

McKinney's Consolidated Laws of New York Annotated [Currentness](#)

Public Authorities Law ([Refs & Annos](#))

Chapter 43-A. Of the Consolidated Laws

▢ [Article 5](#). Public Utility Authorities

→ [Title 1-A](#). Long Island Power Authority ([Refs & Annos](#))

→ [§ 1020](#). Short title

<[As added by L.1986, c. 517. See, also, Public Authorities Law 1020, in another title 1-A, post.]>

This title shall be known and may be cited as the “Long Island power authority act”.

→ [§ 1020-a](#). Declaration of legislative findings and declarations

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-a, in another title 1-A, post.]>

The legislature hereby finds and declares that:

Constantly escalating and excessive costs of electricity in the counties of Suffolk and Nassau and that portion of the county of Queens served by the Long Island lighting company (hereinafter referred to as the “service area”) pose a serious threat to the economic well-being, health and safety of the residents of and the commerce and industry in the service area.

There is a lack of confidence that the needs of the residents and of commerce and industry in the service area for electricity can be supplied in a reliable, efficient and economic manner by the Long Island lighting company (hereinafter referred to as “LILCO”).

Such excessive costs and lack of confidence have deterred commerce and industry from locating in the service area and have caused existing commerce and industry to consider seriously moving out of the service area.

The decisions by LILCO to commence construction of the Shoreham nuclear power plant and thereafter to continue such construction were imprudent.

The investment of LILCO in the Shoreham nuclear power plant has created significant rate increases, straining the economic capabilities of ratepayers in the service area, and likely will require further substantial rate increases if such plant is placed in service.

It is uncertain whether the Shoreham nuclear plant ever will go into commercial service, or if it does whether

its reliability, cost of construction, operation and maintenance will be such as to provide sufficient, reliable and economic electric service to ratepayers in the service area. The very substantial financial strain of the investment in the Shoreham nuclear plant has required LILCO to suspend dividends on its common and preferred stock, severely threatening the continued economic viability of LILCO.

For all the above reasons, a situation threatening the economy, health and safety exists in the service area.

Dealing with such a situation in an effective manner, assuring the provision of an adequate supply of electricity in a reliable, efficient and economic manner, and retaining existing commerce and industry in and attracting new commerce and industry to the service area, in which a substantial portion of the state's population resides and which encompasses a substantial portion of the state's commerce and industry, are hereby expressly determined to be matters of state concern within the meaning of [paragraph three of subdivision \(a\) of section three of article nine of the state constitution](#).

Such matters of state concern best can be dealt with by replacing such investor owned utility with a publicly owned power authority. Such an authority can best accomplish the purposes and objectives of this title by implementing, if it then appears appropriate, the results of negotiations between the state and LILCO. In such circumstances, such an authority will provide safe and adequate service at rates which will be lower than the rates which would otherwise result and will facilitate the shifting of investment into more beneficial energy demand/energy supply management alternatives, realizing savings for the ratepayers and taxpayers in the service area and otherwise restoring the confidence and protecting the interests of ratepayers and the economy in the service area. Moreover, in such circumstances the replacement of such investor owned utilities by such an authority will result in an improved system and reduction of future costs and a safer, more efficient, reliable and economical supply of electric energy. The legislature further finds that such an authority shall utilize to the fullest extent practicable, all economical means of conservation, and technologies that rely on renewable energy resources, cogeneration and improvements in energy efficiency which will benefit the interests of the ratepayers of the service area.

#### → § 1020-b. Definitions

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-b, in another title 1-A, post.]>

As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Acquire" means, with respect to any right, title or interest in or to any property, the act of taking by the exercise of the power of eminent domain, or acquisition by purchase or otherwise.
2. "Act" means the Long Island power authority act, being title one-A of article five of the public authorities law, as added by this title.

3. “Authority” means the Long Island power authority created by [section one thousand twenty-c](#) of this title.
4. “Board” means the board of trustees of the authority.
5. “Bonds” or “notes” mean the bonds, notes or other obligations issued by the authority pursuant to this title.
6. “Fair market value” means the value of property, real, personal or mixed, which would be obtained in an arm's length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller under no compulsion to sell.
7. “Federal government” means the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.
8. “Final determination” or “finally determined” means a judicial decision (i) by the highest court of competent jurisdiction, or (ii) by a court of competent jurisdiction from which no appeal has been taken and the time within which to appeal has expired.
9. “Governing body” means, with respect to any municipality, the body having charge of the fiscal affairs of such municipality.
10. “LILCO” means the Long Island lighting company, its subsidiaries and their successors and assigns, other than the authority.
11. “Municipality” means any city, town, village, county, municipal corporation, district corporation, district or other political subdivision of the state.
12. “OCLD” means the original cost of assets, less depreciation.
- 12-a. “Project” means an action undertaken by the authority that:
  - (i) Causes the authority to issue bonds, notes or other obligations, or shares in any subsidiary corporation, or
  - (ii) Significantly modifies the use of an asset valued at more than one million dollars owned by the authority or involves the sale, lease or other disposition of such an asset, or
  - (iii) Commits the authority to a contract or agreement with a total consideration of greater than one million dollars and does not involve the day to day operations of the authority.

13. "Prudent utility practices" at a particular time means any of the practices, methods, and acts, which, in the exercise of reasonable judgment in light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the gas or the electrical utility industry, as the case may be, prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent utility practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. In evaluating whether any matter conforms to prudent utility practice, the parties shall take into account the fact that the authority is a corporate municipality of the state with the statutory duties and responsibilities thereof.

14. "Real property" means lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within such term, and includes also any and all interests in such property less than full title, such as easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

15. "RCNLD" means the reproduction cost of new assets, less depreciation.

16. "Security" means any note, stock (whether common or preferred), bond, debenture, evidence of indebtedness, transferable share, voting-trust certificate or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

17. "Service area" means the counties of Suffolk and Nassau and that portion of the county of Queens constituting LILCO's franchise area as of the effective date of this title.

18. "Shoreham plant" means the nuclear powered facility designed to generate electric power owned by LILCO and located in Shoreham, New York.

19. "State" means the state of New York.

20. "State agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state.

21. "Trustees" means the trustees of the authority appointed or elected, as the case may be, pursuant to [section one thousand twenty-d](#) of this title.

22. "Valuation date" means (i) the effective date of this title, (ii) the date of the taking of the stock or assets pursuant to this title or (iii) such earlier or later date or, in the case of equity or debt securities, such period of

trading days in the primary established market in which such securities are traded, as may be determined to be necessary to exclude from the determination of the market value thereof any enhancement or depreciation in value arising from the announcement, expectation or accomplishment of the taking by the exercise of the power of eminent domain or otherwise, or speculative market activity intended to cause or having the effect of causing an increase or decrease in such market value.

23. [Eff. Jan. 1, 2014.] “Service provider” means the entity under contract with the authority to provide management and operation services associated with the authority's electric transmission and distribution system and any subsidiary of such entity that provides such services under contract.

24. [Eff. Jan. 1, 2014.] “Operations services agreement” means an agreement and any amendments thereto between the Long Island lighting company dba LIPA or the authority and the service provider to provide management and operation services associated with the authority's electric transmission and distribution system.

#### → § 1020-c. Long Island power authority; creation

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-c, in another title 1-A, post.]>

1. For the purpose of effectuating the policy declared in [section one thousand twenty-a](#) of this title, there is hereby created a corporate municipal instrumentality of the state to be known as the “Long Island power authority”, which shall be a body corporate and politic and a political subdivision of the state, exercising essential governmental and public powers.

2. The area of operations of the authority shall be the service area.

3. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall inure to the benefit of or be distributable to its trustees or officers or any other private persons, except as herein provided for actual services rendered.

