

## **RESOLUTION ADOPTING A RECOMMENDATION RELATING TO PSEG LONG ISLAND LOBBYING AND ADVOCACY POSITIONS AND ACTIVITIES**

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**WHEREAS**, after PSEG Long Island's failed response during Tropical Storm Isaias, the Board directed LIPA Staff to conduct an Options Analysis to review all potential models to operate the LIPA owned electric T&D assets on Long Island, which Options Analysis reviewed four potential alternatives – (i) privatization (i.e., sell LIPA's assets to private investors), (ii) reset the PSEG Long Island relationship and reform the terms of the current Amended and Restated Operations Services Agreement (“OSA”) with PSEG Long Island, (iii) contract with a new service provider to achieve improved operations of customer assets, and (iv) bring operations under a “fully municipal” LIPA management model; and

**WHEREAS**, the Phase I Options Analysis determined that public ownership of the electric utility reduces Long Island customer bills by approximately 20 percent; and

**WHEREAS**, on December 16, 2020, the Board adopted the Phase I Options Analysis and found that privatization was “too costly for Long Island and Rockaways electric customers to merit investing additional staff time and funds to further develop the alternative” and directed discontinued further study of privatization; and

**WHEREAS**, by Resolution dated December 16, 2020, the Board directed LIPA's Chief Executive Officer to further develop the options presented to the public in the Phase I Options Analysis to (i) reset the PSEG Long Island relationship and reform the current terms of the OSA with PSEG Long Island, (ii) contract with a new service provider to achieve improved operations of customer assets, and (iii) bring operations under a “fully municipal” local management model; and report back to the Board in a Phase II Options Analysis on these options, which did not include privatization, no later than March 31, 2021; and

**WHEREAS**, on April 28, 2021, the Board adopted the Phase II Options Analysis, and affirmed its December 16, 2020 determination that privatization was too costly for Long Island and Rockaways electric customers and its decision to discontinue the study of privatization; and

**WHEREAS**, on December 15, 2021, the Board authorized entering into a Second Amended and Restated Operations Services Agreement (“Second A&R OSA”) with PSEG Long Island, which provides in Section 4.2(E)(1), in relevant part, that “The Service Provider will cause all Senior Managers to at all times act in the best interests of LIPA and LIPA's customers consistent with the provisions of this Agreement, to provide safe, adequate and reliable service to Long Island and Rockaway customers, and to not act, fail to act, or cause or permit others under their management, supervision or control to act in furtherance of any conflicting interest.”; and

**WHEREAS**, LIPA and PSEG Long Island executed the Second A&R OSA as of December 15, 2021; and

**WHEREAS**, LIPA Staff recently became aware that PSEG Long Island and its representatives were actively lobbying elected officials and community members to include an analysis of the privatization of LIPA's operations in pending legislation, which is not in the best interests of LIPA and our customers as it threatens to increase electric rates and prohibit LIPA from accessing the tax-exempt bond market for the duration of the study, precluding the realization of potentially hundreds of millions of dollars of financing savings; and

**WHEREAS**, LIPA's Chief Executive Office informed PSEG Long Island verbally on March 14, 2022, and March 29, 2022, and in writing on March 18, 2022, and March 29, 2022, that privatization is not in the best interests of LIPA and its customers and asked that PSEG Long Island cease its lobbying and advocacy activities as it relates to privatization of LIPA owned T&D assets; and

**WHEREAS**, the lobbying and advocacy activities being undertaken by PSEG Long Island represent a direct conflict of interest to the extent that the intent behind PSEG Long Island's lobbying is to provide PSEG with a business opportunity to increase its earnings at our customers' expense should the analysis result in a recommendation to privatize LIPA (an outcome LIPA believes is remote given that privatization takes away LIPA's tax-exempt status and federal grant eligibility, driving up customer rates).

**NOW, THEREFORE BE IT RESOLVED**, that the Board hereby adopts a recommendation requiring PSEG Long Island, as service provider, to immediately cease and desist all lobbying and advocacy activities with elected officials, public officials, customers, and other stakeholders related to privatization, and to provide LIPA prior written notice of all lobbying and advocacy positions and activities by Senior Managers (as defined in the Second A&R OSA), and others under their management, supervision or control, to determine whether those lobbying and advocacy positions and activities are at all times in the best interests of LIPA and LIPA's customers, as determined by LIPA, and are not in furtherance of any conflicting interests, consistent with the terms of the Second A&R OSA; and

**BE IT FURTHER RESOLVED**, that PSEG Long Island should prepare a project implementation plan consistent with this recommendation and deliver such plan to LIPA Staff no later than May 4, 2022, for consideration at the Board's May 18, 2022 meeting; and

**BE IT FURTHER RESOLVED**, that LIPA Staff should prepare an Information Request comprehensively reviewing and conducting oversight of PSEG Long Island's lobbying and advocacy activities and report back to the Board.

