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# Long Island Power Authority by the Numbers

*A Public Authority in Transition*

July 2015

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Prepared by the Office of Budget and Policy Analysis

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# Executive Summary

Long Island utility customers have long paid some of the highest electricity prices in the country. Residents and businesses in the region have raised concerns about such costs, as well as management practices of the Long Island Power Authority (LIPA). Audits, reports and investigations by the State Comptroller and others have identified numerous areas requiring improvement, including adequacy of regulatory oversight, financial management, debt, and storm preparation and response. Relief for LIPA customers has been long overdue.

Over nearly three decades, the State has taken actions to address the cost and reliability of electrical service on Long Island, beginning with the creation of LIPA. The 1986 LIPA Act noted that high electricity costs posed “a serious threat to the economic well-being, health and safety” of Long Island residents and businesses, and declared the construction of the Shoreham Nuclear Power Plant by LIPA’s predecessor imprudent. Nearly three decades later, the Department of Public Service (DPS) has identified \$2 billion in Shoreham costs that remain unrecovered and drive continuing costs for LIPA ratepayers. Legislation was enacted in 2013 (and subsequently amended) in a renewed effort to stabilize rates, improve service and increase accountability. This report provides a financial overview of LIPA and a review of certain changes underway as a result of the 2013 legislation.

One of the State’s largest public authorities in terms of total reported revenues and expenditures, LIPA ranks second in both categories at more than \$3.7 billion each, behind only the Metropolitan Transportation Authority. LIPA reported spending \$1.6 billion for procurements in 2014. Despite a goal for participation by minority- and women-owned business enterprises in its procurements of 20 percent, LIPA reported an actual percentage of just 5.3 percent.

LIPA’s debt burden continues to weigh on ratepayers. The 2013 LIPA legislation authorized the one-time restructuring of LIPA’s debt by a new public authority, the Utility Debt Securitization Authority (UDSA). The State Fiscal Year (SFY) 2015-16 Enacted Budget removed the “one-time” limitation, and in its place capped at \$4.5 billion the total amount of debt that could be issued by UDSA. All costs associated with UDSA debt will be borne by LIPA’s ratepayers until the debt is paid off. In 2014, LIPA reported total debt (including UDSA debt) of nearly \$7.6 billion, up 11 percent since 2010. LIPA projects this debt load will reach approximately \$8 billion by 2018, suggesting that debt will remain a high cost for LIPA customers.

The 2013 LIPA legislation authorized and directed the renegotiation of the Operations Services Agreement (OSA) between LIPA and PSEG Long Island LLC (PSEG), which operates the LIPA system, eliminating Office of the State Comptroller review and approval of the contract. Many of the beneficial terms and protections built into the original contract were modified or eliminated in the final amended OSA. These include budget oversight and cost control mechanisms, performance measurement metrics, storm cost provisions, and compensation terms. This is of particular concern because costs for LIPA customers have not declined and continue to outpace those of other utilities. LIPA’s average retail price for residential electricity was more than 22 percent above the New York State

median and 78 percent above the national median in 2013. LIPA's commercial average retail price was nearly 92 percent above the national median.

The 2013 LIPA legislation also established new rate change procedures. The legislation superseded the Public Authorities Control Board requirement that any rate increase above 2.5 percent be submitted to the Public Service Commission for approval before it could take effect. In January 2015, LIPA and PSEG proposed a three-year rate plan which includes what is described by DPS staff as "aggressive" rate design changes, including increases to certain charges ranging from 100 percent to 300 percent. DPS staff cautioned about "rate shock," disagreed with several aspects of the rate proposal, and recommended alternative revenue targets, service strategies, and charges. The decision as to which – if any – of the recommendations made during the rate proceeding would be accepted resides primarily with LIPA.

In June, PSEG and LIPA submitted rebuttal filings that disagreed with several of the DPS recommendations. While a modest reduction in the revenue requirement was accepted by PSEG, it was accompanied by a proposal to periodically adjust estimates for actual costs associated with debt, tax-related payments, and unionized employee wages. This proposal could create further uncertainty with respect to rates for LIPA's customers. The prospect of actual reductions in LIPA customer bills in the near term appears remote.

The 2013 legislation restructured the LIPA Board, reducing the number of trustees. The restructured board bears responsibility for approving rate increases, and for ensuring the provision of reliable, economical and responsive electric service to its customers, in accordance with LIPA's stated mission. However, LIPA's 2014 performance evaluation, prepared in accordance with the Public Authorities Reform Act of 2009, does not identify any specific efforts to limit or reduce costs for ratepayers, or to provide reliable and responsive electric service. Steps by the board to identify any such efforts could increase ratepayer confidence that LIPA is sufficiently prioritizing these critical mission goals.

So far, the long-overdue improvements promised to LIPA ratepayers have yet to be achieved. It is unclear whether LIPA customers are better or worse off than before the 2013 LIPA legislation. The law created a new Long Island office of the DPS, but only gave it certain review and recommendation powers with respect to LIPA and PSEG. Ratepayers are not benefitting from regulatory oversight, access to information, and cost control mechanisms that are as strong as those enjoyed by other New York utility customers. LIPA ratepayers face higher bills, bear a debt burden that is projected to increase, and, in some ways, have less transparency and accountability regarding their electric service provider than before.

In 2016, LIPA will mark the 30<sup>th</sup> anniversary of its original statutory creation. LIPA's status as a public entity creates certain cost advantages. However, the goal of affordable utility service on Long Island has not yet been attained and longstanding problems persist. More action is needed to improve oversight and accountability, strengthen consumer protections, and provide much-needed rate relief for LIPA customers.

Recommendations that result from DPS reviews are required to be implemented unless LIPA determines particular reasons not to do so. The 2013 LIPA legislation empowered DPS to "inspect all premises and facilities owned or operated by the authority and the

service provider, review all books and records of the authority and the service provider, interview all appropriate personnel, and require annual reporting.” The DPS should take full advantage of this authority and expand its efforts in these areas. The 2013 legislation also calls for DPS to initiate its next comprehensive management and operations audit of LIPA by December 2016. Given the lack of progress in meeting the LIPA reform goals, DPS should consider initiating that audit as soon as practicable.

In addition, strong consideration should be given to increasing the powers and duties of DPS, instituting more robust consumer protection and advocacy provisions, providing opportunities for greater local dialogue and participation, and ensuring LIPA sufficiently prioritizes ratepayer needs with respect to cost, service and other issues. Finally, efforts should be made to reduce, not continue to increase, the debt burden on LIPA ratepayers. Future generations of Long Island and Rockaways residents should not continue to be excessively burdened with the costly decisions of the past.

# Introduction

This report provides an overview of key financial data for the Long Island Power Authority (LIPA), including reported revenue and expenditures, debt, procurement, employment and compensation.

This report also provides a progress report on certain major provisions included in LIPA legislation advanced in 2013 as Governor's Program Bill #20, enacted as Chapter 173 of the Laws of 2013, and subsequently amended.<sup>1</sup> That statute included provisions to reconstitute the LIPA Board of Trustees, modify LIPA's powers and duties, give the State Department of Public Service (DPS) new responsibilities with respect to the LIPA service territory, authorize the renegotiation of the Operations Services Agreement (OSA) between LIPA and its service provider, PSEG Long Island LLC (PSEG) in part to give PSEG more autonomy, and authorize the restructuring of LIPA debt by a newly created public authority.

## Long Island Power Authority by the Numbers

The data in this section of the report have been submitted by LIPA to the Office of the State Comptroller, primarily through the Public Authorities Reporting Information System (PARIS) maintained by the Office of the State Comptroller. PARIS was created in response to a need for greater accountability and transparency through more timely data collection and analysis. The system was fully implemented in November 2007 and is jointly managed by the Office of the State Comptroller and the Authorities Budget Office (ABO).

Unless otherwise stated, the data in this section of the report are for LIPA's fiscal year (FY) ended December 31, 2014. The information and numbers are self-reported by LIPA and have not been verified by the Office of the State Comptroller.

### ***Revenues and Expenditures***

LIPA is among the largest of the State's public authorities in terms of total revenues and expenditures, ranking second in both categories behind the Metropolitan Transportation Authority. Self-reported revenues for LIPA for FY 2014 totaled \$3.77 billion, as shown in Figure 1. The primary source of LIPA's revenues is electricity sales, which represented \$3.61 billion or approximately 96 percent of total reported revenue. Non-operating revenue, which represents \$152 million or 4 percent of total revenue, primarily consists of grants and investment income.

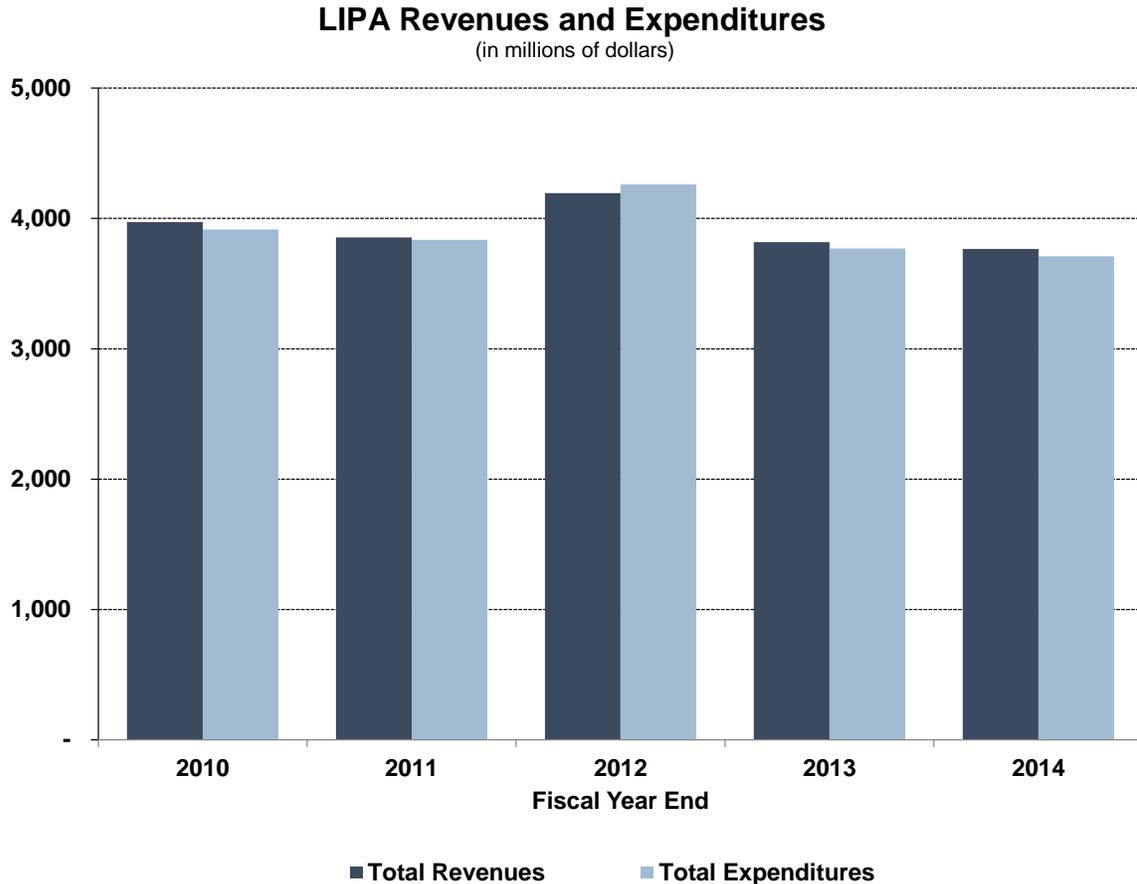
Total expenditures reported for FY 2014 were \$3.71 billion. LIPA's major expenditure categories include \$1.66 billion in fuel and purchased power costs, which represented 45 percent of the total. Operations and maintenance costs, including related amortizations,

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<sup>1</sup> The Executive initially advanced Governor's Program Bill #6, "PSC/LIPA Reform." A substantially similar bill, Governor's Program Bill #20, "LIPA Bill," was subsequently advanced containing some modifications to the original program bill.

represented \$1.08 billion, or 29 percent of total expenditures, while payments in lieu of taxes represented \$333 million or 9 percent of total expenditures. Additional operating expenses include depreciation and amortization, which represented \$216 million or 6 percent of the total, and storm restoration and general and administrative costs, which represented \$60 million or 2 percent of the total.

