



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

December 14, 2021

Honorable Mark Fischl, Vice Chairman
Board of Trustees
Long Island Power Authority
333 Earle Ovington Blvd.
Uniondale, New York 11553
boardoftrustees@lipower.org

Re: Reformed Operation Services Agreement between the Long Island Power Authority and PSEG Long Island LLC

Dear Vice-Chairman Fischl:

Thank you for the opportunity to comment on the revised contract. While we have a number of concerns about the revised contract including: the timing, inadequate integration of municipalization, and the continued lack of value and accountability for ratepayers, we appreciate that LIPA followed through on the commitment for a public comment period made at the August Assembly Energy Committee hearing. We think it is important that the public have the opportunity to provide input on this important issue. Their verdict has been clear – they want municipalization. We concur. It is true that there is a new explicit reference related to municipalization (page 107), which is one more reference than the prior contract, but we are disappointed that municipalization wasn't more fully integrated.

LIPA rates are among the highest in the country and ratepayers have been held hostage by PSEG-LI with its poor performance and customer service for too long already. The existing contract hurt ratepayers by making them pay for bad performance. This year for example, PSEG-LI can get up to \$5.5 million despite being rated at 37% on the electric reliability index, which relates to how well system interruptions are addressed. (p.81). The subsequent contract years, while slightly better, still involve metrics negotiated with PSEG-LI, and an established right for PSEG-LI to have a chance to earn those bonuses (p.91). Assurances have been offered that the Long Island Department of Public Service will have a more robust role, but given their relatively low profile previously, promises of more involvement are not reassuring.

We have also been told that there will be a greater emphasis on ratepayer satisfaction, and this is true. The revised contract would impose a penalty if PSEG-LI fails to achieve a third quartile result for the “Customer Satisfaction Gating Performance Metric” (p.4 of Appendix 4.3C) in two consecutive years. However, in addition to being a very low bar, this penalty appears to take effect beginning in 2024, one year before the contract is set to terminate. Prior to that time, PSEG-LI would be rewarded for achieving a performance in the 3rd quartile. (LIPA fact sheet Reforming Long Island’s Electric Service: Accountability for Performance p.7) PSEG-LI was previously ranked by JD Power as #143 of 144 electric utilities nationwide for customer service and is dead last - #17 of 17 for large utilities in the Eastern U.S.

LIPA’s Isaias Task Force reports repeatedly identified failures of PSEG LI’s Outage Management System (OMS). However, there seem to be only five references to the OMS in the revised contract. Perhaps more importantly, it appears that OMS upgrades are not projected to take effect until 2022 (p.88 of 2022 Performance Metrics). In addition, it isn’t readily apparent from the contract whether LIPA ratepayers would retain ownership of the OMS at the end of the contract period, despite having invested so much funding. Ratepayers would be responsible for paying for the separation of IT systems, pursuant to a plan that would be established following the creation of a joint cross functional team (p.16).

The revised contract does contain provisions that seem intended to increase accountability. For example, there is a requirement for a full-time core senior management team from PSEG-LI, with each position in such team “having defined responsibilities to carry out in a timely manner” PSEG-LI’s obligations. One such senior manager would be located on Long Island to “serve as the single point of contact for LIPA with decision-making authority and overall oversight responsibility” (p.47). The language then goes on to say “...provided however, that a senior management position may be filled by a Service Provider employee, or, on an interim or permanent basis, by a ServCo employee...” Both the language and the purposes of the exception seem unclear. Given the importance of having increased Long Island-specific accountability, the ambiguity is troubling, and it is unclear why LIPA or PSEG-LI would agree.

The ultimate enforcement provision is the ability to terminate the contract. In this case, termination results in a hefty fee for ratepayers, including a termination resulting from a change in regulatory law ranging from \$30 million in 2021 to \$15 million in 2025 (p.108).

The revised contract has several additional violations listed for which LIPA can terminate the agreement, including violations related to “Duty of Candor.” Although it is unfortunate that requirements for the Service Provider to be “honest, forthright, and transparent, and to fully disclose...in a timely fashion, and without obfuscation, sophistry, bias or intent to inappropriately influence decision-making, all facts and circumstances relevant and responsive (p.67) needs to be included – PSEG-LI’s prior actions justify such an inclusion and it is appropriate that a violation of this duty of candor lead to termination.