#### → § 1020-d. Board of trustees

<[As added by L.1995, c. 506. See, also, Public Authorities Law § 1020-d, in another title 1-A, post.]>

<[Eff. Jan. 1, 2014. See, also, § 1020-d ante.]>

1. Starting on January first, two thousand fourteen, the board of the authority shall be constituted and consist of nine trustees all of whom shall be residents of the service area, five of whom shall be appointed by the

governor, one of whom the governor shall designate as chair, and serve at his or her pleasure, two of whom shall be appointed by the temporary president of the senate, and two of whom shall be appointed by the speaker of the assembly. One of the governor's appointees shall serve an initial term of two years; one of the governor's appointees shall serve an initial term of three years; and three of the governor's appointees shall serve an initial term of four years. One of the appointees of the temporary president of the senate and one of the appointees of the speaker of the assembly shall serve initial terms of two years; and one appointee of the temporary president of the senate and one appointee of the speaker of the assembly shall serve initial terms of three years. Thereafter, all terms shall be for a period of four years. In the event of a vacancy occurring in the office of trustee by death, resignation or otherwise, the respective appointing officer shall appoint a successor who shall hold office for the unexpired portion of the term.

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

3. Notwithstanding the provisions of any other law, no trustee, officer or employee of the state, any state agency or municipality appointed a trustee shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of a trusteeship on the authority, his or her service thereon or his or her employment therewith.

4. All trustees appointed under this section shall have relevant utility, corporate board or financial experience.

→ **§ 1020-e. Officers and employees; expenses**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-e, in another title 1-A, post.]>

The board, or the chairman pursuant to authority duly delegated to him, from time to time shall hire, without regard to any personnel or civil service law, rule or regulation of the state and in accordance with guidelines adopted by the authority such employees and consultants, including without limitation those in the areas of engineering, marketing, finance, appraisal, accounting and law, as it may require for the performance of its duties and shall prescribe the duties and compensation of each officer and employee, provided, however, that if any such employees are hired as a consequence of an acquisition of all the stock or assets of LILCO, they shall be hired subject and be entitled to all applicable provisions of (i) any existing contract or contracts with labor unions and (ii) all existing pension or other retirement plans. Notwithstanding the provisions of any general, special or local law, the board may determine that, if any pension or retirement plan becomes inapplicable or is terminated, all or such class or classes of employees of the authority as the board may determine may elect to become members of the New York state employees' retirement system on the basis of compensation payable to them by the authority.

→ **§ 1020-f. General powers of the authority**

<[As added by L.1986, c. 517. Another Public Authorities Law § 1020-f, in another title 1-A, was

added by another act.]>

Except as otherwise limited by this title, the authority shall have all of the powers necessary or convenient to carry out the purposes and provisions of this title, including without limiting the generality of the foregoing, the power:

(a) To sue and be sued in all courts and to participate in actions and proceedings, whether judicial, administrative, arbitrate or otherwise;

(b) To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner;

(c) [Eff. until Jan. 1, 2014. See, also, subd. (c) below.] To appoint officers, agents and employees, without regard to any personnel or civil service law, rule or regulation of the state and in accordance with guidelines adopted by the authority, prescribe their duties and qualifications and fix and pay their compensation, provided, however, that the appointment of the chief executive officer shall be subject to confirmation by the senate in accordance with [section twenty-eight hundred fifty-two](#) of this chapter;

(c) [Eff. Jan. 1, 2014. See, also, subd. (c) above.] To appoint officers, agents and employees, without regard to any personnel or civil service law, rule or regulation of the state and in accordance with guidelines adopted by the authority, prescribe their duties and qualifications and fix and pay their compensation. By January first, two thousand fourteen, the authority, through its governance committee, shall amend such guidelines to require that staffing at the authority is kept at levels only necessary to ensure that the authority is able to meet obligations with respect to its bonds and notes and all applicable statutes and contracts, and oversee the activities of the service provider;

(d) To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property whether tangible or intangible, or any interest therein, within the state;

(e) To acquire real or personal property, whether tangible or intangible, including without limitation property rights, interests in property, franchises, obligations, contracts, and debt and equity securities, by the exercise of the power of eminent domain; provided, however, that any real property acquired by the exercise of the power of eminent domain must be located within the service area;

(f) To sell, convey, lease, exchange, transfer, abandon or otherwise dispose of, or mortgage, pledge or create a security interest in, all or any of its assets, properties or any interest therein, wherever situated;

(g) To purchase, take, receive, subscribe for, or otherwise acquire, hold, make a tender offer for, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge or grant a security interest in,

use and otherwise deal in and with, bonds and other obligations, shares or other securities (or interests therein) issued by others, whether engaged in a similar or different business or activity;

(h) To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this title, including contracts with any person, firm, corporation, municipality, state agency or other entity in accordance with the provisions of [section one hundred three of the general municipal law](#), and all state agencies and all municipalities are hereby authorized to enter into and do all things necessary to perform any such agreement, contract or other instrument with the authority;

(i) To borrow money at such rate or rates of interest as the authority may determine, issue its notes, bonds or other obligations to evidence such indebtedness, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated;

(j) To arrange for guarantees of its bonds, notes or other obligations by the federal government or by any private insurer or otherwise, and to pay any premiums therefor;

(k) To issue such bonds or notes or other obligations whether or not the income therefrom is exempt from federal income taxation;

(l) To purchase bonds, notes or other obligations of the authority at such price or prices as the authority may determine;

(m) To lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(n) To procure insurance against any loss in connection with its properties or operations in such amount or amounts and from such insurers, including the federal government, as it may deem necessary or desirable, and to pay any premiums therefor;

(o) To create or acquire one or more wholly owned subsidiaries in accordance with [section one thousand twenty-i](#) of this title to carry out all or any part of the purposes of this title;

(p) To negotiate and enter into agreements with trustees or receivers appointed by United States bankruptcy courts or federal district courts or in other proceedings involving adjustment of debts and authorize legal counsel for the authority to appear in any such proceedings;

(q) To file a petition under chapter nine of title eleven of the United States bankruptcy code [\[FN1\]](#) or take other similar action for the adjustment of its debts;

(r) To enter into agreements to purchase power from the power authority of the state of New York, the state, any state agency, any municipality, any private entity, or any other available source at such price or prices as may be negotiated; provided, however, that the authority shall not have the power to enter into any agreement or any negotiation for the purchase of power from the dominion of Canada, or any political subdivision, public authority or private corporation therein; but may enter into an agreement with the power authority of the state of New York for the purchase of such power;

(s) To enter into management agreements for the operation of all or any of the property or facilities owned by the authority;

(t) To transfer any asset of the authority to one or more (i) private utility or (ii) municipal gas or electric agency established pursuant to article fourteen-A of the general municipal law, for such consideration and upon such terms as the authority may determine to be in the best interest of the gas and electric ratepayers in the service area;

(u) [Eff. until Sept. 1, 2014, pursuant to [L.2000, c. 589, § 2](#). See, also, subs. (u) below.] Subject to the provisions of [subdivision six of section one thousand twenty-k](#) of this title and after holding public hearings thereon upon reasonable public notice, with at least one such hearing to be held in the county of Suffolk and at least one in the county of Nassau, to fix rates and charges for the furnishing or rendition of gas or electric power or of any related service at the lowest level consistent with sound fiscal and operating practices of the authority and which provide for safe and adequate service; provided, however, that such authority shall not assess any fee, penalty or other charge of any kind for the voluntary termination of electric service to any residential customer for the purpose of utilizing alternative sources of electric generation in excess of that charged to customers who terminate their electric service for any other reason;

(u) [Eff. Sept. 1, 2014, repealed by [L.2013, c. 173, pt. A, § 6, eff. Jan. 1, 2014](#). See, also, subs. (u) above and below.] Subject to the provisions of [subdivision six of section one thousand twenty-k](#) of this title and after holding public hearings thereon upon reasonable public notice, with at least one such hearing to be held in the county of Suffolk and at least one in the county of Nassau, to fix rates and charges for the furnishing or rendition of gas or electric power or of any related service at the lowest level consistent with sound fiscal and operating practices of the authority and which provide for safe and adequate service;