**Figure 1**



Interest charges and credits, categorized as non-operating expenditures, totaled \$358 million, or approximately 10 percent of total expenditures. These included \$339 million of interest on long-term debt, and other interest and allowance for borrowed funds used during construction totaling nearly \$20 million.

***Debt***

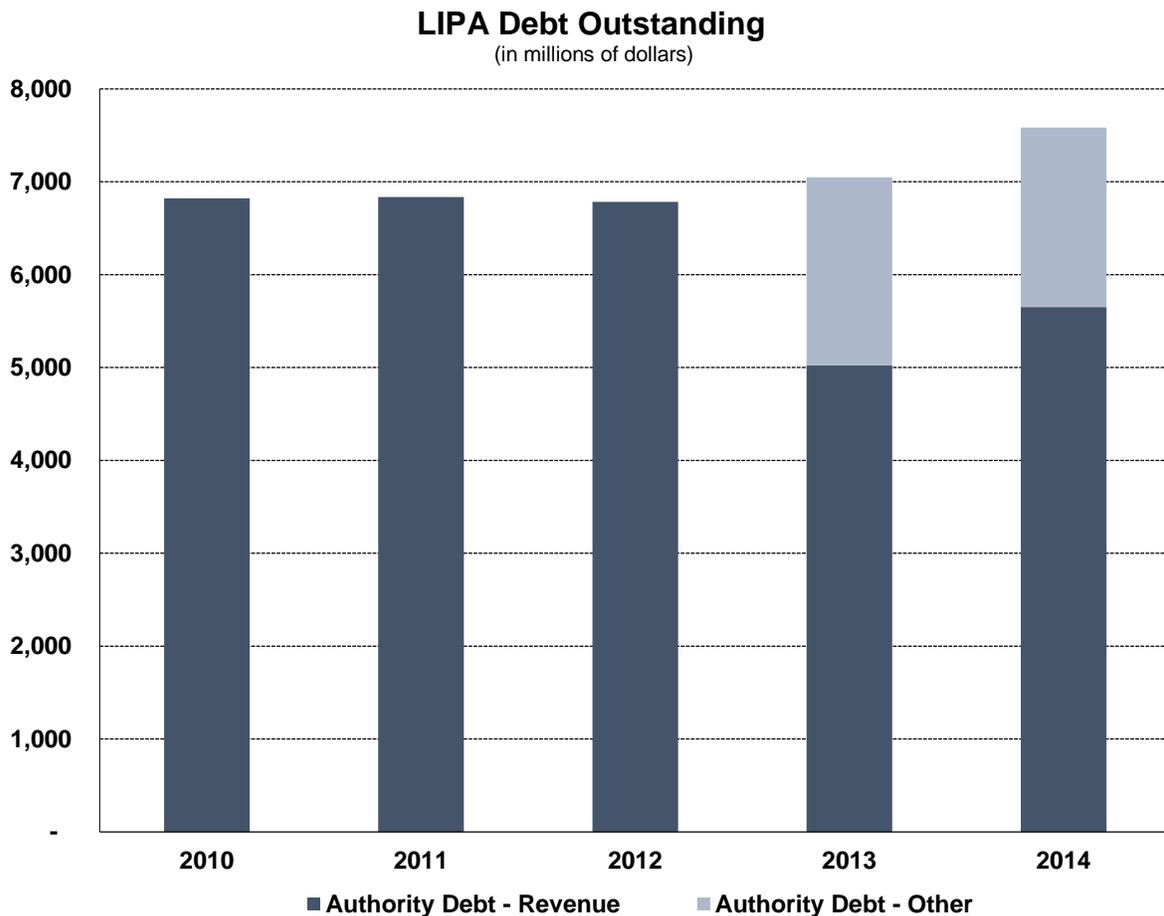
In 1998, LIPA issued \$6.73 billion in bonds to finance the acquisition of the transmission and distribution system of the former Long Island Lighting Company (LILCO) and to refinance portions of LILCO’s outstanding debt, including costs related to the Shoreham Nuclear Power Project, which never became operational. Since that acquisition, LIPA

has issued debt for various purposes, including capital expenditures, debt refundings, and rebates and credits.<sup>2</sup>

LIPA’s reported debt outstanding totaled more than \$7.58 billion for its fiscal year ended December 31, 2014, an increase of 8 percent over FY 2013 and 11 percent over 2010 (see Figure 2).<sup>3</sup> The 2014 figure includes debt issued by the Utility Debt Securitization Authority (UDSA), the new public authority created in 2013 to restructure certain LIPA debt.

In December 2013, UDSA issued \$2.02 billion in restructuring bonds including approximately \$1.54 billion in tax-exempt bonds and \$483 million in taxable bonds. Figure 2 shows LIPA debt outstanding, including UDSA debt, which is presented as Authority Debt – Other. (For more information about LIPA and UDSA debt, see the Debt Restructuring section of this report.)

**Figure 2**



<sup>2</sup> For an overview of certain rebates and credits, see the “Other Charges” section of PSEG’s “Common Residential Rates” brochure, available at [https://www.psegliny.com/files.cfm/rates\\_resi.pdf](https://www.psegliny.com/files.cfm/rates_resi.pdf).

<sup>3</sup> Debt outstanding totals and comparisons reflect the debt reported by LIPA to PARIS and may differ from other LIPA presentations of its debt.

## Procurement

The Public Authorities Law and regulations established by the Office of the State Comptroller require authorities, including LIPA, to report certain financial information accurately to promote high standards of transparency and accountability. Competitive and noncompetitive bid procurement data is supposed to include all active contracts, regardless of contract award date or end date, and to reflect the total contract amount over the life of the contract.

The data reported by LIPA for competitive and noncompetitive procurements in FY 2014 does not fully reflect the total contract amount in all instances, because many of the active contracts were reported with a contract amount of zero. LIPA has acknowledged errors in its reporting of procurement contracts for fiscal year 2014 in PARIS and has indicated that steps have been taken to improve reporting going forward.

In FY 2014, LIPA reported 248 active competitively bid and noncompetitively bid contracts with a total reported amount expended of nearly \$1.62 billion, as shown in Figure 3. Competitively bid contracts represented 69 percent of procurements, and 38 percent of the total amount expended on procurements for FY 2014. Noncompetitively bid contracts represented only 18 percent of procurements for FY 2014, but represented nearly 62 percent of the total amount expended for the year.

A major portion of the amount attributable to noncompetitive contracts, \$718.9 million, reflected expenditures related to power supply and management services agreements. Procurements made through other processes represented 13 percent of the total number of LIPA's procurements, with reported expenditures totaling \$1.6 million (less than 1 percent) for FY 2014.

**Figure 3**

**LIPA Procurement Data**  
(Amounts Expended are shown in thousands of dollars)

<b>Award Process</b>	<b>Number of Procurements</b>	<b>Amount Expended (for FY 2014)</b>	<b>Amount Expended (life to date)</b>
Competitive Bid Contracts	196	616,465	3,715,197
Noncompetitive Bid Contracts	52	1,001,870	4,548,910
Non-Contract Procurements	24	900	-
Purchased Under State Contract	13	688	-
<b>Total</b>	<b>285</b>	<b>1,619,924</b>	<b>8,264,107</b>

Note: Columns may not add due to rounding.

Nearly 69 percent of the total amount expended on procurements was devoted to commodities and supplies, largely reflecting power supply agreements, while expenditures for contracts categorized as Other represented 17 percent. LIPA reported 5 percent of the total amount expended on procurements went to Other Professional Services, 5 percent to Design and Construction/Maintenance, and more than 3 percent to Financial Services.

Article 15-A of the Executive Law created the Division of Minority and Women’s Business Development to increase participation by minority- and women-owned business enterprises (MWBES) in State contracting for both State agencies and public authorities, and instituted various provisions in support of this objective. For FY 2014, LIPA reported that it had established a goal for participation by MWBES in its procurement contracts of 20 percent. For the same fiscal year, LIPA reported the actual percentage of procurements awarded to MWBES as 5.3 percent.

## ***Employment and Compensation***

LIPA reported 100 full-time and part-time general and administrative employees in FY 2014, 69 percent of whom were reported to be in some kind of management role. These included 56 percent with titles of director or manager and 13 percent with executive or general counsel titles, such as Chief Operating Officer or Assistant General Counsel (see Figure 4).

Total employee compensation reported by LIPA for 2014 was nearly \$7 million. However, 2014 was a major year of transition. Over the course of 2014 LIPA reduced staff in response to provisions of the 2013 LIPA legislation, which required LIPA staff to be “kept at levels only necessary to ensure” LIPA could meet its obligations and oversee the service provider. As of March 31, 2015, LIPA indicated a staffing level of 40 full-time and part-time general and administrative positions. Of these positions, LIPA indicated 60 percent were in some kind of management role, including 45 percent with titles of director or manager and 15 percent with executive or general counsel titles, such as Chief Financial Officer or Assistant General Counsel.

**Figure 4**

### **LIPA Compensation by Job Title – 2014**

<b>Title</b>	<b>Number of Employees</b>	<b>Percentage of Total Employees</b>	<b>Total Compensation</b> <i>(in thousands of dollars)</i>	<b>Percentage of Total Compensation</b>
Executive Titles*	13	13.0%	1,455	20.9%
Director	37	37.0%	3,229	46.3%
Manager	19	19.0%	1,193	17.1%
All Other	31	31.0%	1,091	15.7%
<b>Total</b>	<b>100</b>		<b>6,967</b>	

\* Executive Titles include titles such as Chief Financial Officer and General Counsel

Note: Columns may not add due to rounding.

LIPA reported 27 percent of total staff in FY 2014 with total compensation of \$100,000 or more, as shown in Figure 5. Of those, 14 employees received total compensation of between \$100,000 and \$150,000 and 13 employees had total compensation exceeding \$150,000. LIPA’s current staffing information indicates that at least 50 percent of the reduced total staff of 40 employees have an annualized salary of \$100,000 or more. Of the employees identified as such, 12 percent have an annualized salary of between \$100,000 and \$150,000 and 38 percent have an annualized salary exceeding \$150,000.