Dated: March 30, 2022

March 18, 2022

Mr. Daniel Eichhorn  
President and Chief Operating Officer  
PSEG Long Island LLC  
80 Park Plaza – T20  
Newark, New Jersey 07102

Dear Dan,

To reiterate our March 14 conversation, LIPA recently became aware that PSEG Long Island and its representatives are actively lobbying legislators, state officials, and community members to include an analysis of the privatization of LIPA's operations in pending legislation. Lobbying for such an analysis is not in the best interests of LIPA and our customers as it threatens to increase electric rates. In addition, such lobbying activities are a breach of the Second Amended & Restated Operations Services Agreement, dated as of December 15, 2021 (the "Second A&R OSA").

As PSEG Long Island is aware, and as was reported in a March 12 Newsday article, undertaking an analysis of the privatization of LIPA's operations risks LIPA's ability to access the tax-exempt bond market for the duration of the study. To sell tax-exempt bonds, governmental entities, like LIPA, must make representations that the facilities financed are expected to be used for governmental purposes throughout the term of the bonds. A state evaluation of a LIPA sale to private entities and the possibility that such a sale might be recommended would make such representations challenging. Of note, LIPA was unable to access the tax-exempt bond market during the prior state privatization studies in 2005 and 2013.

This is particularly important as in the last legislative session, the Legislature authorized the refinancing of billions of dollars of LIPA and Utility Debt Securitization Authority bonds. The purpose of that bill was to access **hundreds of millions of dollars** of potential savings available in today's low interest rate environment. To the extent the lobbying activities being undertaken by PSEG Long Island and its representatives result in LIPA being barred from selling tax-exempt bonds for a year or more, that could prove very costly to customers should interest rates increase pending the conclusion of the study.

Such lobbying activities are a breach of Section 4.2(E)(1) of the Second A&R OSA which provides in relevant part, "The Service Provider will cause all Senior Managers to at all times act in the best interests of LIPA and LIPA's customers consistent with the provisions of this Agreement, to provide safe, adequate and reliable service to Long Island and Rockaway customers, and to not act, fail to act, or cause or permit others under their management, supervision or control to act in furtherance of any conflicting interest." The lobbying activities being undertaken by PSEG Long Island are not in the best interests of LIPA and our customers, as they threaten to increase electric rates, and represent a direct conflict of interest to the extent that the intent behind your lobbying is to provide PSEG with a business opportunity to increase your earnings at our customers' expense should the analysis result in a recommendation to privatize LIPA (an outcome LIPA believes is remote given that privatization takes away LIPA's tax-exempt status and federal grant eligibility, driving up customer rates).

It is disappointing that LIPA has paid PSEG Long Island over \$500 million of management fees, the management services rendered have been deficient causing LIPA to extensively renegotiate its contract with your company, and at the beginning of this new arrangement, we experience the same principal-agent problems that were the core reason we sought to renew our relationship on a different contractual footing. Simply put, we expect that in exchange for giving your company a second chance to operate on Long Island and the Rockaways, your firm will prioritize delivering value to LIPA and its customers.

I expect PSEG Long Island to live up to its contractual commitments and cease its lobbying activities against the interests of LIPA and our customers. Furthermore, I note that your lobbying activities on this bill were not in the legislative priorities PSEG Long Island disclosed and reported bi-weekly to LIPA.

Additionally, I remind you that staff and consulting resources paid for by LIPA should never be used in lobbying activities that are adverse to LIPA and its customers. LIPA will be closely monitoring PSEG Long Island's activities. To that end, I would like to remind PSEG Long Island of its obligations under Public Authorities Law Section 1020-kk to report such lobbying activities to the governor, the temporary president of the senate and the speaker of the assembly in a report to be issued no later than March 31, 2022. We expect that these lobbying activities will be fully disclosed in that report as required by law.

Sincerely,



Thomas Falcone

Cc: Andrea Elder-Howell, PSEG Long Island, VP-Legal  
Bobbi O'Connor, LIPA, General Counsel  
Tom Locascio, Director of External Affairs  
Brian Fuller, Office of the State Comptroller



March 28, 2022

Mr. Thomas Falcone  
Chief Executive Officer  
Long Island Power Authority  
333 Earle Ovington Blvd.  
Uniondale, New York 11553

Dear Tom,

This is in response to your letter of March 18, 2022, in which you allege that PSEG LI breached Section 4.2(E)(1) of the Second Amended and Restated Operations Services Agreement (“2<sup>nd</sup> A&R OSA”) by “lobbying legislators, state officials, and community members to include an analysis of the privatization of LIPA’s operations in pending legislation.” As explained below, LIPA is incorrect, both with respect to its claimed breach of the 2<sup>nd</sup> A&R OSA and its lobbying allegation.

This is the second time that LIPA has incorrectly claimed that PSEG LI breached the 2<sup>nd</sup> A&R OSA before that agreement has become binding and effective. In PSEG LI’s letter dated March 8, 2022, we explained why the 2<sup>nd</sup> A&R OSA is not yet binding and effective, and we reaffirm that position here. Therefore, PSEG LI could not have breached the 2<sup>nd</sup> A&R OSA. Regardless, as we explain below, PSEG LI would not have breached the 2<sup>nd</sup> A&R OSA, even if it had been binding and effective at the time of the claimed breach, because in its discussions with legislators regarding LIPA asset management structuring options, PSEG LI acted in the best interests of LIPA and its customers.