(u) [Eff. Jan 1, 2014. See, also, subs. (u) above.] Rate plans. Subject to [subdivision six of section one thousand twenty-k](#) of this title to fix rates and charges for the furnishing or rendition of gas or electric power or of any related service at the lowest level consistent with sound fiscal and operating practices of the authority and which provide for safe and adequate service. In implementing this power:

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

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

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

4. Any recommendations associated with a rate proposal submitted pursuant to paragraphs one and two of this subdivision shall be provided by the department of public service to the board of the authority immediately upon their finalization by the department. Unless the board of the authority makes a preliminary determination in its discretion that any particular recommendation is inconsistent with the authority's sound fiscal operating practices, any existing contractual or operating obligations, or the provision of safe and adequate service, the board shall implement such recommendations as part of its final rate plan and such final determination shall be deemed to satisfy the requirements of this subdivision and be considered final for the purposes of review under article seventy-eight of the civil practice law and rules. The board shall make any such preliminary determination of inconsistency within thirty days of receipt of such recommendations, with notice and the basis of such determination being provided to the department of public service, and contemporaneously posted on the websites of the authority and its service provider. The board shall thereafter, within thirty days of such posting and with due advance notice to the public, hold a public hearing with respect to its preliminary determination of inconsistency. At such hearing, the department of public service shall present the basis for its recommendations, the board shall present the basis for its determination of inconsistency and the service provider may present its position. The authority and the service provider may, during the time period before such public hearing reach agreement with the department on disputed issues. Within thirty days after such public hearing, the board of the authority shall announce its final determination and planned implementation with respect to any such recommendations. The authority's final determination of inconsistency shall be subject to any applicable judicial review proceeding, including review available under article seventy-eight of the civil practice law and rules.

(v) To enter upon any lands and within any building whenever in its judgment it may be necessary for the purpose of making surveys and examinations to accomplish any purpose authorized by this title;

(w) To enter into agreements to pay annual sums in lieu of taxes to any municipality with respect to any real property which is owned by the authority and is located in such municipality;

(x) To maintain an office or offices at such place or places in the state as it may determine;

(y) To make any inquiry, investigation, survey or study which the authority may deem necessary to enable it effectively to carry out the provisions of this title and, for that purpose, to take and hear proofs and testimony, and with the prior vote of a majority of the board which majority vote shall include the vote of the chairman to compel the attendance of witnesses and to require the production of records, books, papers, accounts and other documents, including public records, and to make copies thereof or extracts therefrom; and

(z) To adopt, revise, amend and repeal rules and regulations with respect to its operations, properties and facilities as may be necessary or convenient to carry out the purposes of this title, subject to the provisions of the state administrative procedure act.

(aa) Notwithstanding any other provision of law to the contrary the authority shall not undertake any project without the approval of the public authorities control board created pursuant to article one-A of this chapter. Each application to the public authorities control board shall contain a project description and an explanation of why the project meets the standards for project approval set forth in this subdivision. The public authorities control board shall only approve a project proposed by the authority upon its determination that:

1. the project is financially feasible as the standard is defined in article one-A of this chapter;
2. the project does not materially adversely affect overall real property taxes in the service area;
3. the project is anticipated to result generally in lower utility rates in the service area; and
4. the project will not materially adversely affect overall real property taxes or utility rates in other areas of the state of New York.

(bb) [Eff. until Jan. 1, 2014. See, also, subd. (bb) below.] Comprehensive and regular management and operations audits. 1. The authority shall cooperate in the undertaking and completion of a regular and comprehensive management and operations audit conducted pursuant to the requirements of this subdivision and [subdivision two of section three of the public service law](#). Such audit shall review and evaluate the authority's overall operations and management, including the authority's operations and management in the context of its duty to set rates at the lowest level consistent with standards and procedures provided in subdivision (u) of this section, and include, but not be limited to: (i) the authority's construction and capital program planning in relation to the needs of its customers for reliable service; (ii) the overall efficiency of the authority's operations; (iii) the manner in which the authority is meeting its debt service obligations; (iv) the authority's Fuel and Purchased Power Cost Adjustment clause and recovery of costs associated with such clause; (v) the authority's annual budgeting procedures and process; and (vi) the authority's compliance with debt covenants.

2. The department of public service shall notify the authority that said department is in the process of initiating a comprehensive management and operations audit as described in paragraph one of this subdivision in a manner that ensures the timeliness of such audit, and in accordance with the following timeframe: the first comprehensive management and operations audit shall be initiated as of the effective date of this subdivision and undertaken in a manner and to an extent that is practicable in the context of the authority's transition to a new management service structure; the second comprehensive management and operations audit shall be initiated no later than December fifteenth, two thousand fifteen; and all additional comprehensive management and operations audits shall be initiated at least once every five years thereafter. Within a reasonable time after such notification to the authority, said department or the independent auditor retained by the authority to undertake such audit shall hold public statement hearings, with proper notice, in both Nassau and Suffolk counties for the purpose of receiving both oral and written comments from the public on matters related to such audit as described in paragraph one of this subdivision.

3. Each such audit shall be completed within eighteen months of initiation absent an extension for good cause shown by the department of public service or the independent auditor under contract with the authority with notice of such extension to the governor, the temporary president of the senate, the speaker of the assembly, and the chairs of the authority and the department of public service. Such audit shall be provided to the board of the authority immediately upon its completion. The department of public service shall provide notice of completion of such audit to the governor, the temporary president of the senate, the speaker of the assembly, and the minority leaders of the senate and assembly, and the authority, upon receipt of such audit, shall post a copy of such audit, including findings and recommendations, on its website. Unless the board of the authority makes a preliminary determination that any particular finding or recommendation contained in such audit is inconsistent with the authority's sound fiscal operating practices, any existing contractual or operating obligation, or the provision for safe and adequate service, the board shall implement such findings and recommendations in accordance with the timeframe specified under such audit.

4. The board of the authority shall make any preliminary determination of inconsistency with respect to any such finding or recommendation within thirty days of receipt of the audit, with notice and the basis of such determination being provided to the department of public service. Such notice and basis shall be posted contemporaneously on the authority's website and the board shall, within thirty days of such posting and with due advance notice to the public, hold a public hearing with respect to its preliminary determination of inconsistency. At such hearing the department of public service or the independent auditor responsible for undertaking such audit shall present the basis for its findings and recommendations and the board shall present the basis for its determination of inconsistency. The authority and auditor may during the time period prior to such public hearing reach agreement on disputed issues. Within thirty days after such public hearing, the board of the authority shall announce its final determination and planned implementations with respect to any such findings and/or recommendations. The board's final determination of inconsistency shall be subject to any applicable judicial review proceeding, including review available under article seventy-eight of the civil practice law and rules.

(bb) [Eff. Jan. 1, 2014. See, also, subd. (bb) above.] Comprehensive and regular management and operations audits. 1. The authority and the service provider shall cooperate in the undertaking and completion of a regular and comprehensive management and operations audit conducted pursuant to the requirements of this

subdivision and [paragraph \(d\) of subdivision three of section three-b of the public service law](#). Such audit shall review and evaluate the overall operations and management of the authority and service provider, including such operations and management in the context of the authority's duty to set rates at the lowest level consistent with standards and procedures provided in subdivision (u) of this section, and include, but not be limited to: (i) the service provider's construction and capital program planning in relation to the needs of customers for reliable service; (ii) the overall efficiency of the authority's and service provider's operations; (iii) the manner in which the authority is meeting its debt service obligations; (iv) the authority's Fuel and Purchased Power Cost Adjustment clause and recovery of costs associated with such clause; (v) the authority's and service provider's annual budgeting procedures and process; (vi) the application, if any, of the performance metrics designated in the operations services agreement and the accuracy of the data relied upon with respect to such application; and (vii) the authority's compliance with debt covenants.