**Figure 5**

**LIPA Employee Data - 2014**

<b>Compensation Category</b>	<b>Number of Employees</b>	<b>Percentage of Total Employees</b>	<b>Total Compensation</b> <i>(in thousands of dollars)</i>	<b>Percentage of Total Compensation</b>
Less than \$50,000	52	52.0%	1,067	15.3%
\$50,000 or more but less than \$100,000	21	21.0%	1,429	20.5%
\$100,000 or greater	27	27.0%	4,472	64.2%
<b>Total</b>	<b>100</b>		<b>6,967</b>	

Note: Columns may not add due to rounding.

LIPA provides various employee benefits, including participation in the New York State and Local Employees' Retirement System and in the New York State Voluntary Defined Contribution Plan. Employees are also eligible to participate in the State's deferred compensation program. LIPA provides health benefits for eligible retired employees and their dependents through a health care plan with varying contribution rates.<sup>4</sup>

<sup>4</sup> Long Island Power Authority, Basic Financial Statements with Independent Auditor's Reports Thereon, December 31, 2014 and 2013.

# Progress Report on the LIPA Transition

Long Island ratepayers have long paid energy prices among the highest in the nation. Over nearly three decades, the State has taken actions to address the cost and reliability of electrical service in Nassau and Suffolk counties and the Rockaway Peninsula in Queens, beginning with the creation of LIPA. As the 1986 LIPA Act noted, high costs of electricity posed “a serious threat to the economic well-being, health and safety” of Long Island residents and businesses.<sup>5</sup> The decision by LIPA’s predecessor, the private corporation the Long Island Lighting Company (LILCO), to construct the Shoreham Nuclear Power Plant was declared imprudent, creating significant rate increases and straining the economic capabilities of its ratepayers.

LILCO initially estimated the Shoreham Nuclear Power Plant would cost \$261 million to construct.<sup>6</sup> Costs escalated quickly and in the end, including decommissioning costs, were estimated at more than \$6 billion.<sup>7</sup> Costs associated with Shoreham remain a major part of LIPA’s overall financial picture. Nearly three decades after LIPA was created to control electricity costs within the LILCO service territory, DPS identified \$2 billion in Shoreham costs that remain unrecovered, and noted that LIPA projects \$120 million annually in revenue need associated with such costs from 2016 through 2018.<sup>8</sup>

Residents and businesses in the region have raised concerns about LIPA’s costs, operations, billing practices, debt obligations, and other management practices. Studies released by J.D. Power and Associates document LIPA’s struggle with customer satisfaction. In J.D. Power’s 2015 and 2014 residential customer satisfaction studies, PSEG LI scored 584 and 532, respectively, out of a possible 1,000 point scale, ranking last in each year among the 17 utilities in its class and achieving the lowest score of any utility in the studies.<sup>9</sup> Although the 2015 score reflects the highest score received for this service territory since 2010, it is very similar to LIPA’s 2010 and 2011 scores, and the gaps between the PSEG LI 2015 score and the East regional and national averages have widened considerably since then.<sup>10</sup>

Despite the good intentions associated with the creation of LIPA, the goal of affordable, reliable utility service on Long Island has not been achieved. Cost advantages result from LIPA’s status as a public entity, including the lower-cost financing available via tax-exempt debt, as well as eligibility for federal reimbursement for certain storm and disaster

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<sup>5</sup> See Section 1020-a of the New York State Public Authorities Law.

<sup>6</sup> See the New York Times article *A Chronology of the Shoreham Plant* by Conrad Wesselhoeft, published February 19, 1984, available at <http://www.nytimes.com/1984/02/19/nyregion/a-chronology-of-the-shoreham-plant.html>.

<sup>7</sup> See the report prepared by Lazard for LIPA, Strategic Review Prepared for the LIPA Board of Trustees, page 11, available at <http://www.lipower.org/pdfs/company/papers/orgreview2010.pdf>.

<sup>8</sup> See DPS filing 86, PORR Testimony FINAL, page 9, and DPS filing 103, PORR Revised Testimony FINAL, page 10 at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>9</sup> For information about the J.D. Power study results see <http://www.jdpower.com/press-releases/2015-electric-utility-residential-customer-satisfaction-study> and <http://www.jdpower.com/press-releases/2014-electric-utility-residential-customer-satisfaction-study>. The 2014 J.D. Power study notes that the PSEG LI results reflect LIPA results from July 2013 through January 2014.

<sup>10</sup> For prior year J.D. Power study results see <http://www.jdpower.com/press-releases/2013-electric-utility-residential-customer-satisfaction-study>, <http://www.jdpower.com/press-releases/2012-electric-utility-residential-customer-satisfaction-study>, <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2011101>, and <http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010120>.

costs. However, audits and reports from the Office of the State Comptroller over the past several years have identified areas requiring improvement, including adequacy of regulatory oversight, financial management, debt, and storm preparation and response.<sup>11</sup> Analysis, review and investigations by the Executive, the Legislature and other entities have also found need for reform.

Governor's Program Bill #20 of 2013, signed into law in July of that year as Chapter 173, reflected an effort to address some of the identified issues and concerns regarding LIPA. An overview of the major provisions of the LIPA legislation and subsequent changes, along with an assessment of progress to date, follows.

## ***Renegotiated Operations Services Agreement***

In 1998, LIPA acquired LILCO's electrical transmission and distribution system, as well as certain other assets, and became the primary supplier of electricity on Long Island. LILCO's remaining assets, including its electrical generating facilities, were merged with Brooklyn Union Gas, creating a new publicly-traded utility corporation called KeySpan Corporation. In October 2007, National Grid LLC (National Grid) purchased KeySpan and legally assumed KeySpan's contracts with LIPA to manage most of LIPA's day-to-day operations.<sup>12</sup>

In June 2010, LIPA launched a competitive procurement process for a new management services agreement with the issuance of a request for proposals (RFP). After an extensive selection process, LIPA entered into a new 10-year, \$3.9 billion utility services management agreement with PSEG Long Island, LLC (PSEG), a subsidiary of Public Service Enterprise Group Incorporated, to replace the previous agreement with National Grid.

In June 2012, the Office of the State Comptroller approved an Operations Services Agreement (OSA) between LIPA and PSEG. The contract included significant consumer protections, benchmarks and requirements. Among other elements, the OSA provided for creation of a Joint Operating Committee with representatives of LIPA and PSEG to provide oversight and control over major operating decisions. After a transition period during 2013, PSEG was to assume responsibility for the day-to-day operations of LIPA's transmission and distribution system in 2014.

Ongoing concerns over LIPA's performance, amplified by dissatisfaction with its response to Superstorm Sandy in 2012, led to changes in State law governing the authority. The 2013 LIPA legislation authorized the renegotiation and amendment of the OSA between

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<sup>11</sup> In addition to ongoing contract review and periodic audits, the Office of the State Comptroller has highlighted the need for LIPA reform and ratepayer relief through various means including: guidance to improve the LIPA Restructuring Bill (June 2013), available at [www.osc.state.ny.us/reports/pubauth/preliminaryanalysisLIPA.pdf](http://www.osc.state.ny.us/reports/pubauth/preliminaryanalysisLIPA.pdf); *Public Authorities by the Numbers: Long Island Power Authority* (October 2012), available at [www.osc.state.ny.us/reports/pubauth/lipa\\_by\\_the\\_numbers\\_10\\_2012.pdf](http://www.osc.state.ny.us/reports/pubauth/lipa_by_the_numbers_10_2012.pdf); *Long Island Power Authority: Response to Hurricane Earl* (December 2010), available at [www.osc.state.ny.us/reports/pubauth/LIPA\\_HurricaneEarl2010.pdf](http://www.osc.state.ny.us/reports/pubauth/LIPA_HurricaneEarl2010.pdf); as well as periodic testimony to the State Legislature on the need for LIPA oversight and reform and comments to the Public Authorities Control Board with respect to LIPA's borrowing practices.

<sup>12</sup> For an historic overview of LIPA, see the Office of the State Comptroller's report, *Public Authorities by the Numbers: Long Island Power Authority* (October 2012).

LIPA and PSEG with limited oversight, subject to review and written recommendations by the Department of Public Service (DPS) and adoption of a resolution by the LIPA Board. Review and approval of the renegotiated contract by the Office of the State Comptroller was explicitly eliminated in the legislation. As a result, many of the beneficial terms and protections built into the original, competitively bid contract that had been reviewed and approved by the Office of the State Comptroller were modified or eliminated in the final amended OSA.

A term sheet negotiated by the Executive, LIPA and PSEG before enactment of the 2013 LIPA legislation outlined the changes to the contract. The LIPA Board directed its staff to effectuate the changes in October 2013. According to Board meeting minutes from October 3, 2013, “In anticipation of enactment of the LIPA Reform Act, the Parties and the Governor’s Office negotiated a “Term Sheet for Amendments to the Operations Services Agreement” dated June 6, 2013 (“Term Sheet”) in order to set forth the material, substantive terms of proposed amendments to the Existing OSA intended to reflect a realignment of the rights and responsibilities of the Parties.”<sup>13</sup> This term sheet identified several oversight and consumer protection provisions that were built into the original contract that were to be changed significantly in the renegotiated contract.

These changes were effectuated in the amended and restated OSA dated December 31, 2013.<sup>14</sup> The renegotiated OSA diminished key controls from the original contract, including LIPA’s oversight responsibilities, and gave more autonomy and authority to the service provider, PSEG. It is unclear what, if any, day-to-day oversight of the contractor remains with LIPA. Along with recent LIPA board actions, including authorizing the decoupling of sales from revenue to remove a disincentive to promote energy conservation by guaranteeing a rate of return to PSEG regardless of sales,<sup>15</sup> these changes will impact ratepayers’ bills in both the short and long term.

### *Amended OSA Progress Report*

#### Oversight and Cost Controls

As set forth in the term sheet, LIPA’s oversight authority over PSEG with respect to Operations Services would be minimized, and the anticipated Joint Operating Committee (JOC), along with its rights and responsibilities, would be eliminated. These provisions were effectuated in the amended OSA.

However, the primary construct of the original OSA had been that the majority of the costs of operations were to be paid as pass-through costs, making upfront control over such costs critical. In the OSA, the primary oversight and control for these costs would have

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<sup>13</sup> See the minutes of the October 3, 2013 meeting of the LIPA Board, page 13, available at <http://www.lipower.org/pdfs/company/papers/board/100313-minutes.pdf>, page 13. The June 6, 2013 term sheet is available at <http://www.governor.ny.gov/sites/governor.ny.gov/files/archive/assets/documents/LIPATERMSHEET.pdf>.

<sup>14</sup> For a copy of the amended OSA, see <http://www.lipower.org/papers/OSA.pdf>.

<sup>15</sup> See the minutes of the 255<sup>th</sup> meeting of the LIPA Board held on March 26, 2015, available at <http://www.lipower.org/pdfs/company/papers/board/032615-minutes.pdf>.

occurred through review of the costs by the JOC and approval of an annual budget by the LIPA Board. Requirements of the original OSA included that:

- Pass-through costs, as well as work plan status updates, would be reviewed monthly by the JOC for reasonableness.
- PSEG would be required to provide monthly budget reports to LIPA showing actual results as compared to the budget, including explanations of variances and projected full-year results.
- LIPA would monitor for early warnings of cost-overruns or schedule delays.
- PSEG would be required to develop specific action plans to address any projected overruns.