As regards your lobbying allegation, you are fully aware that PSEG LI periodically meets with legislators to discuss a variety of matters. During one such interaction, as it was PSEG LI’s understanding that the legislature intended to analyze municipalization as the only alternative structure for managing LIPA assets, PSEG LI suggested that the legislature should consider all structuring options. Presumably, doing so would be in the best interests of LIPA and its customers. Moreover, the fact that LIPA has on previous occasions considered privatization – in December 2020 as part of LIPA’s Phase I Options Analysis and in April 2021 as part of LIPA’s Phase II Options Analysis – only further serves to demonstrate that it would be appropriate for the legislature to consider privatization as a possible structuring option.

PSEG LI did not hide this suggestion from LIPA. To the contrary, at a March 4, 2022 meeting, between our respective leads for External Affairs, PSEG LI’s suggestion that the scope of the legislative analysis be broadened to include all structuring alternatives was openly discussed, and LIPA’s External Affairs lead concurred that this would be a “reasonable approach” for the legislature to take.

Finally, I must address the end of your letter where you make the false accusation that PSEG LI's management services have been "deficient" and that LIPA is experiencing the "same principal-agent problems" for which LIPA sought to enter into the 2<sup>nd</sup> A&R OSA. As the attached data attests, PSEG LI has provided high quality utility services to customers in Long Island. Moreover, as discussed many times over the past year and a half, PSEG LI has accepted responsibility for the issues experienced by customers in connection with Tropical Storm Isaias. As we have previously requested, it is time to recognize the performance outcomes and not characterize differences of opinions as poor performance of contractual obligations.

Regards,



Daniel Eichhorn  
President & Chief Operating Officer

*Attachment*

cc: Andrea Elder-Howell, PSEG Long Island, VP-Legal  
Bobbi O'Connor, LIPA, General Counsel  
New York State Office of the State Comptroller, Contract Division

## PSEG Long Island - Key Metric Performance



Metric	LIPA	2014	2015	2016	2017	2018	2019	2020	2021	2021 Benchmark (Top Quartile)	LIPA	2014	2015	2016	2017	2018	2019	2020	2021
OSHA Days Away Rate	3Q	3Q	4Q	2Q	3Q	3Q	3Q	2Q	1D	13.46	46.48	28.97	61.11	26.02	30.59	27.79	29.90	11.90	6.21
SAIDI (Excludes Singles/Sec)*	1Q	1Q	1Q	2Q	1Q	1Q	1D	1Q	1D	76.4	47.9**	59.1**	62.4**	71.6	62.2	60.6	47.5	60.8	54.7
SAIFI (Excludes Singles/Sec)*	1Q	1Q	2Q	3Q	2Q	1Q	1Q	2Q	1Q	0.71	0.71**	0.72**	0.82**	1.08	0.93	0.83	0.65	0.76	0.68
CAIDI (Excludes Singles/Sec)*	1D	1D	1D	1D	1D	1D	1D	1D	1D	90	68**	82**	76**	66	67	73	73	80	81
MAIFI*	N/A	N/A	3Q	3Q	3Q	3Q	2Q	2Q	1Q	1.18	N/A	N/A	3.68**	3.92	3.52	3.44	2.41	2.14	1.78
Sustained MCO (CEMI 4)	N/A	N/A	N/A	3Q	2Q	2Q	1Q	1Q	1Q	23,905	N/A	N/A	N/A	70,248	41,730	38,239	14,477	23,479	23,788
JD Power Residential Survey	4Q	4Q	4Q	4Q	4Q	4Q	3Q	3Q	4Q	Q1	519	571	584	610	662	680	695	717	677
JD Power Business Survey	4Q	4Q	4Q	4Q	4Q	4Q	3Q	3Q	4Q	Q1	525	595	631	689	710	724	754	781	737
After Call Residential Survey	IM	IM	IM	IM	IM	IM	IM	IM	IM	N/A	63.7%	87.4%	91.6%	92.9%	94.4%	94.5%	95.0%	94.7%	95.1%
After Call Business Survey	IM	IM	IM	IM	IM	IM	IM	IM	IM	N/A	43.7%	81.6%	90.6%	92.4%	94.0%	94.2%	95.4%	96.0%	96.3%
Personal Contact Survey	IM	IM	IM	IM	IM	IM	IM	IM	IM	N/A	81.9%	90.7%	92.9%	94.6%	95.8%	95.9%	96.5%	96.7%	97.6%
Average Speed of Answer	4Q	3Q	2Q	1Q	1Q	1Q	1Q	2Q	1D	19	93	54	35	24	19	15	15	25	12
Customer Complaint Rate	N/A	1Q	1Q	1Q	1D	1D	1D	4Q	1D	3.3	N/A	10.4	7.7	5.7	4.9	4.6	4.2	11.8	2.0