2. The department of public service shall notify the authority that said department is in the process of initiating a comprehensive management and operations audit as described in paragraph one of this subdivision in a manner that ensures the timeliness of such audit, and in accordance with the following timeframe: the first comprehensive management and operations audit shall be initiated as of the effective date of chapter eight of the laws of two thousand twelve and undertaken in a manner and to an extent that is practicable in the context of the authority's transition to a new management service structure; the second comprehensive management and operations audit shall be initiated no later than December fifteenth, two thousand sixteen ; and all additional comprehensive management and operations audits shall be initiated at least once every five years thereafter. Within a reasonable time after such notification to the authority, said department or the independent auditor retained by the authority to undertake such audit shall hold public statement hearings, with proper notice, in both Nassau and Suffolk counties for the purpose of receiving both oral and written comments from the public on matters related to such audit as described in paragraph one of this subdivision.

3. Each such audit shall be completed within eighteen months of initiation absent an extension for good cause shown by the department of public service or the independent auditor under contract with the authority with notice of such extension to the governor, the temporary president of the senate, the speaker of the assembly, and the chairs of the authority and the department of public service. Such audit shall be provided to the board of the authority immediately upon its completion. The department of public service shall provide notice of completion of such audit to the governor, the temporary president of the senate, the speaker of the assembly, and the minority leaders of the senate and assembly, and the authority, upon receipt of such audit, shall post a copy of such audit, including findings and recommendations, on its website and the website of the service provider. Unless the board of the authority makes a preliminary determination that any particular finding or recommendation contained in such audit is inconsistent with the authority's sound fiscal operating practices, any existing contractual or operating obligation, or the provision for safe and adequate service, the board shall implement or cause its service provider to implement such findings and recommendations in accordance with the timeframe specified under such audit.

4. The board of the authority shall make any preliminary determination of inconsistency with respect to any such finding or recommendation within thirty days of receipt of the audit, with notice and the basis of such determination being provided to the department of public service. Such notice and basis shall be posted contemporaneously on the authority's website and the website of the service provider and the board shall,

within thirty days of such posting and with due advance notice to the public, hold a public hearing with respect to its preliminary determination of inconsistency. At such hearing the department of public service or the independent auditor responsible for undertaking such audit shall present the basis for its findings and recommendations and the board shall present the basis for its determination of inconsistency and the service provider may present its position. The authority, service provider and auditor may during the time period prior to such public hearing reach agreement on disputed issues. Within thirty days after such public hearing, the board of the authority shall announce its final determination and planned implementations with respect to any such findings and/or recommendations. The authority's final determination of inconsistency shall be subject to any applicable judicial review proceeding, including review available under article seventy-eight of the civil practice law and rules.

(cc) [Eff. Jan. 1, 2014.] To prepare an emergency response plan pursuant to this subdivision. 1. The service provider shall, in consultation with the authority, prepare and maintain an emergency response plan (i) to assure the reasonably prompt restoration of service in the case of an emergency event, defined for purposes of this subdivision as an event where widespread outages have occurred in the authority's service territory due to a storm or other causes beyond the control of the authority and the service provider, (ii) consistent with the requirements of paragraph (a) of [subdivision twenty-one of section sixty-six of the public service law](#) and any regulations and orders adopted thereto, and (iii) establishing the separate responsibilities of the authority and service provider.

2. On or before February third, two thousand fourteen, the authority and service provider shall submit an emergency response plan to the department of public service for review. Contemporaneously with such submission, the authority shall provide notice of such proposed plan to the secretary of state for publication in the state register, the authority and service provider each shall post such plan on their websites and otherwise make such plan available for review in-person, and afford members of the public an opportunity to submit written comments and oral comments pursuant to at least one hearing to be held each in the county of Suffolk and the county of Nassau. Such written comments must be submitted by March fourteenth, two thousand fourteen. The authority and service provider shall provide a copy of all written comments they receive and a transcript of such public hearings to the department of public service for its consideration in reviewing the emergency response plan. The department shall provide any recommendations to the authority and service provider with respect to such plan on or before April fifteenth, two thousand fourteen. Such plan must be made final by June second, two thousand fourteen. For each year thereafter, the service provider shall submit an emergency response plan to the department of public service, and such department shall provide its recommendations, in accordance with a schedule to be established by such department and that is consistent with the schedule associated with such department's review of similar such plans provided by electric corporations pursuant to [subdivision twenty-one of section sixty-six of the public service law](#).

3. By June second, two thousand fourteen, and by June first annually thereafter, the authority and service provider shall jointly certify to the department of homeland security and emergency services that the emergency response plan ensures, to the greatest extent feasible, the timely and safe restoration of energy services after an emergency consistent with the requirements of paragraph (a) of subdivision twenty-one of the public service law and the department's recommendations. The filing of such emergency response plan shall also include a copy of all written mutual assistance agreements among utilities. The authority and service

provider shall file with the county executives of Nassau and Suffolk county and the mayor of the city of New York the most recent version of the emergency response plan, and make sure that such amended versions are timely filed.

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

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

(dd) [Eff. Jan. 1, 2014.] On or before January first, two thousand fifteen, and by January first of each calendar year thereafter, to submit for review to the department of public service a report detailing the service provider's planned capital expenditures.

(ee) [Eff. Jan. 1, 2014.] On or before July first, two thousand fourteen, and annually thereafter, to submit for review to the department of public service any proposed plan related to implementing energy efficiency measures, distributed generation or advanced grid technology programs for the purpose provided pursuant to [paragraph \(g\) of subdivision three of section three-b of the public service law](#).

(ff) [Eff. Jan. 1, 2014.] To assist and cooperate with the department of public service with respect to any review undertaken pursuant to [section three-b of the public service law](#), including providing the department with reasonable access to all facilities and premises owned or operated by the authority or its service provider, allowing review of all books and records of the authority and its service provider, providing copies of requested documents, allowing interviews of all appropriate personnel, and responding in a reasonable and timely manner to any inquiries or reporting requests made by the department; provided, however, that the obligations set forth in this subdivision shall not extend to affiliates of the service provider.

(gg) [Eff. Jan. 1, 2014.] Renewable generation and energy efficiency programs. 1. The authority in coordination with the service provider, the power authority of the state of New York and the New York state energy research and development authority shall, to the extent the authority's rates are sufficient to provide safe and adequate transmission and distribution service, and the measures herein, undertake actions to design and administer renewable energy and energy efficiency measures in the service area, with the goal of continuing and expanding such measures that cost-effectively reduce system-wide peak demand, minimize long-term fuel price risk to rate payers, lower emissions, improve environmental quality, and seek to meet New York state climate change and environmental goals. Such actions shall also include implementation of any renewable energy competitive procurement or feed-in-tariff programs that were approved by the authority as of the effective date of the chapter of the laws of two thousand thirteen which added this subdivision.

2. The service provider shall consider, consistent with maintaining system reliability, renewable generation and energy efficiency program results and options in establishing capital plans.

(hh) [Eff. Jan. 1, 2014.] Starting in calendar year two thousand fifteen, the authority and the service provider shall submit to the department of public service for review, any and all data, information and reports which set forth the service provider's actual performance related to the metrics in the operations services agreement, including the authority's evaluation thereof, no less than forty-five days prior to the authority's determination of the service provider's annual incentive compensation.

[FN1] 11 USCA § 901 et seq.

