment dated November 2004 for the Project, and (c) for the reasons set forth in and on the basis of such Supplemental Environmental Assessment, finds and determines that (1) the construction and operation of the Project, as described in the Supplemental Environmental Assessment, and the carrying out of the Project will not have, and has not had, a significant adverse effect on the environment, and (2) accordingly, an environmental impact statement need not be prepared in connection with the Project; and be it further

RESOLVED, that the Chairman or his designee is directed to prepare and file a Negative Declaration, effective immediately, for the Project in accordance with the requirements of SEQRA, and to perform such further acts and deeds as may be necessary, convenient or appropriate, in the judgment of the Chairman or his designee, to ensure that the foregoing is carried out; and be it further

RESOLVED, that the Project described in the Supplemental Environmental Assessment is hereby approved.

* * *

Chairman Kessel stated that the next item on the agenda is Board consideration of a resolution authorizing the Chairman or his designee to execute an amendment extending by three years and revising the terms of the PPA between PPL ENERGYPLUS, LLC and LIPA relating to the Brentwood Project, and to execute an amendment making a conforming extension of the related Agreement of Lease.

The Chairman stated that in November 2001 the Board authorized a PPA for a three-year term for the PPL Brentwood Project, and commercial operation of the project commenced on July 25, 2002. He added that the project has demonstrated a very high availability factor since that date. The Chairman stated that the PPA expires on July 25, 2005, and the project could become a merchant facility with the output bid into the New York ISO. The Chairman continued that LIPA will benefit from continuing to have this on-Island generation available, and LIPA would continue to pay for the project capacity under New York ISO rules in that situation. He added that PPL indicated that absent an extension, it would consider a very limited seasonal operation since it is not optimistic about the economic viability of operation, or PPL may place the project in reserve status or deactivate it.

Chairman Kessel stated that after extensive negotiations, PPL has agreed to a reduction in the capacity charge of approximately 34 percent in return for a three-year extension, and in addition, PPL has agreed to increase the guaranteed availability of the project and to further reduce the capacity charge should availability levels not be met. The Chairman continued that LIPA's staff believes that the amendment is in LIPA's interest from a reliability perspective, since the project is one of the most heavily dispatched of the fast track units, and it is of strategic value to LIPA's system, due to its quick-start capability during system emergencies, and especially during peak periods.

Chairman Kessel stated that the project is located on land owned by LIPA and leased to PPL. The Chairman indicated that the proposed amendment of the lease agreement will extend the term to be consistent with the PPA extension.

Chairman Kessel stated that the extensions are in the best interest of LIPA's customers. The Chairman continued that if LIPA does not extend the PPA and Agreement of Lease and were to lose the capacity in the Long Island Control Area, it would effectively negate one of the new projects. He thanked Mr. Grilli, Ms. Barish-Strauss, Mr. Peterson and LIPA's team who negotiated agreements that will be highly beneficial to LIPA.

Chairman Kessel stated that the PPA extension proves that shorter term contracts ultimately can benefit customers. The Chairman continued that had the contract been for twenty years, LIPA would be locked into a higher cost for seventeen additional years. He indicated that the industry will have to address this issue on a national level.

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

717. APPROVAL OF AUTHORITY TO EXECUTE AMENDMENTS TO POWER PURCHASE AND LEASE AGREEMENTS BETWEEN LIPA AND PPL ENERGYPLUS, LLC FOR BRENTWOOD PROJECT

RESOLVED, that the Chairman or his designee be, and hereby is, authorized to execute an amendment to the Power Purchase Agreement and an amendment to the Agreement of Lease between LIPA and PPL ENERGYPLUS, LLC for the Brentwood project, with such terms and conditions as he deems

necessary or advisable and as are consistent with the basic terms set forth in the preceding Memorandum.

Chairman Kessel stated that the next item on the agenda is Board consideration of a resolution authorizing the Chairman to engage two law firms to provide Disclosure Counsel Services on an as-needed basis to the Authority and its subsidiary, LIPA, with the contract terms to be four years. The Chairman continued that on June 21, 2004, the Authority issued an RFP for experienced law firms to provide Disclosure Counsel Services, and on or before July 19, 2004, nine firms responded. He added that a selection committee comprised of Authority staff members carefully examined each proposal.