Because these oversight provisions and cost controls were eliminated, it is unclear what mechanisms, if any, have been instituted to control costs, all of which will ultimately be borne by ratepayers. The amended contract provides for the creation of a management review board with LIPA and PSEG representatives, but the authority of such board is limited to providing “a forum for the Parties to review and consider each Party’s recommendations with respect to the Service Provider’s performance of Operations Services and the overall administration of this Agreement.”<sup>16</sup>

The 2013 LIPA legislation gave a new Long Island office of the Department of Public Service (DPS LI) review and recommendation responsibilities over LIPA and PSEG, including with regard to rate setting. However, DPS LI’s authority with regard to rate setting is limited to reviewing and making recommendations. Any such recommendation must be implemented unless LIPA makes a determination that it is “inconsistent” with the Authority’s sound fiscal operating practices, any existing contractual or operating obligations, or the provision of safe and adequate service.

In addition, DPS LI does not have broad-scoped regulatory authority over PSEG, and is not authorized to review some items that had previously been subject to oversight. For example, PSEG is not required to file with DPS LI any budget changes related to cost overruns, or the reallocation or postponement of any operating or capital expenditures, except in connection with review by DPS LI of major storm costs or non-storm emergency expenditures.

### Budget Process

The amended OSA required PSEG to submit Operating and Capital budgets for 2014 and 2015 to LIPA for review and approval. For contract years 2016, 2017 and 2018, PSEG is required to consult with LIPA in preparing the budgets, but is not required to obtain agreement or approval from LIPA.<sup>17</sup> For subsequent years, PSEG is again required to submit its budget to LIPA for review and approval, with any disagreements over modifications subject to dispute resolution. If the LIPA Board does not approve the budget by the beginning of a contract year, the prior year budget would take effect, adjusted for inflation.

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<sup>16</sup> See the amended OSA, page 32, available at <http://www.lipower.org/papers/OSA.pdf>.

<sup>17</sup> Ibid, page 42.

This multiyear budget process departs from the approach built into the original contract, which required the submission by PSEG of an annual budget, subject to LIPA approval, monthly monitoring by the JOC, and mandatory PSEG action plans to address projected cost overruns. Under the amended OSA, any proposed rate increase for 2016 and beyond that is greater than 2.5 percent is subject to DPS LI review. However, DPS LI is only authorized to make recommendations that must be addressed by the LIPA Board. DPS LI does not have the authority to enforce such recommendations, or to impose penalties for failure to comply with DPS directives. This raises concerns regarding the adequacy of oversight and control.

It is unclear what level of detail is required in the multiyear budgets, since the requirement that PSEG develop and submit work plans for all budgets was eliminated. In addition, the amended contract gave PSEG complete flexibility to reallocate or postpone any operating or capital expenditures, making the budgeting requirement less meaningful. LIPA's previous budget process allowed for the annual budgets to be presented for public comment. It is unclear to what extent budget transparency will be maintained, given the shift of authority under the amended OSA to PSEG.

The amended OSA gives PSEG the "flexibility to overrun" costs and incur "excess expenditures" worth up to 2 percent of the total operating and capital budgets.<sup>18</sup> Based on LIPA's approved 2015 Operating and Capital budgets, which totaled \$3.6 billion and \$642 million, respectively, this would equate to approximately \$84 million. PSEG is allowed to withdraw up to 2 percent from the Operating Account without LIPA approval, but instead must provide 10 days' notice. The amended OSA allows any PSEG excess expenditures up to this 2 percent limit to be treated as if they had been included in the initial budget in all respects, including with respect to meeting the related cost-management performance metric, which determines PSEG's eligibility for certain incentive payments.

The pass-through cost structure of the contract, combined with the elimination of the robust cost control mechanisms in the original OSA (including JOC oversight, required monthly reporting, and PSEG action plans to address variances from budgets), raises questions as to what mechanisms will effectively constrain PSEG expenditures and how ratepayers will be protected from unnecessary costs.

### Storm Costs

The amended OSA authorizes PSEG to withdraw funds from LIPA's Storm Reserve for storm costs incurred, and requires PSEG to promptly provide LIPA with an invoice after each withdrawal. In addition, the amended OSA provides that, in the event PSEG incurs costs "unreasonably and imprudently" in connection with a major storm event or non-storm emergency, PSEG's liability for amounts not treated as pass-through expenditures in both categories combined would be limited to \$5 million in 2014 and 2015 and \$10 million in each subsequent year, leaving LIPA ratepayers to cover the difference.

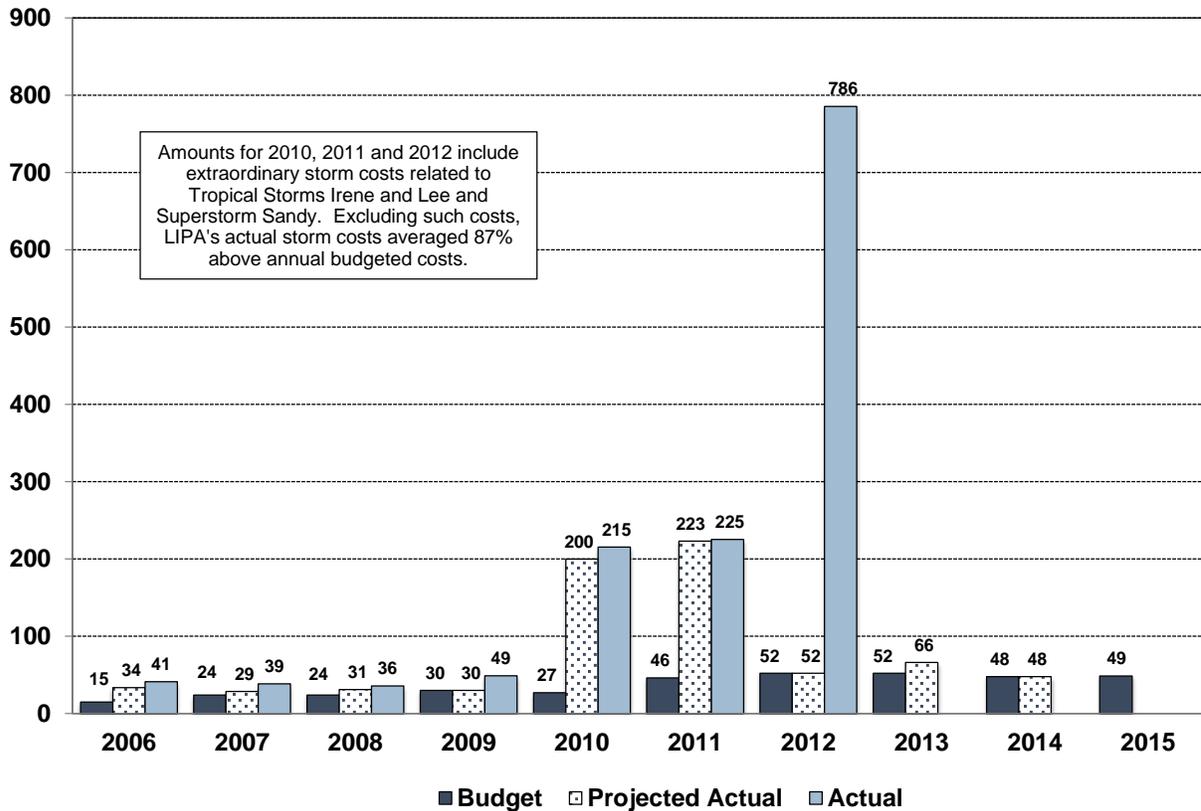
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<sup>18</sup> See the amended OSA, pages 43-46, available at <http://www.lipower.org/papers/OSA.pdf>.

This limit on PSEG’s liability for disallowed expenses could prove costly for LIPA ratepayers, given how far in excess of these amounts LIPA’s storm costs have been in recent years (as discussed below). In addition, PSEG will have no liability if LIPA terminates the agreement due to a Major Storm Performance Metric failure by PSEG. According to the amended OSA, in such circumstances, all such expenditures would be paid by LIPA.<sup>19</sup> Storm costs have regularly exceeded LIPA’s budgeted amounts in recent years, as shown in Figure 6.

**Figure 6**

**LIPA Storm Costs: Budget vs. Actual**  
(in millions of dollars)



Source: LIPA annual budget documents

According to LIPA, actual storm costs in 2010, 2011, and 2012 were \$215.5 million, \$225.4 million, and \$785.7 million, respectively, exceeding annual budgeted amounts by an average of 833 percent. From 2006 to 2012, the last year for which actual spending is available from LIPA’s reported budget documents, excluding Superstorm Sandy, actual storm costs exceeded budgeted amounts by an annual average of 239 percent, a strong indication that LIPA’s storm cost projections are not well-founded.

<sup>19</sup> See the amended OSA, page 45, available at <http://www.lipower.org/papers/OSA.pdf>.

Actual storm cost information is no longer provided by LIPA for the prior year as part of its budget presentation. LIPA's failure to make actual and budget comparison data readily available to the public has been criticized repeatedly in the past, both in previous Comptroller reports, as well as by the Citizens Advisory Panel (CAP) dating back to 1999.<sup>20</sup> The relatively recent elimination of actual to budget comparisons makes it difficult for policy makers and the public to evaluate LIPA's actions and proposals. Actual storm cost information has been provided in LIPA's more recent financial statements, but the figures are not provided in comparison to LIPA's budget estimates. For 2013, the reported amount of \$15.8 million deviates significantly from the projected actual amount (which is estimated by LIPA approximately three-quarters into the year based on actual results to date), calling into question whether it accurately reflects the actual storm costs for that year.

Some storm cost information has also been made available in response to DPS requests associated with the LIPA and PSEG rate proceeding currently underway. Unfortunately, the annual figures presented in the filing generally do not match those reported by LIPA in its budget documents or financial statements, in several cases with very significant variances. This is explained in the filing as follows: "Please note that these costs may not match LIPA's General Ledger due to various accounting reasons (e.g., reserves and accruals)."<sup>21</sup> According to the filing, actual storm costs were \$63.1 million in 2013 and \$30.3 million in 2014.<sup>22</sup> However, given the discrepancies between what LIPA has officially reported as actual storm costs in the past compared to the information provided in the rate filing, which in some years were tens of millions of dollars lower, it is unclear what costs these figures actually represent, or which figures best reflect actual storm costs.

DPS staff has expressed concern with respect to how storm costs charged to LIPA customers were being tracked by LIPA and PSEG.<sup>23</sup> DPS said LIPA and PSEG failed to make clear whether certain labor costs already being recovered in the rates were adjusted out, and recommended that only incremental costs be charged to the storm reserve. DPS also recommended that LIPA and PSEG change how storm costs are tracked and reported to avoid double counting.

While concerns regarding LIPA's budgeting and monitoring of storm costs persist, efforts to improve protections against storms are underway. LIPA has identified planned spending in 2015 of \$140 million in its Capital budget for the protection of its facilities and equipment against potential storm damage, known as storm hardening, associated with a \$730 million multiyear grant funding agreement with the Federal Emergency

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<sup>20</sup> CAP was established by order of the Federal Eastern District Court to advise Long Island's public concerning ways to improve electrical service, to mitigate rate increases, to control energy costs and to assist LIPA ratepayers to conserve energy.