→ § 1020-g. Powers to provide and maintain generating, transmission and resource recovery waste to energy facilities

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-g, in another title 1-A, post.]>

Without limiting the generality of the powers conferred upon the authority by [section one thousand twenty-f](#) of this title, the authority shall have the specific power:

(a) Subject to the provisions of [subdivision one of section ten hundred twenty-s](#) of this title, to acquire, construct, improve, rehabilitate, maintain and operate such generating, transmission and related facilities as the authority deems necessary or desirable to maintain an adequate and dependable supply of gas and electric power within the service area;

(b) Subject to the provisions of [subdivision one of section ten hundred twenty-s](#) of this title, to acquire, construct, improve, rehabilitate, maintain and operate such hydroelectric or energy storage projects within the state as it deems necessary or desirable to contribute to the adequacy, economy and reliability of the supply of electric power and energy or to conserve fuel;

(c) Subject to the provisions of [subdivision one of section ten hundred twenty-s](#) of this title, to determine the location, type, size, construction, lease, purchase, ownership, acquisition, use and operation of any generating, transmission or other related facility, provided, however, that in making such determinations relating to electric power facilities the authority shall give primary consideration to the construction of energy efficient facilities, energy conservation, load management programs, and cogeneration in the service area;

(d) To proceed with the physical construction or completion of any generating, transmission or related facility;

(e) To apply to the appropriate agencies and officials of the federal and state governments, for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable, and to accept such licenses, permits or approvals as may be tendered to it by such agencies or officials, upon such terms and conditions as it may deem appropriate;

(f) To institute suit, or to apply to any legislative body for legislation, or to take such other action as it may deem necessary or advisable in the furtherance of the purposes of this title and for the protection of its rights, if for any reason the authority shall fail to secure any such license, permit or approval as it may deem necessary or advisable;

(g) To study means of maintaining the customer base in, and attracting commerce and industry to the service area;

(h) To implement programs and policies designed to provide for the interconnection of: (i) (A) solar electric generating equipment owned or operated by residential customers, (B) farm waste electric generating equipment owned or operated by customer-generators, (C) solar electric generating equipment owned or operated by non-residential customers, (D) micro-combined heat and power generating equipment owned, leased or operated by residential customers, (E) fuel cell electric generating equipment owned, leased or operated by residential customers, and (F) micro-hydroelectric generating equipment owned, leased or operated by customer-generators and for net energy metering consistent with [section sixty-six-j of the public service law](#), to increase the efficiency of energy end use, to shift demand from periods of high demand to periods of low demand and to facilitate the development of cogeneration; and (ii) wind electric generating equipment owned or operated by customer-generators and for net energy metering consistent with [section sixty-six-l of the public service law](#).

(i) To develop, with public participation, a comprehensive least-cost plan which shall consider practical and economical use of conservation, renewable resources, and cogeneration for providing service to its customers;

(j) To cooperate with and to enter into contractual arrangements with private utility companies or public entities:

(i) with respect to the construction and operation of facilities by the authority and the sale of all or part of the output therefrom;

(ii) with respect to the construction, completion, acquisition, ownership and/or operation of generating facilities, fuel, docks, sidings, loading or unloading equipment, storage facilities and other subsidiary facilities and the disposition of the output of such generating facilities; and

(iii) with respect to the construction, acquisition, ownership, operation and/or use of transmission facilities;

(k) To cooperate with and to enter into contractual arrangements with municipalities with respect to the construction, improvement, rehabilitation, ownership and/or operation of generating facilities;

(l) To cooperate with and to enter into contractual arrangements with the New York state energy research and development authority in connection with the planning, siting, development, construction, operation and

maintenance of generating facilities of the authority utilizing new energy technologies;

(m) Subject to the provisions of [section ten hundred twenty-aa](#) of this title, to construct, maintain and operate resource recovery waste to energy facilities; and

(n) After the establishment of Long Island Power Authority (LIPA) and the commencement of its function as a utility, LIPA shall acquire from LILCO all franchise and utility service responsibilities for all ultimate consumers of gas and electricity within LILCO's former service territory, including the responsibility to provide safe and adequate service.

→ **§ 1020-h. Acquisition of property, including the exercise of the power of eminent domain**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-h, in another title 1-A, post.]>

1. The legislature hereby expressly finds and determines:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Use of RCNLD may result in an unwarranted windfall to LILCO and an unjustifiable penalty to the ratepayers who would have to pay it, since to the extent an award based on RCNLD would exceed an award based on OCLD, it would reflect to a large extent the effects of inflation which would not increase the value

of the property to LILCO or its rate base for ratemaking purposes or to the authority for the purpose of continuing to generate and transmit electric power within the service area.

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

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

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

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

3. The authority also is authorized and empowered, in its discretion, to make a tender offer or tender offers for all or any portion of the securities of LILCO at such price or prices as the authority may determine to be appropriate; provided, however that such tender offer or tender offers, in the sole judgment of the authority, will result in rates less than the rates which would result from continued operation by LILCO.

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

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

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

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

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

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

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

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

(d) The supreme court in the district in which LILCO has its principal office shall have exclusive jurisdiction

to hear and determine all claims arising from the acquisition of stock by the exercise of the power of eminent domain and shall hear such claims without a jury and without referral to a referee or commissioners. Notwithstanding the provisions of [section nine hundred one of the civil practice law and rules](#), upon motion to the court by the authority, the condemnation proceeding for the acquisition of stock shall be maintained as a class action, pursuant to remaining provisions of article nine of the civil practice law and rules, and the owners of the stock shall be deemed a defendant class on the basis of the following express legislative findings:

- (i) the class of LILCO stock owners is so numerous that joinder of all members is impracticable;
  - (ii) the issue of valuation of LILCO stock is common to all LILCO stock owners and there are questions of law or fact common to the members of such class which predominate over any questions affecting only individual members;
  - (iii) the claims or defenses, if any, of any representative owner of LILCO stock to acquisition thereof by the authority are typical of the claims or defenses of the class;
  - (iv) there are representative parties who will fairly and adequately protect the interests of the class; and
  - (v) the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to the issue of valuation and other issues common to the class.
- (e) The procedure for determining just compensation shall be in the manner prescribed by the eminent domain procedure law, except to the extent such procedure is inconsistent with the provisions of this title, in which case the provisions of this title shall control.
- (f) Upon the entry of an award finally determining just compensation for the stock, the authority shall have sixty days after receipt of notice of entry of such award within which to elect to proceed with the taking or to abandon such acquisition as provided in subdivision ten hereof. Notice of such election shall be served by the authority and by the stock transfer agent in the manner described in paragraph (a) hereof. If the authority elects to proceed with the acquisition, it shall deposit with the supreme court in which the condemnation proceeding was held an amount equal to the award within one hundred eighty days after receipt by the authority of notice of entry of such award. Upon the making of such deposit, the authority shall notify LILCO's stock transfer agent in writing of such deposit. The sum so deposited [\[FN1\]](#) shall be applied as provided in the eminent domain procedure law. Upon making such deposit and giving such notice to the stock transfer agent, title to all stock described in the notice of taking shall immediately vest in the authority and the authority shall have the immediate right thereto. In the event the authority elects to abandon the acquisition, the provisions of subdivision ten hereof shall apply.
- (g) It shall be a condition precedent to the payment of compensation for any such securities that such securities be surrendered to the supreme court or to such other entity, including the issuer's stock transfer

agent, as the supreme court may direct.

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

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

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

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

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

(f) Should LILCO's property be taken by the exercise of the power of eminent domain and if LILCO shall

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

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

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

8. Upon the acquisition of all the outstanding shares of stock of a corporate issuer representing all the voting rights and equity thereof, the authority shall as soon as reasonably practicable take all steps necessary to assure that the rights and claims of all the holders of any other stock and debt securities and all other creditors thereof are as secure as they were immediately prior to the acquisition by the authority. Nothing herein shall prohibit the authority from taking any appropriate and prudent action to renegotiate and restructure such debt

or from purchasing the preferred stock and debt securities issued by such corporation at such prices as the authority may determine. The authority may also exchange its bonds for any outstanding preferred stock or debt securities with the consent of the holders of such preferred stock or debt securities.

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

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

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

[FN1] So in original. (Word misspelled.)

## → § 1020-i. Subsidiaries

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-i, in another title 1-A, post.]>

1. The authority shall have the right to exercise and perform all or part of its powers and functions through one or more wholly owned subsidiaries by acquiring the voting shares thereof or by resolution of the board directing any of its trustees, officers or employees to organize a subsidiary corporation pursuant to the business corporation law, the not-for-profit corporation law or the transportation corporations law. Such resolution shall prescribe the purpose for which such subsidiary corporation is to be formed.