Chairman Kessel stated that based on the written submissions, interviews and an assessment of the Authority's and LIPA's needs, it was determined that it would be appropriate to select two firms, Clifford Chance US, LLP and Harris Beach LLP to serve as disclosure counsel to the Authority. The Chairman indicated that Clifford Chance will serve as the Authority's disclosure counsel for standard disclosure issues and matters, and Harris Beach will serve as disclosure counsel to the Authority for special disclosure projects, particularly those involving State disclosure issues. He further indicated that both firms were selected on the basis of their strengths and expertise, and these firms are not being engaged for specific work but to be available on an as-needed basis. He also stated that LIPA will not spend cumulatively more for these two firms as compared to hiring one firm.

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

718. ENGAGEMENT OF FIRMS TO PROVIDE DISCLOSURE COUNSEL SERVICES

RESOLVED, that the Chairman be, and hereby is, authorized to engage Clifford Chance US, LLP and Harris Beach LLP to provide Disclosure Counsel services to the Authority and LIPA, with the contract terms to be four years.

Chairman Kessel stated that the next item on the agenda is Board consideration of a resolution authorizing the Chairman to engage Patricia Lynch Associates and Brian R. Meara Public Relations to provide governmental relations services to the Authority and LIPA, with the contract terms to be three years. The Chairman continued that the Authority recognized soon after the LILCO takeover in 1998 that it is necessary to maintain a consistent and substantial presence in Albany in order to monitor and address State legislative matters affecting the Authority and to obtain required approvals. He added that the Authority must obtain certain approvals from other governmental entities, including the Office of the State Comptroller and the Public Authorities Control Board, and these interactions may increase in connection with the strategic organizational and governance options that the Authority is currently examining.

Chairman Kessel stated that the Authority needs to continue to retain highly experienced governmental relations service professionals to supplement its limited in-house resources to accomplish its legislative and governmental

objectives. The Chairman continued that Ms. Lynch and Mr. Meara have provided governmental relations services to the Authority for several years, and they were selected based on their experience and expertise.

Chairman Kessel stated that the contracts for the two firms require that they provide reports, as suggested by several Trustees. The Chairman indicated that reports will be provided to the Authority on a monthly basis from January to August with a final report to be provided by December 31 of each year. He added that the reports will outline the nature and status of their activities.

Chairman Kessel stated that the contracts will also include a comprehensive provision regarding potential conflicts of interest, and will be terminable by the Authority upon notice. The Chairman continued that the two firms have already provided services to LIPA, and the matter is before the Board in view of multi-year contracts being involved. Mr. Klimberg added that the compensation arrangements are the same as they have been.

Trustee Affrunti asked whether Ms. Lynch will continue to be compensated during months when no services are performed. Chairman Kessel responded in the affirmative, but noted that he does not foresee any time period in which they would not perform significant work, and he expects to receive significant value from them. The Chairman added that the firms will report on a monthly basis and the contracts may be reviewed later if there is dissatisfaction.

Trustee Fabio asked whether it is an annual contract that is invoiced monthly. Chairman Kessel responded yes.

Trustee Sinnreich stated that although he is in favor of retaining the two firms, he opposes the resolution. He continued that he objects to the requirement for reports, which should not apply to this kind of service, and which may be subject to the Freedom of Information Law.

Upon motion duly made and seconded, the following resolution was approved, with Trustee Sinnreich opposing:

719. ENGAGEMENT OF GOVERNMENTAL RELATIONS SERVICES

RESOLVED, that the Chairman be, and hereby is, authorized to engage Patricia Lynch Associates and Brian R. Meara Public Relations, Inc. to provide governmental relations services to the Authority and LIPA, with the contract terms to be three years.