<sup>21</sup> See DPS filing 86, SDSA Panel Exhibit FINAL, page 7 of 57, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>22</sup> See DPS filing 86, SDSA Panel Exhibit FINAL, page 25 of 57, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

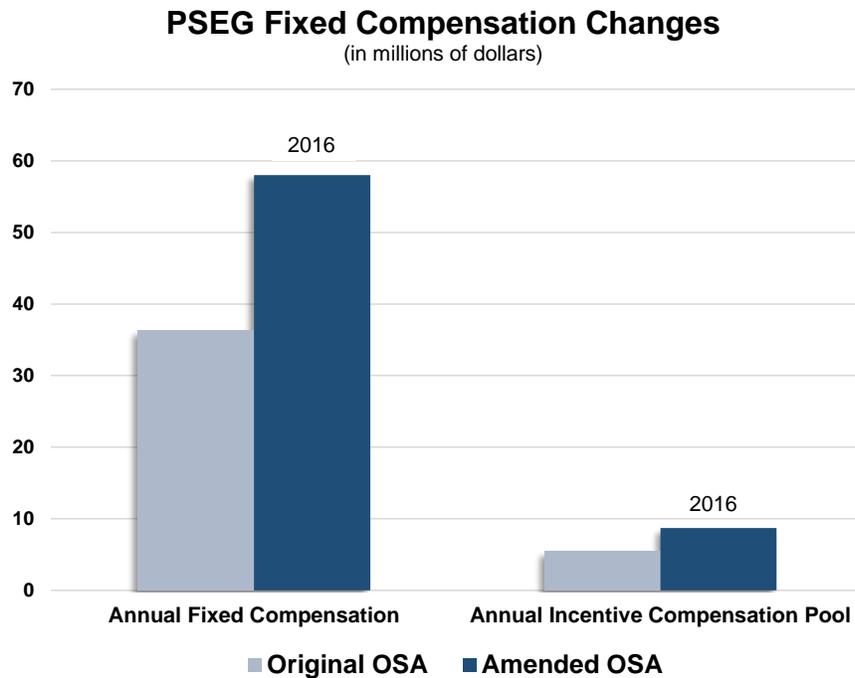
<sup>23</sup> See DPS filing 86, SDSA Panel Testimony FINAL, pages 23-24, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

Management Agency (FEMA).<sup>24</sup> LIPA has been allocated \$143 million in Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (HUD) through the Governor’s Office of Storm Recovery, a non-statutory entity under the Housing Trust Fund Corporation, a public authority.<sup>25</sup> A portion of this grant will fund the local match component of certain FEMA grants. LIPA expects these significant investments to improve the electric system’s resiliency and reliability, as well as customer service.<sup>26</sup>

**Fixed Compensation and Incentive Compensation**

As shown in Figure 7, the amended contract provides that beginning in 2016 the annual fixed compensation for PSEG would be increased from \$36.3 million in the original OSA to \$58 million, reflecting a 60 percent increase, and indexed for inflation. The Annual Incentive Compensation Pool would also increase 60 percent, from \$5.44 million to \$8.7 million, also indexed for inflation. The amended contract reduced the number of performance metrics to be used to evaluate PSEG and determine its eligibility for incentive payments by 22 percent, from 27 to 21.<sup>27</sup>

**Figure 7**



Source: LIPA

<sup>24</sup> See LIPA’s 2015 Approved Operating Budget and 2015 Approved Capital Budget, pages A-9(a) and B-1, available at <http://www.lipower.org/pdfs/company/investor/2015budget.pdf>.

<sup>25</sup> See LIPA’s 2015 Approved Operating Budget and 2015 Approved Capital Budget, page 4, available at <http://www.lipower.org/pdfs/company/investor/2015budget.pdf>.

<sup>26</sup> Ibid, page 2.

<sup>27</sup> These are categorized in the OSA as “tier 1” metrics. See *Comparison of Key Terms and Provisions for the Operations Services Agreement between the Long Island Lighting Company (d/b/a LIPA) and PSEG Long Island LLC*, available at <http://www.lipower.org/pdfs/company/papers/LIPAPSEG/LIPABillExhibitC.pdf>, and Appendix 9 from the amended OSA, available at <http://www.lipower.org/papers/Appendices2-14.pdf>.

Neither the term sheet nor the amended OSA included justification explaining how the proposed increase in compensation was determined to be necessary or reasonable, particularly given the latitude being proposed for PSEG with respect to budgeting and the lack of regulatory control. The justification for increasing the incentive portion of the compensation beginning in 2016 is also unclear. The Joint Operating Committee, which was eliminated by the amended OSA, was to be responsible for overseeing the incentive program, establishing annual goals, and ensuring that PSEG focus on areas most in need of improvement, rather than areas where goals could easily be met.

Under the amended OSA, PSEG will calculate its proposed incentive compensation for that year and submit it to LIPA with supporting documentation. LIPA has 90 days to accept or disagree with PSEG's calculation. Any disagreement would be subject to binding arbitration. It is unclear whether this process is sufficient to provide ratepayers the same level of protection that was provided under the original contract.

## ***Debt Restructuring***

According to the Governor's bill memo that accompanied the 2013 LIPA legislation, one goal was to reduce the amount of debt paid by LIPA's ratepayers, a contributor to its high electric rates. The memo noted that LIPA maintained roughly the same amount of debt as it had when it acquired LILCO's assets in 1998, or about \$7 billion, putting pressure on customer rates.

The 2013 LIPA legislation was intended, among other things, to "authorize LIPA to refinance a significant portion of its debt in a manner that would provide much needed relief to ratepayers in the service area."<sup>28</sup> It provided for the one-time restructuring of LIPA debt through the creation of a new public authority, the Utility Debt Securitization Authority (UDSA), governed by a three member board appointed by the Governor.

### *Debt Restructuring Progress Report*

The newly created UDSA issued bonds in December 2013 to restructure a portion of outstanding LIPA debt. The UDSA bonds are secured by and repaid with a new, "irrevocable, nonbypassable consumption-based" "transition" charge, initially set at 1.25 cents per kilowatt-hour, to be paid by LIPA ratepayers and reset as needed.<sup>29</sup> Credit rating agencies typically look favorably on such a secured revenue stream, and the UDSA received the highest credit rating, AAA, from three major rating agencies (S&P, Moody's and Fitch). Comparatively, at the time of issuance, LIPA's credit rating on its Senior Revenue Bonds was A- with a negative outlook by Fitch, Baa1 with a negative outlook by Moody's and A- (Credit Watch Negative) by S&P, six and seven steps lower than the AAA rating.

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<sup>28</sup> See the Governor's 2013 Program Bill #20 Memorandum, available at [http://nygovernorstg.prod.acquia-sites.com/sites/governor.ny.gov/files/archive/governor\\_files/documents/GPB20-LIPA-MEMO.pdf](http://nygovernorstg.prod.acquia-sites.com/sites/governor.ny.gov/files/archive/governor_files/documents/GPB20-LIPA-MEMO.pdf).

<sup>29</sup> See LIPA's December 13, 2013 press release, LIPA Successfully Completes Securitization Transaction, available at <http://www.lipower.org/newscenter/pr/2013/121313-securitization.html> and UDSA's Official Statement-Series 2013T&TE, page iv, available at <http://www.lipower.org/UDSA/docs/OfficialStatement2013T&TE.pdf>.

UDSA issued approximately \$2.0 billion in bonds, including approximately \$1.5 billion of tax-exempt bonds and approximately \$483 million in federally taxable bonds. While the Office of the State Comptroller reviews and approves the terms and conditions of LIPA debt issuances, the 2013 LIPA legislation did not provide for the Comptroller's oversight of UDSA debt.

The State Fiscal Year (SFY) 2015-16 Executive Budget proposed to amend the 2013 LIPA legislation to remove the provision which prohibited more than one issuance of restructuring bonds. Instead, the proposal would have provided new language to limit the aggregate amount of outstanding restructuring bonds at any time to \$4.5 billion, creating a revolving cap on UDSA debt outstanding.

The SFY 2015-16 Enacted Budget amended the 2013 LIPA legislation to remove the prohibition on more than one issuance of restructuring bonds by UDSA. Instead, the amendment established a cap of \$4.5 billion on the aggregate amount of debt that could be issued by UDSA and a potential new public authority – a second Utility Debt Securitization Authority (UDSA No. 2).

The legislation prohibited the issuance of restructuring bonds by UDSA No. 2 unless and until the LIPA board determined by resolution that the terms of the sale of the bonds were, at such time, reasonably expected to be more favorable than such terms would be if the bonds were issued by UDSA. The legislation also limited the term of the bonds to the final maturity of the bonds being refinanced and prohibited the issuance of restructuring bonds for the purpose of refunding other restructuring bonds.<sup>30</sup> In July 2015, LIPA received approval from the Public Authorities Control Board for the issuance of up to approximately \$2.5 billion in new bonds by UDSA in order to restructure certain LIPA debt.

The Governor's Program Bill Memo which accompanied the 2013 LIPA legislation promoted the UDSA debt restructuring plan, along with other measures in the proposal, as a means to "start the process of reducing the overall debt burden borne by LIPA's ratepayers."<sup>31</sup> However, despite the \$2 billion of restructuring bonds issued by UDSA in 2013, and the additional debt restructuring authorization, LIPA projects both higher outstanding debt (including UDSA borrowing) and debt service costs in 2018 compared to 2015. Under the expected debt restructuring, LIPA debt will go down, but UDSA debt, all of which is borne directly by LIPA ratepayers, will rise.

According to a recent Request for Proposals for underwriters from LIPA, as of February 2015, LIPA had \$5.9 billion in electric system general revenue bonds outstanding (including \$4.7 billion in senior lien bonds and \$1.2 billion in subordinate bonds), while UDSA had approximately \$1.9 billion.<sup>32</sup> LIPA has expressed plans to finance approximately \$300 million to \$400 million per year between 2016 and 2018, along with the additional LIPA debt to be restructured through UDSA as authorized in the SFY 2015-

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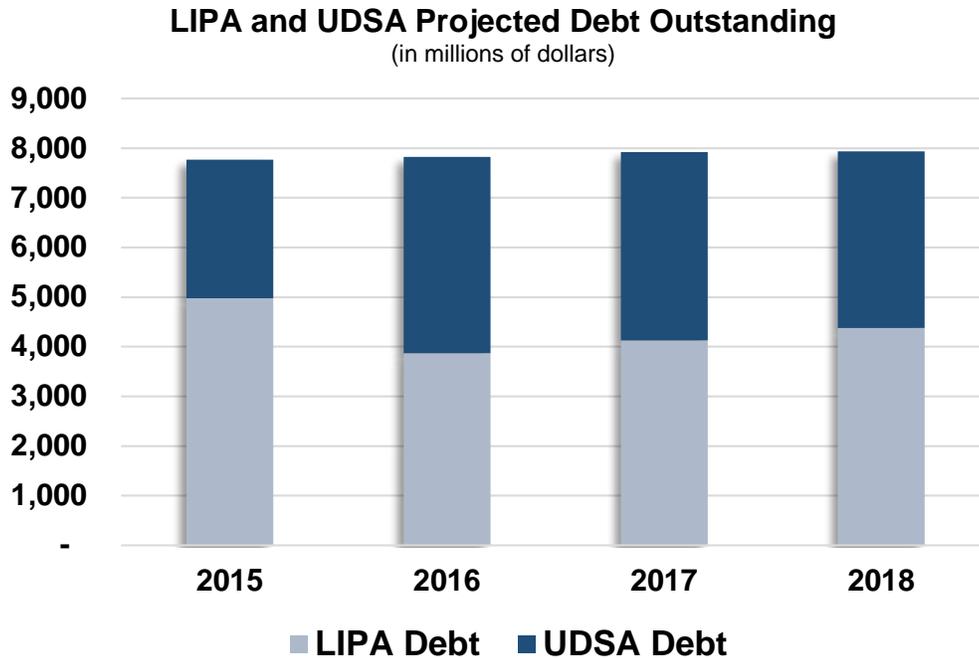
<sup>30</sup> See the SFY 2015-16 Transportation, Economic Development and Environmental Conservation Article VII Budget Bill (S 2008-B / A 3008-B), Part W.