2. The authority may transfer to any subsidiary corporation any moneys, property (real, personal or mixed) or facilities in order to carry out the purposes of this title. Each such subsidiary corporation shall have all the privileges, immunities, tax exemptions and other exemptions of the authority to the extent the same are not inconsistent with the statute or statutes pursuant to which such subsidiary was incorporated provided, however, that in any event any such subsidiary corporation shall be entitled to exemptions from the state public service law and any regulation by, or the jurisdiction of, the public service commission, and the state

environmental quality review act to the extent provided in [subdivision two of section one thousand twenty-s](#) of this title.

→ **§ 1020-j. Notes of the authority**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-j, in another title 1-A, post.]>

The authority shall have the power and is hereby authorized from time to time to issue its negotiable notes in conformity with applicable provisions of the uniform commercial code for any corporate purpose and to refund from time to time any notes by the issuance of new notes, whether the notes to be refunded have or have not matured. The authority may issue notes partly to refund notes or to discharge other obligations then outstanding and partly for any other corporate purpose of the authority. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds.

→ **§ 1020-k. Bonds of the authority**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-k, in another title 1-A, post.]>

1. The authority shall have power and is hereby authorized from time to time to issue its negotiable bonds in conformity with applicable provisions of the uniform commercial code for any purpose authorized by this title, including without limitation (a) to acquire any real or personal property or facilities deemed necessary by the authority, (b) to pay interest on bonds or notes of the authority, (c) to establish reserves to secure such bonds and notes, (d) to establish or maintain such other funds or accounts for such purpose or purposes as the authority may deem necessary or desirable, and (e) to pay all other expenses of the authority incident to the issuance of such bonds or notes.

2. Except as may be otherwise expressly provided by the authority, the bonds and notes of every issue shall be general obligations of the authority payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of particular bonds or notes, or any trustee therefor, pledging any particular moneys or revenues.

3. The authority shall have power from time to time, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose of the authority. Refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold with the proceeds applied to the purchase, payment or provision for payment of the bonds to be refunded.

4. Bonds may be issued, payable in annual installments or as term bonds or both. Bonds shall be authorized by resolution of the board of the authority and shall bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America or by check at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. In the event that term bonds are issued, the resolution authorizing the same may make such provisions for the establishment and maintenance of sinking funds for the payment thereof as the authority may deem necessary or appropriate. Bonds or notes may be sold at public or private sale at such price or prices as the authority shall determine but shall not be sold by the authority at private sale unless such sale and terms thereof have been approved in writing by the state comptroller. Pending preparation of definitive bonds or notes, the authority may issue bonds or notes in temporary form which shall be exchanged for bonds or notes in definitive form when available.

5. Any resolution or resolutions authorizing any bonds or any issue of bonds may (a) delegate to an officer or officers of the authority the power to approve the issuance of bonds from time to time and to fix the details of any such bonds or issues of bonds by an appropriate certificate of such authorized officer or officers and (b) contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized as to: (i) pledging or creating a lien on all or any part of the moneys, revenues or properties of the authority to secure the payment of the bonds or of any particular issue of bonds or any portion of any issue of bonds, subject to such agreements with bondholders as may then exist;

(ii) the rates, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(iii) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(iv) limitations on the right of the authority to restrict and regulate the use of any of its property;

(v) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied;

(vi) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(vii) the procedure, if any, by which the terms of any contract with bondholders may be amended, the amount or percentage of outstanding bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(viii) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders or of a trustee acting on their behalf in the event of a default; and

(ix) any other matters of like or different character, which in any way may affect the security and protection of the bonds and the rights of the holders thereof.

6. Notwithstanding any other provisions of this title, any such resolution or resolutions shall contain a covenant by the authority that it will at all times maintain rates, fees or charges sufficient to pay, and that any contracts entered into by the authority for the sale, transmission or distribution of electricity shall contain rates, fees or charges sufficient to pay, the costs of operation and maintenance of the facilities owned or operated by the authority, payments in lieu of taxes, renewals, replacements and capital additions, the principal of and interest on any obligations issued pursuant to such resolution as the same severally become due and payable, and to establish or maintain any reserves or other funds or accounts required or established by or pursuant to the terms of such resolution or resolutions.

7. It is the intention of the legislature that any pledge of moneys, revenues or property or of a revenue producing contract or contracts made by the authority shall be valid and binding from the time when the pledge is made; that the moneys, revenues or proceeds so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge or lien is created pursuant to this subdivision need be recorded in order to perfect such pledge or lien.

8. Neither the trustees of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

9. The authority shall have power out of any funds available therefor to purchase bonds or notes at such price or prices as it deems advisable. The authority may hold, pledge, cancel or resell such bonds, subject to agreements with bondholders.

10. All bonds, notes and other obligations issued by the authority under the provisions of this title are hereby declared to have all the qualities and incidents of negotiable instruments under the applicable laws of the state.

→ **§ 1020-1. State and municipalities not liable on bonds or notes**

<[As added by L.1986, c. 515. See, also, Public Authorities Law § 1020-1, in another title 1-A, post.]>

The bonds, notes and other obligations of the authority shall not be a debt of the state or of any municipality, and neither the state nor any municipality shall be liable thereon. The authority shall not have the power to pledge the credit, the revenues or the taxing power of the state or of any municipality, and neither the credit, the revenues nor the taxing power of the state or of any municipality shall be, or shall be deemed to be, pledged to the payment of any bonds, notes or other obligations of the authority. Each evidence of indebtedness of the authority, including the bonds and notes of the authority, shall contain a clear and explicit

statement of the provisions of this section.

→ **§ 1020-m. Legal investments**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-m, in another title 1-A, post.]>

Any bonds or notes issued by the authority are hereby made securities in which all public officers and bodies of this state and all municipalities, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all trusts, estates and guardianships and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital in their control or belonging to them. The bonds and notes are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of the state and all municipalities for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

→ **§ 1020-n. Deposit and investment of moneys of the authority**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-n, in another title 1-A, post.]>

1. All moneys of the authority from whatever source derived, except as otherwise authorized or provided in this title, shall be paid to the treasurer of the authority and shall be deposited forthwith in a bank or banks designated by the authority. The moneys in such accounts shall be withdrawn on the order of such person or persons as the authority may authorize. All deposits of such moneys shall be secured in accordance with [section two thousand nine hundred twenty-five](#) of this chapter. The state comptroller and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing; the authority shall not be required to pay a fee for any such examination.

2. The authority shall have power to contract with holders of any of its bonds or notes, or any trustee therefor, as to the custody, collection, securing, investment and payment of any moneys of the authority and of any moneys held in trust or otherwise for the payment of bonds or notes, and to carry out any such contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of such moneys shall be secured in accordance with [section two thousand nine hundred twenty-five](#) of this chapter, and all banks and trust companies in the state are authorized to give such security for such deposits.

3. Subject to agreements with noteholders and bondholders or any trustee therefor, the authority shall prescribe a uniform system of accounts in accordance with generally accepted accounting principles.

**→ § 1020-o. Agreement of the state**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-o, in another title 1-A, post.]>

1. The state of New York does hereby pledge to and agree with the holders of any obligations issued under this title and the parties to any contracts with the authority hereunder that the state will not limit or alter the rights hereby vested in the authority until such obligations together with the interest thereon are fully met and discharged and/or such contracts are fully performed on the part of the authority, provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such obligations of the authority, or those entering into such contracts with the authority. The authority as agent for the state is authorized to include this pledge and agreement by the state in all agreements with the holders of such obligations and in all such contracts.
2. Nothing in this title shall be construed as diminishing or enlarging any valid existing rights under any license heretofore issued pursuant to the provisions of the federal power act.