\* Results prior to PSEG Long Island implementation of new Outage Management Systems (OMS)

IM = Not Measurable Benchmark

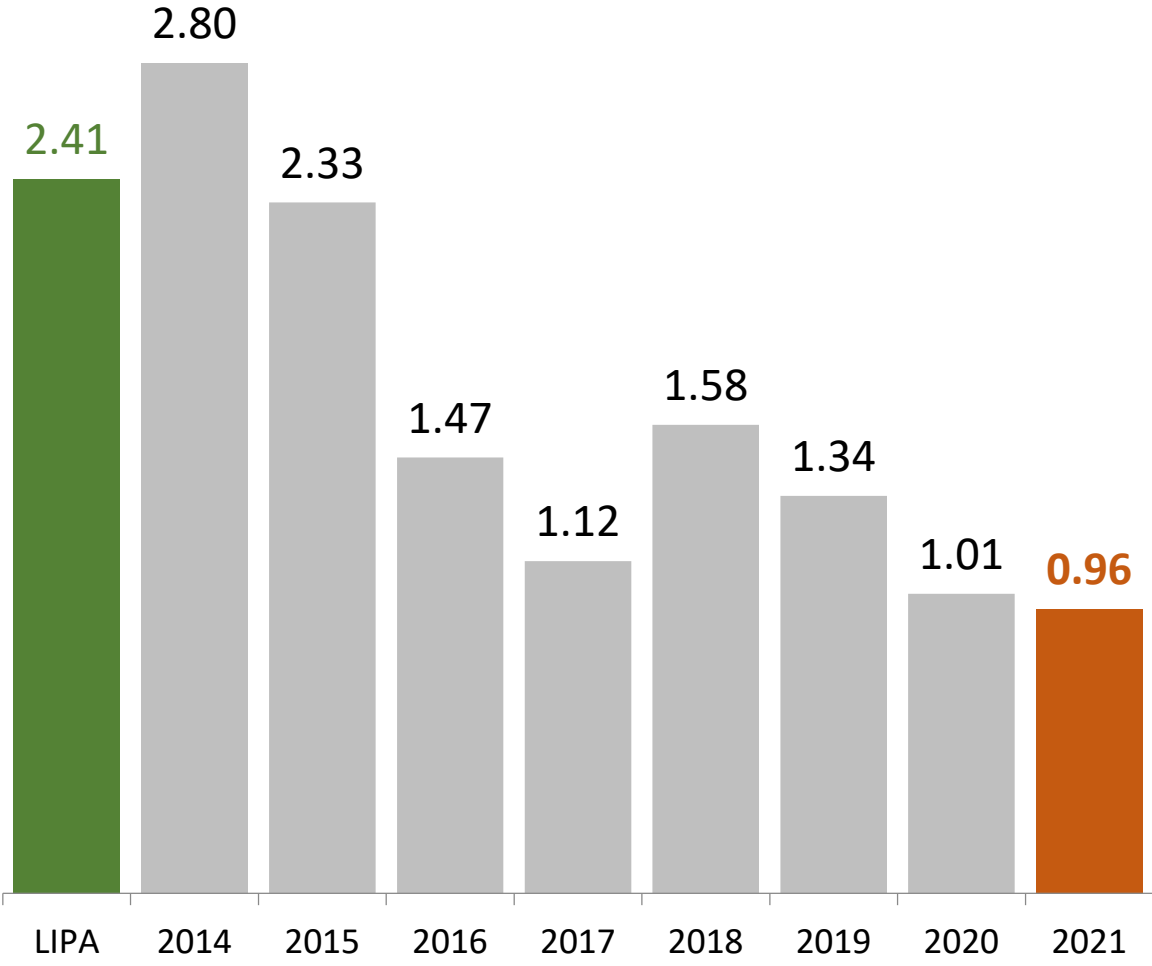
### Legend - Performance Level

TD	Top Decile	3Q	3rd Quartile
1Q	1st Quartile	4Q	4th Quartile
2Q	2nd Quartile		

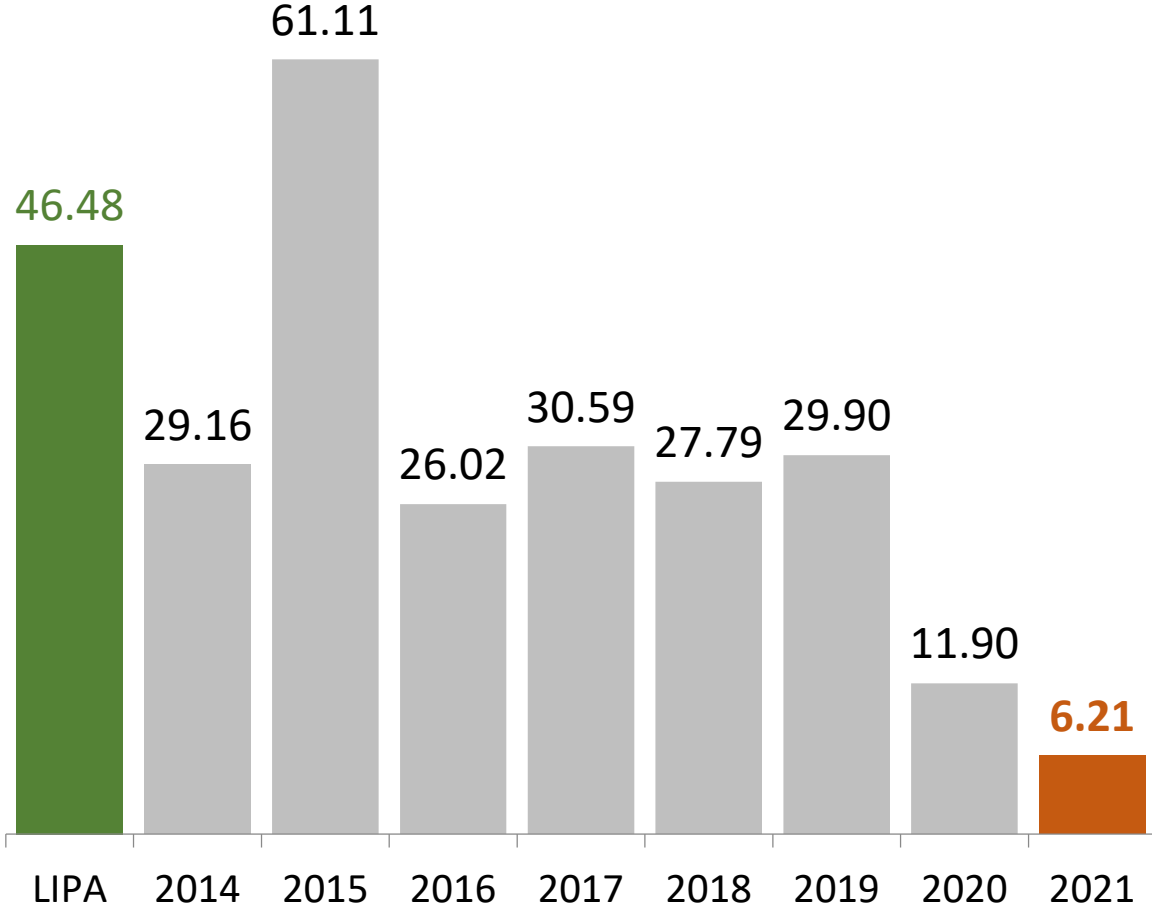