<sup>31</sup> See the Governor's 2013 Program Bill #20 Memorandum.

<sup>32</sup> See LIPA's February 2015 Request for Proposals to serve as an underwriter and/or swap counterparty, page 8, available at <http://www.lipower.org/proposals/docs/Underwriting2015Final.pdf>.

16 Enacted Budget. As shown in Figure 8, the total LIPA and UDSA debt outstanding will reach approximately \$8 billion by 2018, all to be paid by ratepayers.<sup>33</sup>

**Figure 8**



Source: LIPA

LIPA’s capital structure presentation included in its rate filing summary, encompassing LIPA and UDSA debt, premium on bonds issued, and deferred losses, estimates total debt with the securitization of \$8.3 billion by 2018, up 4.1 percent from 2015 projections.<sup>34</sup>

Associated with this increased debt burden are higher projected debt service costs which ratepayers must bear. Debt service payments for LIPA and UDSA debt are projected to dip from a combined \$521 million in 2015 to \$502 million in 2016, and then increase to \$538 million in 2018.<sup>35</sup> Figure 9 shows LIPA’s projected debt service payments under the executed and anticipated LIPA debt restructurings, the shift of debt service costs from LIPA to UDSA, and the overall increase in debt service costs projected to begin in 2017.<sup>36</sup>

<sup>33</sup> See the PSEG Long Island and Long Island Power Authority document: Summary of 2016-2018 Three-Year Rate Plan, page B-3, available at <http://www.lipower.org/pdfs/company/investor/SummaryThreeYearRatePlanFiling.pdf>. The debt projections included in LIPA’s 2016-2018 Proposed Operating and Capital Budgets submitted as part of the three-year rate filing anticipate the use of the additional debt restructuring authorization provided in the SFY 2015-16 Enacted Budget, and anticipate certain savings associated with such debt restructuring which have not been reviewed or verified by the Office of the State Comptroller. Even with these projected savings, debt service costs are projected to rise.

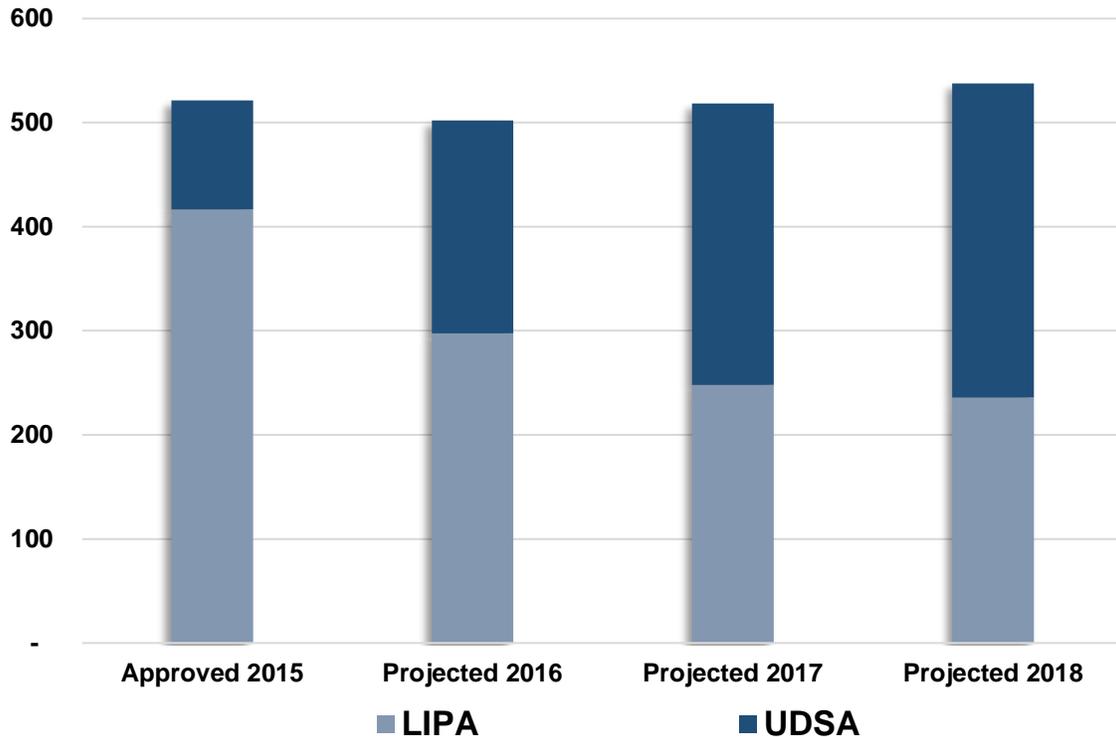
<sup>34</sup> See the PSEG and LIPA document: Summary of 2016-2018 Three-Year Rate Plan, page B-3, available at <http://www.lipower.org/pdfs/company/investor/SummaryThreeYearRatePlanFiling.pdf>.

<sup>35</sup> Ibid, page c-1.

<sup>36</sup> Ibid.

**Figure 9**

**LIPA and UDSA Projected Debt Service Payments**  
(in millions of dollars)



Source: LIPA

Note: LIPA's debt service projections included in LIPA's 2016-2018 Proposed Operating and Capital Budgets submitted as part of the three-year rate filing anticipate the use of the additional debt restructuring authorization provided in the SFY 2015-16 Enacted Budget, and anticipate certain savings associated with such debt restructuring which have not been reviewed or verified by the Office of the State Comptroller. Even with these projected savings, debt service costs are projected to rise.

Annual LIPA and UDSA debt service costs, along with LIPA's fixed obligation coverage requirement, are expected to grow 12.5 percent, from \$660 million in 2015 to \$742 million by 2018.<sup>37</sup> A January 2015 analysis of LIPA's financial condition and debt levels by its consultant PFM found that LIPA "remains the most leveraged utility and has the lowest credit ratings (Baa1/A-/A-) of any major public power utility in the United States."<sup>38</sup>

PFM found that LIPA's credit ratings "have essentially returned to their original 1998 levels, which were driven at the time by: (1) an all debt balance sheet; (2) unproven financial and operating performance; and (3) an unprecedented, untested rate regulation process."<sup>39</sup> The report noted that LIPA's low ratings, without improvement, will translate into higher electricity costs, and more financial and utility rate volatility for LIPA's customers.

<sup>37</sup> See the PSEG and LIPA document: Summary of 2016-2018 Three-Year Rate Plan, page A, available at <http://www.lipower.org/pdfs/company/investor/SummaryThreeYearRatePlanFiling.pdf>.

<sup>38</sup> See DPS filing 1, Testimony – LIPA – Falcone – Exhibit TF-1, *Analysis of Financial Policies for the Long Island Power Authority*, prepared by Public Financial Management Inc., January 30, 2015, pg. 2, at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>39</sup> Ibid, page 18.

A May 2015 ratings report from Standard and Poor's Rating Services affirmed LIPA's negative credit outlook, noted the uncertainty as to whether the transition of operations from National Grid to PSEG will improve performance, and concluded that the UDSA securitization financing of LIPA debt had not, to date, reduced customer bills.<sup>40</sup> The report stated, "LIPA projects that combining securitization charges with its other charges will maintain bills at current levels and customers will not see savings compared to presecuritization bills."<sup>41</sup> According to Moody's Investors Service, from 2011 through 2013, LIPA's average debt ratio was 137 percent, roughly double the median figure for comparable large public power utilities in the United States.<sup>42</sup>

These factors, along with the projected increase in LIPA's debt and debt service costs, raise concerns for both the short-term and longer term impact of such costs on LIPA customers' bills, suggesting that debt will persist as a particularly challenging burden for LIPA and its customers for years to come.

### ***Oversight of Rate Changes by the Department of Public Service***

LIPA's rates have consistently outpaced those of other utilities in New York State, the Northeast and the United States. According to U.S. Energy Information Administration electricity data, LIPA had the third highest average bundled retail sales price for residential customers and the second highest average bundled retail sales price for commercial customers among utilities in the 48 contiguous United States with more than 1 million megawatt hours of sales in 2013.<sup>43</sup>

While average retail prices in the residential sector have generally risen over the past decade, ratepayers on Long Island have experienced consistently higher prices. Based on 2013 average retail price data, residential ratepayers on Long Island paid 22.9 percent above the New York State median, 31.6 percent above the Northeast median and 77.8 percent above the United States median. Figure 10 compares the average retail prices paid by LIPA's residential ratepayers to those paid by residential ratepayers in New York State as a whole, the Northeast, and the United States.

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<sup>40</sup> See Standard and Poor's Ratings Services report, *Long Island Power Authority, New York; Retail Electric*, May 12, 2015, available at <http://www.lipower.org/pdfs/company/investor/2015-05-12%20LIPA%20S&P%20Rating.pdf>.

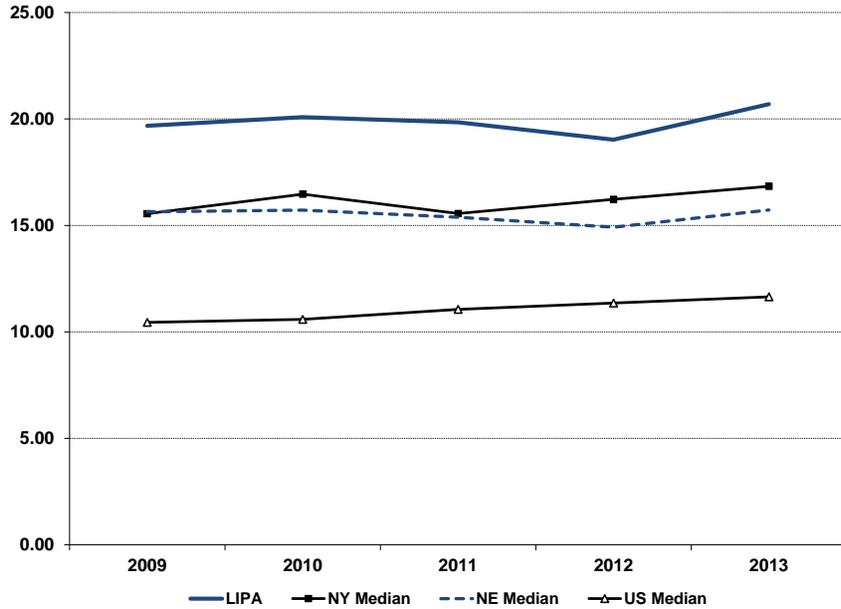
<sup>41</sup> Ibid, page 4.

<sup>42</sup> See DPS filing 86, SFPP Exhibit FINAL, Moody's Investors Service report, page 11 of 17 of Exhibit, (SFPP-3), and DPS filing 103, SFPP Revised Exhibit FINAL, Moody's Investors Service report page 11 of 17 of Exhibit, (SFPP-3), at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>43</sup> EIA residential data is available at [http://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table6.pdf](http://www.eia.gov/electricity/sales_revenue_price/pdf/table6.pdf). EIA commercial data is available at [http://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table7.pdf](http://www.eia.gov/electricity/sales_revenue_price/pdf/table7.pdf). Consolidated Edison Co. – NY Inc. had the highest average price for bundled retail sales in both the residential and the commercial category.