**→ § 1020-p. Exemption from taxation**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-p, in another title 1-A, post.]>

1. It is hereby found and declared that the operation of the authority is primarily for the benefit of the people of the state of New York, for the improvement of their health, welfare and prosperity, and is a public purpose, and the authority shall be regarded as performing an essential governmental function in carrying out the provisions of this title.
2. The authority shall be required to pay no taxes nor assessments upon any of the property acquired or controlled by it or upon its activities in the operation and maintenance thereof or upon income derived therefrom, provided that nothing herein shall prevent the authority from entering into agreements to make payments in lieu of taxes with the governing bodies of municipalities, as provided for in [section one thousand twenty-q](#) of this title.
3. The securities and other obligations issued by the authority, their transfer and the income therefrom shall, at all times, be free from taxation by the state or any municipality, except for estate and gift taxes.

**→ § 1020-q. Payments in lieu of taxes**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-q, in another title 1-A, post.]>

1. [Eff. until Jan. 1, 2014. See, also subd. 1 below.] Each year after property theretofore owned by LILCO is acquired by the authority by any means authorized by this title and, as a consequence, is removed from the tax

rolls, the authority shall make payments in lieu of taxes to municipalities and school districts equal to the taxes and assessments which would have been received from year to year by each such jurisdiction if such acquisition had not occurred, except for such taxing jurisdictions which tax the Shoreham plant, in which case the in lieu of tax payments shall in the first year after the acquisition be equal to one hundred percent of the taxes and assessments which would have been received by such taxing jurisdictions. In each succeeding year such in lieu of tax payments shall be decreased by ten percent until such time as such payments equal taxes and assessments which would have been levied on such plant in a nonoperative state .

1. [Eff. Jan. 1, 2014. See, also subd. 1 above.] Each year after property theretofore owned by LILCO is acquired by the authority by any means authorized by this title and, as a consequence, is removed from the tax rolls, the authority shall make payments in lieu of taxes to municipalities and school districts equal to the taxes and assessments which would have been received from year to year by each such jurisdiction if such acquisition had not occurred, provided, however, that for the calendar year starting on January first, two thousand fifteen, and for each calendar year thereafter, such payments in lieu of taxes shall not exceed the in lieu of tax payments made to such municipalities and school districts in the immediately preceding year by more than two percent.

2. [Eff. until Jan. 1, 2014. See, also subd. 2 below.] The authority shall also make payments in lieu of taxes for those taxes which would otherwise be imposed upon LILCO, if LILCO were to continue in operation, pursuant to [sections one hundred eighty-six-a and one hundred eighty-six-c of the tax law](#), and to former sections one hundred eighty-six and one hundred eighty-six-b of the tax law as such sections one hundred eighty-six and one hundred eighty-six-b were in effect on December thirty-first, nineteen hundred ninety-nine, [paragraph \(b\) of subdivision four of section one hundred seventy-four of the navigation law](#), and any taxes imposed by a city pursuant to the authorization granted by [section twenty-b of the general city law](#).

2. [Eff. Jan. 1, 2014. See, also subd. 2 above.] The authority shall also make payments in lieu of taxes for those taxes which would otherwise be imposed pursuant to [sections one hundred eighty-six-a and one hundred eighty-six-c of the tax law](#), and to former sections one hundred eighty-six and section one hundred eighty-six-b of the tax law as such section was in effect on December thirty-first, nineteen hundred ninety-nine, and any taxes imposed by a city pursuant to the authorization granted by [section twenty-b of the general city law](#).

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

#### → [§ 1020-r. Repayment of state appropriations](#)

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-r, in another title 1-A, post.]>

All appropriations made by the state to the authority shall be treated as advances by the state to the authority, and shall be repaid to it without interest either out of the proceeds of bonds issued by the authority pursuant to the provisions of this title, or by the delivery of non-interest bearing bonds of the authority to the state for all or any part of such advances, or out of excess revenues of the authority, at such times and on such conditions as the state and the authority mutually may agree upon.

→ **§ 1020-s. Public service law generally not applicable to authority; inconsistent provisions in certain other acts superseded**

1. [Eff. until Jan. 1, 2014. See, also, subd. 1 below.] The rates, services and practices relating to the electricity generated by facilities owned or operated by the authority shall not be subject to the provisions of the public service law or to regulation by, or the jurisdiction of, the public service commission, except to the extent (a) article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined there-in, (b) article ten of such law applies to the siting of a generating facility as defined therein, and (c) section eighteen-a of such law provides for assessment for certain costs, property or operations.

1. [Eff. Jan. 1, 2014. See, also, subd. 1 above.] The rates, services and practices relating to the electricity generated by facilities owned or operated by the authority shall not be subject to the provisions of the public service law or to regulation by, or the jurisdiction of, the public service commission, except to the extent (a) article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined there-in, (b) article ten of such law applies to the siting of a generating facility as defined therein, (c) section eighteen-a of such law provides for assessment for certain costs, property or operations, and (d) to the extent that the department of public service reviews and makes recommendations with respect to the operations and provision of services of, and rates and budgets established by, the authority pursuant to section three-b of such law.

2. The issuance by the authority of its obligations to acquire the securities or assets of LILCO shall be deemed not to be “state action” within the meaning of the state environmental quality review act, and such act shall not be applicable in any respect to such acquisition or any action of the authority to effect such acquisition.

→ **§ 1020-t. Authority not to construct or operate a nuclear powered facility in the service area**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-t, in another title 1-A, post.]>

In no event shall the authority construct or operate a nuclear powered facility in the service area.

→ **§ 1020-u. Employees of the authority not subject to the public employees' fair employment act**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-u, in another title 1-A, post.]>

All employees of the authority shall be exempt from the provisions of the public employees' fair employment act as set forth in article fourteen of the civil service law.

→ **§ 1020-v. Equal employment opportunity and minority and women owned business enterprise programs**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-v, in another title 1-A, post.]>

1. All contracts entered into by the authority pursuant to this title of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training and retraining, including apprenticeship and on-the-job training.

(b) At the request of the authority, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the authority to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

(c) The contractor shall state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the authority that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The contractor will include the provisions of paragraphs (a) through (c) of this subdivision in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the authority.

2. The authority shall establish measures, procedures and guidelines to ensure that contractors and subcontractors undertake meaningful programs to employ and promote qualified minority group members and women. Such procedures may require after notice in a bid solicitation, the submission of a minority and women workforce utilization program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any workforce utilization program adopted hereunder. The authority may take appropriate action, including the impositions of sanctions for non-compliance to effectuate the provisions of this section and shall be responsible for

monitoring compliance with this title.

3. In the performance of projects pursuant to this title, minority and women-owned business enterprises shall be given the opportunity for meaningful participation. The authority shall establish quantifiable standards and measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority and women-owned business enterprises may best bid to actively and affirmatively promote and assist their participation in projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this title shall be construed to limit the ability of the authority to assure that qualified minority and women-owned business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock or other voting interest is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian, American Indian, Pacific islander, or Alaskan native, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock to other voting interests of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year.

The provisions of this subdivision shall not be construed to limit the ability of any minority business enterprise to bid on any contract.

4. In order to implement the requirements and objectives of this section, the authority shall establish procedures to monitor contractors compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, impose contractual sanctions for non-compliance, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

→ **§ 1020-w. Audit and annual reports**

<[As added by L.1986, c. 517. See, also, Public Authorities Law § 1020-w, in another title 1-A, post.]>

The accounts of the authority shall be subject to the supervision of the state comptroller and an annual audit shall be performed by an independent certified accountant selected by the authority, upon recommendation of its finance and audit committee. The authority shall submit annually to the governor, the state comptroller, the temporary president of the senate, the speaker of the assembly and the county executives and governing bodies of the counties of Suffolk and Nassau, a detailed report pursuant to the provisions of [section two thousand eight hundred](#) of this chapter, which report shall be verified by the chairman of the authority. The authority shall comply with the provisions of [sections two thousand eight hundred one](#), [two thousand eight hundred two](#) and [two thousand eight hundred three](#) of this chapter.

**→ § 1020-x. Authority subject to open meetings law**

The authority shall be subject to the provisions of article seven of the public officers law relating to the open meetings law.