# Employee Safety

*OSHA Recordable Incident Rate and OSHA Days Away Rate*

### OSHA Recordable Incident Rate



### OSHA Days Away Rate (Severity)

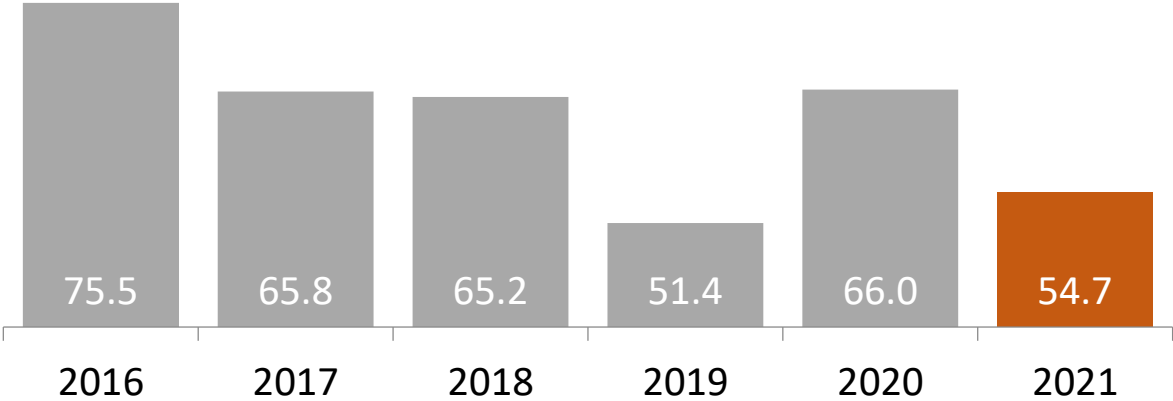




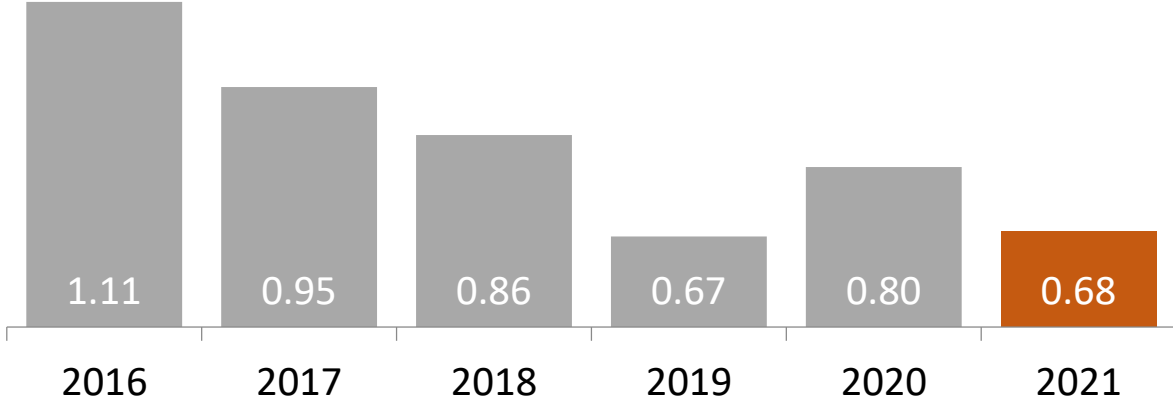
# Electric Reliability

*SAIDI, SAIFI, CAIDI and MAIFI*

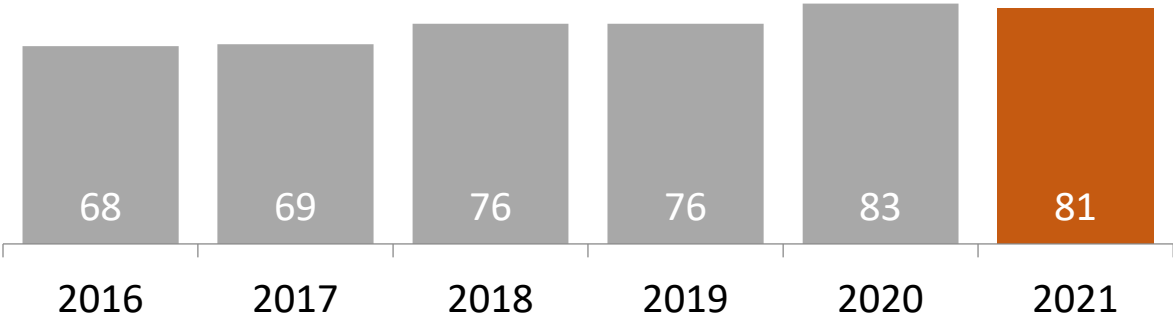