Chairman Kessel stated that the next item on the agenda is Board consideration of a resolution to engage Ernst & Young LLP to provide financial and other advisory services related to the Offshore Wind Park for a term of two years. The Chairman continued that in June 2004, the Board approved the selection of FPL Energy, LLC's (FPL) proposed project in response to an RFP for power supply from an Offshore Wind Park to supply approximately 140 MW from wind turbines to be located within a specified target area off the south shore of Long Island. He continued that the Board previously authorized the Chairman or

his designee to negotiate terms of a Power Purchase Agreement and other related agreements with FPL, and the Authority needs to engage expert financial and tax consulting services to assist in the negotiations for this project.

Chairman Kessel stated that the specific services include but are not limited to analyzing key commercial corporate and risk factors, advising the Authority on the financial security and related issues associated with a long-term contract, providing wind modeling to reflect the economics of the project and assess the potential impact of key elements of the negotiations, and analyzing and evaluating how to maximize the benefits of production tax credits available for the project. The Chairman indicated that based on inquiries made of several firms, the Authority believes that Ernest & Young is the most qualified firm to provide these services in light of their deep resources and expertise.

Chairman Kessel indicated that as part of the complicated review of this project, a number of Trustees have raised legitimate questions, and in order to answer them LIPA wants to be able to provide the Trustees with a full economic analysis. The Chairman further indicated that this is a very different project from a traditional fossil fuel generated project, and LIPA must secure the necessary expertise.

Trustee Affrunti stated that the decibel rating of the turbines at a distance is a concern. Chairman Kessel indicated that LIPA will conduct a full environmental review, and noise will be a major part of this, as well as the avian issue. The Chairman added that economics are also critically important; and

LIPA is committed to the Governor's 24 percent renewable portfolio standard, but it must be done the right way.

Deputy Chairman Foye asked whether there are any conflicts of interest.

Ms. McCarthy responded that there are none.

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

**720. ENGAGEMENT OF FINANCIAL AND OTHER ADVISORY SERVICES
RELATED TO THE OFFSHORE WIND PARK**

RESOLVED, that the Chairman be, and hereby is, authorized to engage Ernst & Young LLP to provide financial and other advisory services related to the Offshore Wind Park, with the contract term to be two years.

Chairman Kessel state that the next item on the agenda is Board approval of a resolution authorizing the Chairman to engage Hilka Klinkenberg & Co., Inc. d/b/a Etiquette International to provide professional development consulting and training services to the Authority and LIPA, with a initial contract term of two years, and with Authority options to renew for two additional one-year terms. The Chairman continued that in April 2004, the Authority issued an RFP for professional development consulting and training services. He added that a selection committee carefully examined the responsive proposals for compliance with the terms of the RFP and then evaluated the proposals against the criteria set forth in the RFP.

Chairman Kessel stated that based on the written submissions, interviews and an assessment of the Authority's and LIPA's needs, it was determined that Etiquette International is best suited to fulfill the Authority's needs. The Chairman continued that Etiquette International has demonstrated a good understanding of the Authority's professional development needs, and it has extensive knowledge and experience in the professional development field. He added that the Authority has the right to terminate the contract at any time on prior notice.

Chairman Kessel stated that the training is important for staff development and the contract is relatively small. The Chairman indicated that LIPA has built a strong Human Resources department headed by Barbara Dillon.

Deputy Chairman Foye asked how much the total contract amount is. Chairman Kessel responded that it is \$20,000 per year.

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

721. ENGAGEMENT OF ETIQUETTE INTERNATIONAL TO PROVIDE PROFESSIONAL DEVELOPMENT SERVICES

RESOLVED, that the Chairman be, and hereby is, authorized to engage Hilka Klinkenberg & Co., Inc. d/b/a Etiquette International to provide Professional Development consulting and training services as needed by the Authority and LIPA, with an initial contract term of two years, and with Authority options to renew for two additional one year terms.

Chairman Kessel entertained a motion to adjourn. Upon motion duly made and seconded, the Board voted unanimously to adjourn the meeting at 8:55 PM.

Respectfully submitted,

Stanley B. Klimberg