**Figure 10**

**Average Retail Price Comparison – Residential Sector**  
(in cents/kWh)

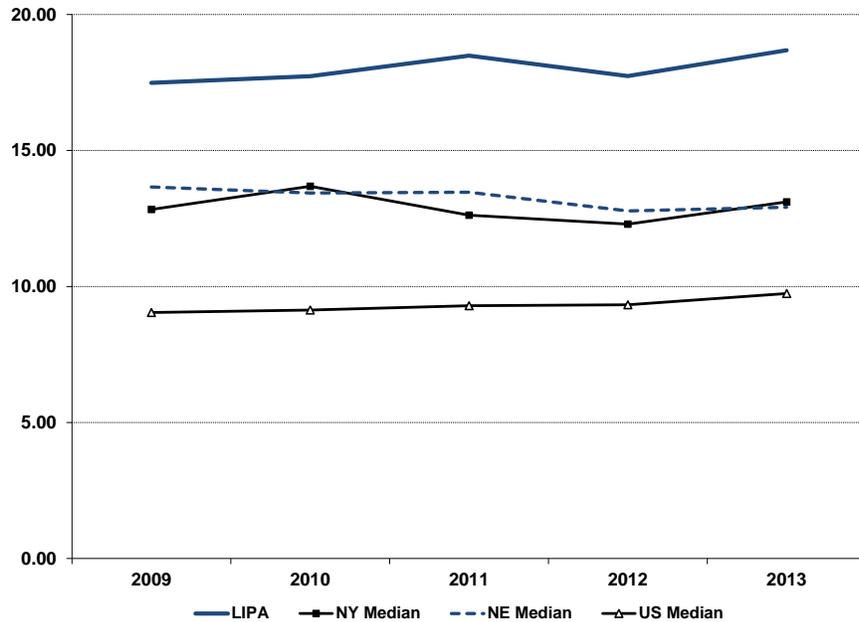


Source: U.S. Energy Information Administration, Monthly Electric Sales and Revenue Report with State Distributions, May 7, 2015.

LIPA's commercial rates have been even further out of line. Figure 11 compares the average retail price paid by LIPA's commercial ratepayers to those paid by commercial ratepayers in New York, the Northeast, and the United States.

**Figure 11**

**Average Retail Price Comparison – Commercial Sector**  
(in cents/kWh)



Source: U.S. Energy Information Administration, Monthly Electric Sales and Revenue Report with State Distributions, May 7, 2015.

Based on 2013 data, commercial ratepayers on Long Island paid 42.5 percent above the New York State median, 44.7 percent above the Northeast median and 91.8 percent above the United States median.

Unlike every other major electric service territory in the State, LIPA ratepayers have not enjoyed the protections afforded by the Department of Public Service (DPS), including formal rate proceedings with DPS approval requirements, prior to 2012. Although DPS now exercises oversight over LIPA, its authority is limited as detailed below. The 2013 LIPA legislation created a new Long Island office of the DPS (DPS LI). In addition to new responsibilities, DPS LI was given powers similar to those authorized for the DPS in Chapter 8 of the Laws of 2012, which included audit and review powers over LIPA. Similar to the 2013 LIPA legislation, under this prior 2012 law, DPS audit recommendations were required to be implemented by LIPA unless the board determined that any finding or recommendation was inconsistent with the Authority's sound fiscal operating practices, any existing contractual or operating obligations, or the provision of safe and adequate service.

Under the 2013 LIPA legislation, DPS LI was directed to conduct regular LIPA audits, and to review and make recommendations with respect to LIPA rates and charges. However, in accordance with the 2013 legislation, only recommendations of the DPS LI accepted by the LIPA Board would take effect, and no authority to impose penalties or other remedial powers were given to DPS LI.<sup>44</sup> DPS LI is prohibited by the 2013 LIPA legislation from making any recommendation to modify the compensation or fee structure included within the renegotiated OSA. DPS LI's reviews and recommendations are required to examine performance metrics and incentive-based compensation, as well as the performance of the service provider in restoring service after widespread outages from major storms. DPS LI can recommend that LIPA deny the reimbursement of a service provider cost if it is determined to be unreasonable or imprudent.

The 2013 LIPA legislation established rate change procedures, including a provision that by February 1, 2015, LIPA and the service provider were required to submit to DPS LI a three-year rate proposal. Any proposed rate increase above 2.5 percent would be subject to review and recommendations by DPS LI as described above. Any proposed rate increase below 2.5 percent would take effect immediately. The legislation superseded the Public Authorities Control Board (PACB) requirement that any rate increase above 2.5 percent had to be submitted to the Public Service Commission for approval before it could take effect, which was established in conjunction with LIPA assuming control of the service territory in 1998.

Concurrent with enactment of the 2013 LIPA legislation, LIPA delivery rates were to be frozen for 2014 and 2015. However, as previous analyses of LIPA rates have shown,

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<sup>44</sup> According to the 2013 legislation, unless the LIPA Board "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."

LIPA customers' bills increased primarily because of increases in other components of the bill – most notably, the power supply charge, which was not subject to external review or control.<sup>45</sup> This was due, in part, to the PACB requirement that any rate increase greater than 2.5 percent had to be submitted to the DPS for review and approval. LIPA has generally held delivery rates flat while repeatedly increasing other charges since it assumed management of the system from LILCO.

### *DPS LI Rate Change Oversight Progress Report*

Long Island ratepayers may reasonably feel they have been taken on a roller-coaster ride with respect to their electric bills since the 2013 LIPA legislation was passed. Certain actions have increased monthly bill unpredictability. For example, in the past, LIPA had billed its customers for the power supply charge portion of the bill using a 12-month rolling average of fuel costs to moderate or smooth costs. In 2013, it transitioned to the method used by most other utilities in the State, where actual full fuel costs are simply passed on to customers each month.<sup>46</sup> As a result, the charge is adjusted each month, resulting in a more immediate reflection of actual costs, but increasing the likelihood of more significant bill changes month-to-month.

In January 2015, LIPA and PSEG submitted a three-year rate plan, subject to review and recommendations by DPS LI and approval by LIPA.<sup>47</sup> When this was announced, LIPA said it would equate to an annual 3.8 to 3.9 percent delivery charge increase beginning in 2016, and would reflect an annual increase of 2 percent of aggregate revenue for the next three years.<sup>48</sup> This proposal represents the largest rate increase LIPA ratepayers have faced since LIPA assumed responsibility for the service territory from LILCO in 1998.

In addition to increased revenue, the proposed three-year rate plan includes what was described by DPS LI staff as “aggressive rate design changes,” including increases to customer, meter, and demand charges ranging in some cases from 100 percent to 300 percent, leading DPS to caution about rate shock.<sup>49</sup> DPS staff indicated that over the three-year rate plan, PSEG would increase residential customer charges from \$10.95 to \$20.08 per month, and small commercial charges from \$10.95 to \$43.80 per month.<sup>50</sup> DPS noted that these large increases – which would result in “unacceptable bill impacts for smaller customers within each class” – stand in contrast to public statements from LIPA regarding a “modest” rate increase, which suggested bills would only rise a few

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<sup>45</sup> See the 2012 Office of the State Comptroller report, *Public Authorities by the Numbers: Long Island Power Authority*, pg. 5, available at [www.osc.state.ny.us/reports/pubauth/lipa\\_by\\_the\\_numbers\\_10\\_2012.pdf](http://www.osc.state.ny.us/reports/pubauth/lipa_by_the_numbers_10_2012.pdf).

<sup>46</sup> See LIPA's explanation of the Power Supply Charge, available at <http://www.lipower.org/powersupply/>.

<sup>47</sup> See DPS Matter Number 15-00262: Long Island Power Authority and PSEG Long Island Three-Year Rate Plan for 2016-2018, available at [http://www.dps.ny.gov/longisland/Electric\\_Rate.html](http://www.dps.ny.gov/longisland/Electric_Rate.html).

<sup>48</sup> According to LIPA: “The three-year rate plan requests modest increases of 2 percent of aggregate revenues (customers' bills) a year for the next three years, which is lower than the projected rate of inflation. This is the equivalent of 3.8 percent, 3.9 percent, and 3.9 percent increases if applied solely to the delivery charge portion of the bill in 2016, 2017 and 2018, respectively. The increase will result in the average residential customer seeing an increase in the monthly bill of approximately \$3.25 in 2016 and approximately \$3.30 in 2017 and 2018.” See <http://www.lipower.org/newscenter/pr/2015/013015-rate.html>.

<sup>49</sup> See DPS filing 86, SR Panel Testimony FINAL and DPS filing 103, SRP Revised Testimony FINAL, pages 14-15, at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>50</sup> Ibid. Also, see LIPA's January 30, 2015 press release, “PSEG Long Island Submits Three-Year Rate Plan for 2016-17-18,” available at <http://www.lipower.org/newscenter/pr/2015/013015-rate.html>.

dollars per month. The large commercial customer charge is proposed by PSEG to increase from \$42.58 per month to \$106.46 per month over the rate plan period.<sup>51</sup>

While the new three-year rate proceeding involves DPS LI, the agency's role is limited to making recommendations that the LIPA Board must implement unless LIPA makes a preliminary determination of inconsistency as previously described. Thus, the decision as to whether or not this rate increase proceeds depends primarily on the discretion of LIPA.

### Transparency and Accountability Issues

DPS LI has made a significant amount of information on the proposed rate plan available to the public online, including all filed documents, public comments, a list of all entities that are parties to the rate proceeding, and a calendar. There appears to be a clear recognition on the part of DPS LI that its work is important to the ratepayers of Long Island.

However, approximately three-quarters of the rate plan-related filings through April 2015 included requests for exemption from disclosure by PSEG or LIPA, asking for confidentiality of information pertaining to the rate case.<sup>52</sup> While many of these requests cover issues identified as being related to "confidential critical infrastructure," others cover a broad scope of topics, some of which in the past have been publicly available through LIPA, including information associated with:

- Budgeted electric capital expenditure projects, including descriptions and justifications, along with cost breakdowns, schedules, and cost-benefit analyses for each (request filed on March 2, 2015);
- Survey instruments used to measure customer satisfaction levels (March 6, 2015);
- Base rent, operating expenses and property tax calculations included in PSEG's facilities management budget (March 17, 2015);
- Vegetation management agreements (March 18, 2015);
- Consumer outreach and education budget information (March 25, 2015);
- Full-time Customer Services employees (April 6, 2015); and
- A "targeted overhead enhancements program" (April 24, 2015).

As a result of these confidentiality requests, LIPA ratepayers may not be permitted access to information on matters that will directly impact their bills. Also, given the limited role of the DPS LI, ratepayers are not benefitting from regulatory oversight, access to information, and cost control mechanisms that are as strong as those enjoyed by other utility customers in the State.