### System Average Interruption Duration Index (SAIDI)



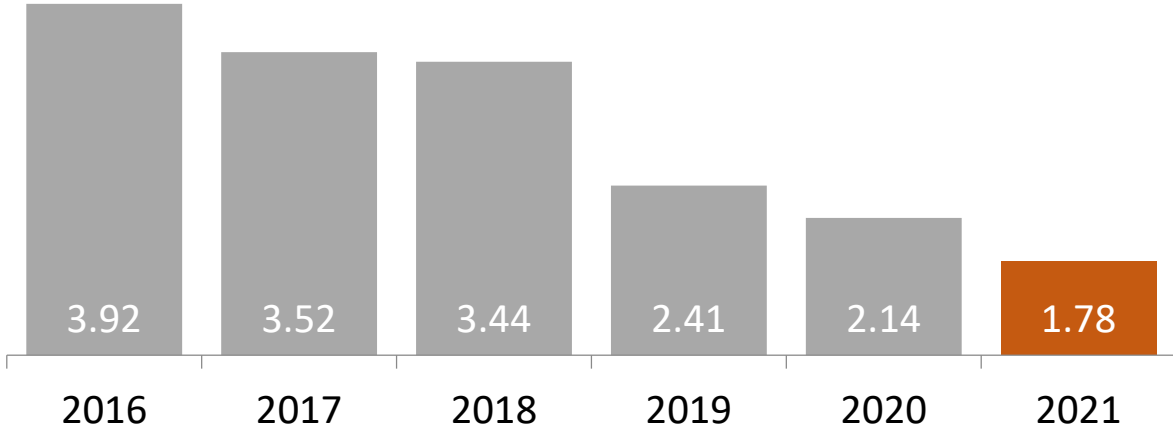
### System Average Interruption Frequency Index (SAIFI)



### Customer Average Interruption Duration Index (CAIDI)



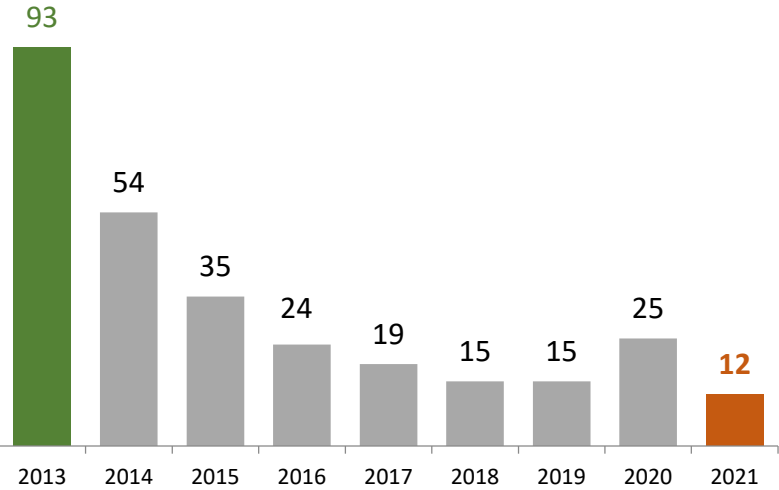
### Momentary Average Interruption Frequency Index (MAIFI)