**→ § 1020-y. Court proceedings; preferences; venue**

1. Any action, suit or proceeding to which the authority may be a party in which any question arises as to the validity of this title or the valuation of stock or assets acquired by the authority by the exercise of the power of eminent domain shall be preferred over all other civil causes in all courts of the state, except election matters, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding questioning the validity of this title or the valuation of stock or assets acquired by the authority by the exercise of the power of eminent domain in which such counsel may be allowed to intervene. The venue of any action or proceeding questioning the validity of this title shall be laid in the county in which the principal office of the authority is located.

2. In the event any party shall appeal an award of compensation for the taking by the authority of stock or assets, such party shall post a bond in such amount, if any, as the supreme court shall deem appropriate to adequately protect the interests of the other party under all the circumstances.

3. Except in an action for wrongful death, an action against the authority founded on tort shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the authority within the time limited by, and in compliance with all the requirements of [section fifty-e of the general municipal law](#). An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.

**→ § 1020-z. Corporate existence**

The authority and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the authority shall have bonds, notes or other obligations outstanding, unless adequate provision has been made for the payment thereof.

**→ § 1020-aa. Conflicts of interest**

1. If any member, officer or employee of the authority shall have an interest, either direct or indirect, in any contract to which the authority is, or is to be, a party, such interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member, officer or employee having such interest shall not participate in any action by the authority with respect to such contract.

2. No member, officer or employee shall be deemed to have such an interest solely by reason of the ownership of two percent or less of the securities of a corporation which is, or is to be, a party to a contract with the authority, including without limitation the holding company of any banking institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under any bond or note resolution, trust indenture or similar instrument to which the authority is a party.

3. Nothing in this section shall be deemed or construed to limit the right of any member, officer or employee of the authority to acquire an interest in bonds or notes of the authority.

→ **§ 1020-bb. Exculpation**

1. The trustees and officers of the authority, while acting within the scope of their authority as trustees or officers, shall not be subject to any personal or civil liability resulting from the exercise, carrying out or advocacy of any of the authority's purposes or powers, unless the conduct of the trustees or officers is finally determined by a court of competent jurisdiction to constitute intentional wrongdoing.

2. The provisions of [section seventeen of the public officers law](#) shall apply to trustees and officers of the authority, in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against any of them arising out of any determinations made or actions taken or omitted to be taken in compliance with any obligations under or pursuant to the terms of this title.

3. Notwithstanding any other provisions of law to the contrary, the provisions of [section eighteen of the public officers law](#) shall apply to the employees of the authority, in connection with any and all claims, demands, suits, actions or proceedings which may be brought against any of them arising out of any determinations made or actions taken or omitted to be taken in compliance with any obligations under or pursuant to the terms of this title. Whenever the provisions of [section seventeen of the public officers law](#) do not apply to the trustees and officers of the authority, the provisions of [section eighteen of the public officers law](#) shall apply to such trustees and officers.

4. Any costs incurred by the state in accordance with subdivision two of this section shall be treated as advances by the state to the authority, and shall be repaid to it without interest either out of the proceeds of bonds issued by the authority pursuant to the provisions of this title, or by the delivery of non-interest bearing bonds of the authority to the state for all or any part of such advances, or out of excess revenues of the authority, at such times and on such conditions as the state and the authority mutually may agree upon. Any agreement entered into by the state and the authority for the repayment of any costs incurred pursuant to subdivision two of this section, shall be subject to the approval of the public authorities control board.

5. As used in this section, the terms "trustee", "officer" and "employee" shall include a former trustee, officer or employee and his or her estate or judicially appointed personal representative.

→ § 1020-cc. Authority subject to certain provisions contained in the state finance law, the public service law, the social services law and the general municipal law

1. All contracts of the authority shall be subject to the provisions of the state finance law relating to contracts made by the state. The authority shall also establish rules and regulations with respect to providing to its residential gas, electric and steam utility customers those rights and protections provided in article two and sections one hundred seventeen and one hundred eighteen of the public service law and section one hundred thirty-one-s of the social services law. The authority shall conform to any safety standards regarding manual lockable disconnect switches for solar electric generating equipment established by the public service commission pursuant to subparagraph (ii) of paragraph (a) of subdivision five and subparagraph (ii) of paragraph (a) of subdivision five-a of section sixty-six-j of the public service law. The authority shall let contracts for construction or purchase of supplies, materials, or equipment pursuant to section one hundred three and paragraph (e) of subdivision four of section one hundred twenty-w of the general municipal law.

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

→ § 1020-dd. Authority not to seek nor any subsidiary of the authority, to apply for or accept preference hydroelectricity

The authority nor any subsidiary of the authority, shall not seek, apply for, nor accept hydroelectricity produced by the power authority of the state of New York and marketed subject to the federal preference clause contained in the Niagara Redevelopment Act at 16 USC Section 836(b)(1) and distributed by the Power Authority of the State of New York subject to section ten hundred five of this chapter. Nothing herein shall be construed to prohibit the authority from entering into agreements with public bodies within its service territory for the wheeling and/or distribution of such hydroelectricity.

→ § 1020-ee. Nine Mile Point II; disposition of interest

The authority shall make every effort to convey its interest in the Nine Mile Point II nuclear generating facility through the sale of its interest in such facility to the power authority of the state of New York or to one or more of the co-tenants of such plant, provided, however, that in any acquisition of such interest by the power authority of the state of New York or by one or more of the co-tenants, the authority shall agree to remain responsible for the purchase of such share of the power generated by such facility as it is required to purchase under agreements entered into by LILCO and obligating the authority.

**→ § 1020-ff. Rates charged to veterans' organizations**

1. The authority shall charge a rate for electric service, regardless of the type of service offered, to any post or hall owned or leased by a not-for-profit veterans' organization that is no greater than the rate charged to domestic customers receiving single-phase service within the same village, town or municipality.
2. The authority shall not recover revenues foregone pursuant to subdivision one of this section from customers of the authority. To the extent that a lack of recovery of such foregone revenues may prevent the authority from meeting its bond coverage requirements, the authority shall reduce its non-personnel operating expenses by an amount equal to its foregone revenue.

**→ § 1020-gg. Energy plan**

The authority shall complete a biennial energy plan in accordance with the provisions of article six of the energy law. In addition to any requirements of article six of the energy law, the authority shall provide copies of its biennial energy plan to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the assembly committee on energy and the chair of the senate committee on energy and telecommunications. Further, the authority shall cooperate and participate in the state energy planning procedures as enumerated in article six of the energy law.

**→ § 1020-hh. Green jobs-green New York on-bill recovery**

1. Within three hundred days of the effective date of this section, the authority shall establish a program to provide for the billing and collection of on-bill recovery charges for payment of obligations of its customers to the green jobs-green New York revolving loan fund established pursuant to title nine-A of article eight of the public authorities law. Such program shall be consistent with the standards set forth in [subdivision three of section forty-two](#) and [section sixty-six-m of the public service law](#). To the maximum extent practicable, funding available from the New York state energy research and development authority shall be utilized to defray any costs associated with electronic data interchange improvements or other costs of initiating and implementing this program. Billing and collection services under such tariffs shall commence as soon as practicable after establishment of the program.
2. The authority may suspend its offering of the on-bill recovery charge provided that the authority makes a finding that there is a significant increase in arrears or utility service disconnections that the authority determines is directly related to such charge, or a finding of other good cause.

**→ § 1020-ii. Liberal interpretation**

This title, being necessary for the prosperity of the state and its inhabitants, shall be liberally construed to effect the purposes hereof.

→ **§ 1020-jj. Inconsistent provisions of other laws superseded**

Insofar as the provisions of this title are inconsistent with the provisions of any other law or any part thereof, the provisions of this title shall be controlling.

→ **§ 1020-kk. Severability**

The provisions of this title are severable, and if any part or provision hereof, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this title or the application of such provision to any other person or circumstance, but shall be confined in its operation to the provision, person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

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