At first glance, “failure otherwise to comply with this agreement” would also seem to be appropriate for termination. However, a closer review indicates that this provision includes a 50-day cure period. During this timeframe the Service Provider may cure the failure or refusal. If cured within this time period, or if efforts to cure are commenced, then the failure or refusal to perform shall not constitute a default and the contract may not be terminated. (p.102) It is also unclear, how, if at all, these refusals or failures will impact PSEG-LI’s compensation. While the overall number is cited as \$40 million, a closer look at the metrics indicates that in some instances very little funding is actually at stake. For example, PSEG-LI’s failure to deliver “Strategic Customer Projects” is valued at \$500,000. (LIPA fact sheet Reforming Long Island’s Electric Service: Accountability for Performance p.7)

The revised contract has been identified as being successful because it puts \$40 million in compensation at risk for PSEG-LI, however, we view it another way, PSEG-LI stands to be rewarded with millions of dollars of ratepayer money, and a guaranteed yearly consumer price index increase, after its abysmal performance failures. Looking more closely at the specifics also reveals that PSEG-LI is required to credit LIPA \$4.25 million per year (\$17 million in the aggregate), which reduces the amount of the Compensation Pool subject to reduction (p.75). It is appropriate for PSEG-LI to be penalized, but it seems disingenuous to portray the compensation at risk based on performance as \$20 million when it is actually \$15.75 million.

We are left to hope that the contract will terminate in 2025. In their review of the contract, the Public Service Commission noted “As discussed above, DPS recommended in its November 13th letter that LIPA affirmatively declare it would not renew the A&R OSA for the period after 2025. While LIPA did not elect to do so, the Reformed OSA reflects that an automatic renewal of the contract may not be in the best interest of customers.” (p.7) We agree. While we appreciate that the contract has an end date of 2025, with a mutual five-year renewal option, versus the more open-ended date of the prior contract, we remain concerned that it still may prove difficult to sever the connection. There are multiple examples of language (for example pages 57, 65, and 138) where PSEG-LI is authorized to enter into contracts that extend beyond 2025. For example, the Service Provider may not enter into any vendor agreements or “other agreements material to the performance of its obligations” whose term extends beyond the earlier of December 31, 2025, or any prior termination date (p.138) without LIPA’s approval. However, the language also indicates that LIPA’s approval “shall not be unreasonably withheld or delayed” and specifies that the approval applies only to contracts with a value in excess of \$10 million. In addition, PSEG-LI is also required to prepare an eight-year financial plan (proposed budget and seven projected years) and long-range plans (p.82). Long-term planning is a critical component of planning, but it is unclear why a contract that terminates in 2025 contains such a long-term component.

We would be remiss if we did not mention the context in which this contract was developed. After the abysmal failures of PSEG-LI in Tropical Storm Isaias, there were a series of investigations into PSEG-LI's failures, failures which had a devastating impact on Long Islanders, leaving over a half million customers without power for up to a week. The Term Sheet (p.17) indicates "The execution of the New OSA shall be accompanied by (i) a release and waiver of all claims, known and unknown arising out of or relating to Tropical Storm Isaias; (ii) withdrawal of Nassau County Compliant with prejudice; a final resolution of DPS investigation...; and (iv) LIPA's withdrawal of the RFI issued for electricity distribution services to replace PSEG-LI. By agreeing to this Term Sheet, PSEG-LI does not admit any wrongdoing, breach of contract, or violation of law." However, we all know that PSEG-LI has consistently done wrong. Glossing over that wrongdoing as is done in this new contract results in ratepayers being forced to continue to suffer with bad service and pay more for the privilege.

While we recognize that this contract is better than the prior bad contract, we think Long Islanders deserve more than that. Ratepayers deserve to get the services and performance that they pay so much for, and this contract falls far short of achieving that goal.

Thank you, in advance for your consideration of these comments.

Sincerely,

Steve Englebright

Fred Thiele, Jr.



Member of Assembly
4th District

Member of Assembly
1st District