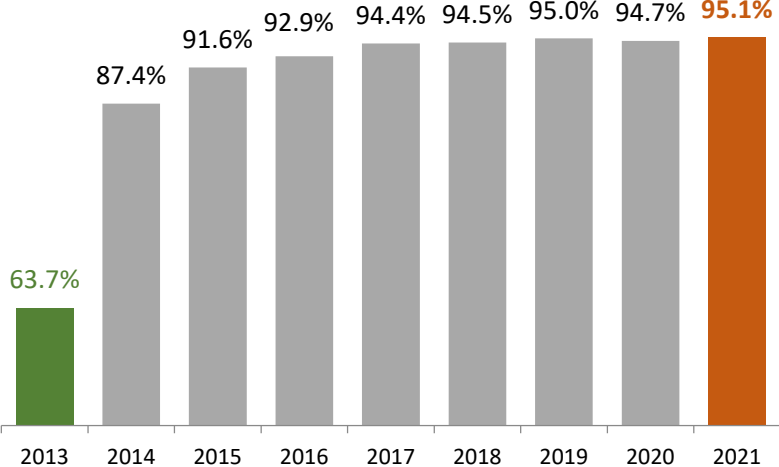
# Customer Satisfaction

ASA, After Call Surveys, Personal Contact Survey and Customer Complaint Rate

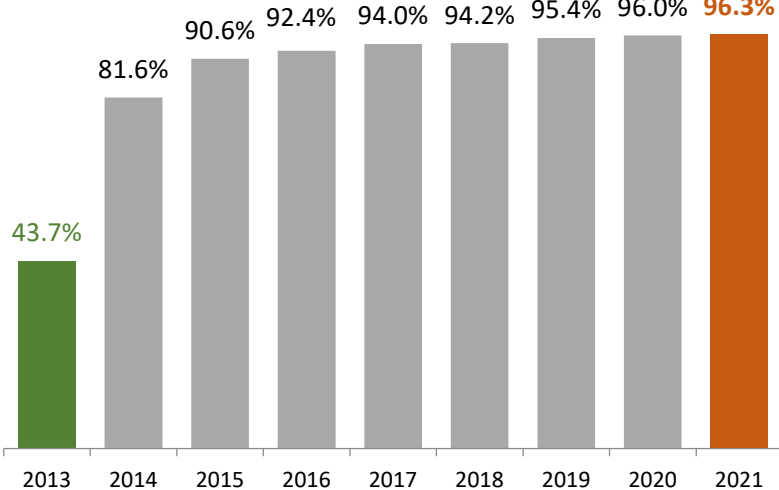
**Average Speed of Answer (Seconds)**



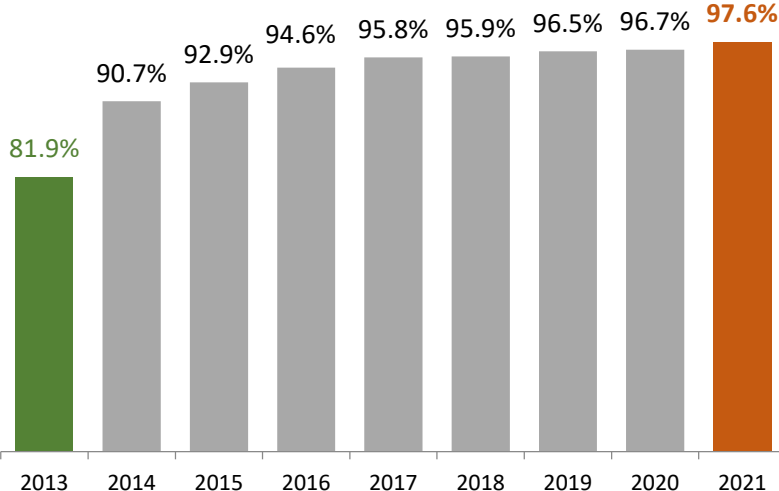
**After Call Survey – Residential**



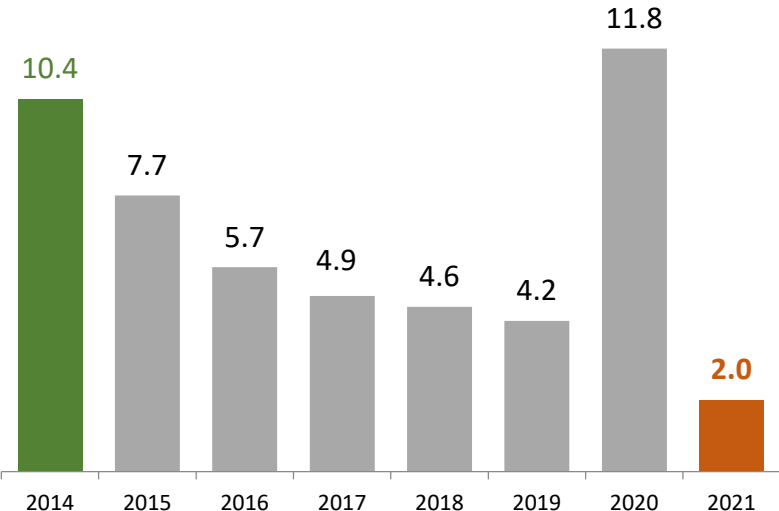
**After Call Survey – Business**



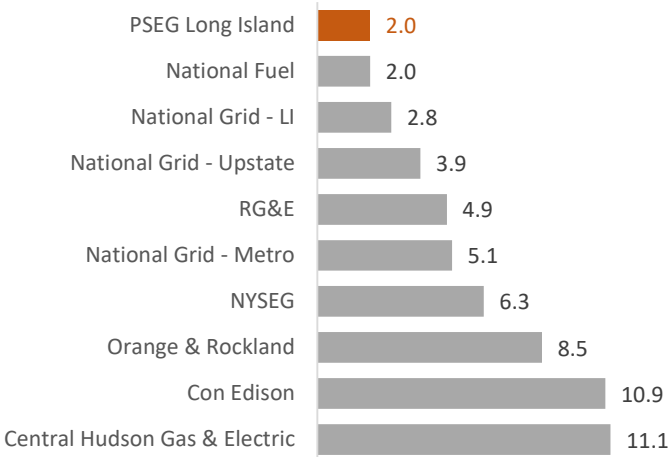
**Personal Contact Survey**



**Customer Complaint Rate**



**Rolling 12 Month DPS Complaint Rate per 100,000 Customers**



**From:** Tom Falcone [REDACTED]  
**Date:** Tuesday, March 29, 2022 at 14:03  
**To:** Eichhorn, Daniel [REDACTED]  
**Cc:** Andrea Elder-Howell [REDACTED], Bobbi OConnor  
[REDACTED], Tom Locascio [REDACTED]  
**Subject:** Re: Letter Regarding PSEG's Lobbying Activities

Dear Dan,

I am not going to address your points to the extent that they were covered in our prior correspondence. However, I will note two things -- first, LIPA's Director of External Affairs has a different recollection of the conversation than you state in your letter. LIPA did not bless your lobbying campaign. In fact, our Director of External Affairs raised the issues previously described in our letter, and advised that PSEG cease its lobbying efforts to include privatization. We have serious concerns about the intentional misrepresentation by your company.

And second, to the extent that you believe privatization is in our customers' interest, LIPA is instructing you that it is not for the reasons previously stated and directing you to cease your lobbying efforts with elected officials and community stakeholders.

Tom

From: Elder-Howell, Andrea [REDACTED]  
Sent: Wednesday, March 30, 2022 7:49:24 AM  
To: Tom Falcone [REDACTED]; Keane, Margaret A. [REDACTED]  
Cc: Bobbi OConnor [REDACTED]; Tom Locascio [REDACTED]; Hahn, Christopher [REDACTED]  
Subject: RE: Letter Regarding PSEG's Lobbying Activities

Tom:

I am writing in response to your March 29 email regarding PSEG's alleged lobbying activities. Although I am reluctant to continue to engage in an unproductive back and forth on this topic, I feel that I must address a baseless allegation in your email.

You indicate that LIPA's Director of External Affairs has a "different recollection" of a conversation that PSEGLI cited to in its March 28 letter where we indicated that there was a conversation between our respective leads for External Affairs regarding a proposal that a legislative analysis be broadened to include all structuring alternatives, and that your lead indicated that would be a "reasonable approach" for the legislature to take. Because LIPA has a different recollection of this conversation, you indicate that you have "serious concerns" regarding the "intentional misrepresentation" made by PSEGLI.

As you know, a different recollection does not constitute an intentional misrepresentation. You have not provided any basis to support an allegation that PSEGLI intentionally made a false statement. If you do have a basis, we invite you to provide that information. Furthermore, we have confirmed with PSEGLI's Director of External Affairs that his recollection is as described in our March 28 letter.

PSEGLI's lobbying efforts continue to be in the best interests of LIPA and its customers. As a result, there is no reason to cease PSEGLI's lobbying efforts with elected officials and community stakeholders. This is further supported by LIPA's actions where on two separate occasions LIPA publically considered other structuring options that included privatization, in December 2020 and as part of LIPA's Phase I Options Analysis and again in April 2021 as part of LIPA's Phase II Options Analysis.

We are happy to have a further dialogue between our leads for External Affairs to support coordination of those efforts.

Best regards,

Andrea Elder-Howell  
Vice President-Legal Services  
333 Earle Ovington Blvd, Suite 403  
Uniondale, New York 11553