On March 13, 2015, the DPS LI served PSEG with a motion to compel discovery of information PSEG was withholding that DPS deemed necessary for its review of the rate

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<sup>51</sup> See DPS filing 86, SR Panel Testimony FINAL and DPS filing 103, SRP Revised Testimony FINAL, pages 24-25, at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>52</sup> See DPS Matter 15-00262, Three-Year Rate Proposal Submitted by LIPA and PSEG, filed documents, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

plan. As noted by DPS LI staff in the motion, “Prompt and thorough response to Staff’s discovery requests are always important but even more so here than is the case with the normal rate case filing of the investor owned utilities. This is the first time in more than 20 years that a rate filing affecting Long Island electric customers has been reviewed by the DPS; the DPS is not familiar with PSEG Long Island’s mode of operation. To add to the difficulty, the filing was made using a different regulatory model than that familiar to Staff and used by electric utilities throughout the rest of New York State, and the timeframe to complete the process is shorter than the normal rate case process.”<sup>53</sup>

The motion filed by DPS LI went on to say, “Under these circumstances, PSEG Long Island’s reluctance to be fully responsive to the discovery requests made by Staff is severely hindering Staff’s ability to fulfill its obligations to effectively review the filing.” According to rate filing documents, this matter was resolved, although the extent to which the information requests made by the DPS LI staff were being fulfilled was not disclosed in detail.<sup>54</sup>

### DPS LI Staff Recommendations

In addition to numerous testimonies presented at public hearings and submitted to the DPS, rate-case-related filings reflected input from interested parties including the DPS staff, the County of Suffolk, the City of New York, the towns of Brookhaven and Smithtown, and numerous other individuals and organizations.<sup>55</sup>

DPS staff provided extensive testimony and exhibits related to the proposed rate plan, including: revenue requirements; rates; energy efficiency; inflation; productivity and management audit; finance; delivery service adjustment and storm reserve; transmission and distribution capital expenditures; transmission and distribution operations; and customer service.<sup>56</sup> In its May filings, the DPS staff disagreed with several aspects of the rate proposal and recommended alternative revenue targets, service strategies, and charges.<sup>57</sup>

In June, however, DPS said it had discovered “mechanical accounting variances” and revised its calculations, recommending an incremental revenue increase closer to that requested by LIPA and PSEG.<sup>58</sup> In any case, a May 2015 report from Moody’s Investors Service observed that while DPS staff was recommending a smaller rate increase than the amount proposed by LIPA and PSEG-LI, “the vast majority of the adjustments pertain

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<sup>53</sup> See DPS filing 27, DPS Staff Motion to Compel, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>54</sup> See DPS filing 39, Notification Concerning DPS Motion to Compel Discovery, March 25, 2015, from ALJs Phillips and Van Ort, at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>55</sup> For example, see DPS Matter 15-00262 filing numbers 81, 82, 84, 85, 87-90, 92, 96, and 101, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>56</sup> See DPS filing 86 and more on Matter 15-00262 available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>57</sup> See DPS filing 86, PORR Exhibit FINAL, PORR-2, PDF page 7, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>58</sup> See DPS filing 94, Notice that Staff intends to file revised testimony, and DPS filing 103, LIPA PSEG Electric Rates - Staff Updated Testimony and Exhibits 1 of 2, and revised testimony and exhibits available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

to items that would be subject to automatic true-ups in the event actual expenses deviate from assumptions,”<sup>59</sup> which could render illusory any potential cost savings under the DPS staff’s recommendations.

Rebuttal filings from PSEG and LIPA in June disagreed with several of the DPS recommendations, though a modest reduction in the proposed revenue requirement was accepted. This was accompanied by a proposal to provide periodic adjustments for actual costs, including a late 2015 update for 2016 rates, and a “second stage” update submission to LIPA for 2017 and 2018.<sup>60</sup> These updates would adjust estimates for costs associated with debt, tax-related payments, and union employee wages to reflect actual costs, and the update procedure would be a “ministerial matter.”<sup>61</sup> If this proposal is adopted, it would cloud the rate picture and leave even further uncertainty with respect to rates for LIPA’s customers.

As previously noted, the extent to which any recommendations made during the rate proceeding will impact the final outcome for LIPA customers depends primarily upon LIPA. Despite the fact that DPS LI does not possess approval authority over LIPA’s rate setting, DPS LI appears to be making an effort to provide LIPA customers with access to information that was not previously available. In addition to extensive documentation of the rate proceeding, information on customer rights and protections, complaint resolution, and consumer education is readily available on the agency’s website – which is more assistance than LIPA customers had from the DPS before the 2013 LIPA legislation.<sup>62</sup> DPS LI is also providing LIPA customers with the opportunity to have their input considered as part of the rate proceeding.<sup>63</sup>

According to LIPA’s rate filing, beginning in 2016 LIPA ratepayers will have to pay for a new, annual \$8 million “New York State DPS Administrative Assessment” to cover the costs associated with DPS LI.<sup>64</sup> It remains questionable whether a DPS office with only an advisory role and without enforcement powers can adequately protect ratepayers and control rates. The extraordinary measures the agency had to take to get information it considered essential for its review of the proposed PSEG rate increase, as well as the fact that its recommendations are subject to LIPA’s discretion, are cause for concern. All these factors raise questions about the adequacy of the current rate-setting oversight mechanism, and suggest that further evaluation and action are warranted.

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<sup>59</sup> See Moody’s Investor Services Report on LIPA’s planned Series 2015 direct placement bonds, available at <http://www.lipower.org/pdfs/company/investor/2015-05-26%20LIPA%20Moody’s%20Rating.pdf>.

<sup>60</sup> See DPS filing 107, 2015-06-10 – PS Rebuttal – Ratemaking and Revenue Requirements, available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=47329&MNO=15-00262>.

<sup>61</sup> Ibid, page 9.

<sup>62</sup> See the DPS Long Island website, at <http://www.dps.ny.gov/longisland/>.

<sup>63</sup> See the DPS Fact Sheet on PSEG Long Island’s Three-Year Rate Proposal, available at [http://www.dps.ny.gov/longisland/DPS\\_LI\\_Rate\\_Setting\\_Fact\\_Sheet\\_2\\_20\\_15\\_Final.pdf](http://www.dps.ny.gov/longisland/DPS_LI_Rate_Setting_Fact_Sheet_2_20_15_Final.pdf).

<sup>64</sup> See the PSEG and LIPA document: Summary of 2016-2018 Three-Year Rate Plan, page A-7(b), available at <http://www.lipower.org/pdfs/company/investor/SummaryThreeYearRatePlanFiling.pdf>. The 2013 LIPA legislation eliminated the State gross receipts tax paid by LIPA, estimated by the Governor at about \$26 million annually.

## ***Reconstituted LIPA Board***

The 2013 LIPA legislation eliminated the 15-member LIPA Board and created a new nine member board. As of January 1, 2014, the new LIPA board was comprised as follows: five appointees by the Governor including the Chair, two by the Temporary President of the Senate, and two by the Speaker of the Assembly. In addition, the legislation directed that LIPA staff be 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.”

The reduction in the number of board members followed a September 2013 management and operations audit of LIPA performed for DPS by a consultant, NorthStar Consulting Group. The audit found that LIPA’s board size was “larger than typical,” and “has suffered from persistent vacancies.” Among other conclusions regarding the board, the audit found that members of the board had been actively involved in discussions and decisions “regarding activities brought to its attention.” However, the audit found, “There is less attention to Authority operational performance, potential issues, future needs, and longer term considerations.”<sup>65</sup>

The restructured LIPA board bears responsibility for approving proposed budgets and rate increases, and more broadly is charged with ensuring the provision of reliable, economical and responsive electric service to its customers. The Public Authorities Reform Act (PARA) of 2009 required State public authorities to have a proposed mission statement and self-determined performance measurement criteria. The statute also requires public authorities to identify stakeholders and their reasonable expectations of the authority, to re-examine the mission statement and measurements, and to publish a self-evaluation of its performance based on the established measurements.

### *Board Progress Report*

Even in the earliest days of the reconstituted LIPA Board, issues related to governance arose. In February 2014, the new nine-member LIPA Board of Trustees considered a new mission statement for the Authority, intended to “better reflect LIPA’s new organizational structure and purpose.” The revised mission statement eliminated the phrase “with a commitment to superior customer service, accountability and transparency in all of our operations,” and added as part of LIPA’s mission to “meet the expectations of our bondholders,” a focus which was not present in LIPA’s original mission statement.<sup>66</sup> The proposed revised statement called for LIPA to carry out its duties “faithfully and professionally.”

The LIPA Trustees apparently reconsidered the proposed revised mission statement after a news article highlighted the proposed elimination of the word “transparency.”<sup>67</sup> The

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<sup>65</sup> “Comprehensive Management and Operations Audit of Long Island Power Authority,” Matter No. 12-00314, Final Report to the Public Service Commission and Department of Public Service, September 13, 2013.

<sup>66</sup> PSEG’s mission statement references a commitment to exceptional customer service. See <https://www.psegliny.com/page.cfm/AboutUs>.

<sup>67</sup> See Harrington, Mark, “LIPA’s customer-satisfaction rating drops again,” *Newsday*, February 25, 2014.

February 26, 2014 Board of Trustees meeting minutes noted a discussion of the revised mission statement by the Trustees and the public, and the word “transparently” was inserted.<sup>68</sup> The archived webcast of this Board meeting has been removed from LIPA’s website, so details regarding the Board and public discussion are not available.

LIPA’s revised mission statement provides that: “Our Mission is to ensure the provision of reliable, economical and responsive electric service to 1.1 million customers on Long Island and in the Rockaways, meet the expectations of our bond holders and be a trusted, valued member of the community. We will oversee the performance of our Service Provider, PSEG-Long Island, maintain a consistent focus on energy efficiency and renewable energy and carry out our public service, fiscal and contractual duties faithfully, transparently and professionally.”

In addition, in accordance with PARA requirements, LIPA established goals and measurements to evaluate its performance relative to its mission in 2014. The goals are in four categories: “(i) ensure the provision of reliable, economical and responsive electric service; (ii) meet the expectations of bondholders; (iii) maintain a focus on energy efficiency and renewable energy; and (iv) transparency.”<sup>69</sup>

LIPA’s 2014 performance evaluation report for its stated goals includes several specific references to financial matters.<sup>70</sup> For example, performance measurements for the second goal, regarding bondholder expectations, include reviewing PSEG’s proposed 2015 operating budget, and maximizing federal funding for work related to the major storms of recent years. However, LIPA’s 2014 performance measurements do not identify any specific efforts to limit or reduce costs for ratepayers, or to provide reliable and responsive electric service, raising the question as to whether the board is sufficiently prioritizing these critical mission goals. Clear evaluation of any progress in addressing LIPA’s high costs is especially important given the rate proposal currently under review.

## ***Procurement Review***

The 2013 LIPA legislation preserved the requirement that LIPA contracts follow State Finance Law provisions that apply to State contracts generally, including Office of the State Comptroller review and approval. PSEG contracts, however, were not made subject to Comptroller review and approval. Instead, a provision was included in the legislation to require LIPA and PSEG to provide to the State Comptroller, on March 31 and September 30 of each year, a report documenting each contract entered into with a third party for an amount greater than \$250,000 and related to management and operation services associated with LIPA’s transmission and distribution system.

LIPA continues to submit its procurements to the Office of the State Comptroller for review and approval, as required by law. Information regarding these procurements is publicly

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<sup>68</sup> See the LIPA Board minutes of the 247<sup>th</sup> meeting, held on February 26, 2014, pg. 7, available at <http://www.lipower.org/pdfs/company/papers/board/022614-minutes.pdf>.

<sup>69</sup> See LIPA’s *Authority Mission Statement and 2014 Performance Measurements* document, available at <http://www.lipower.org/pdfs/company/trans/LIPAprformance.pdf>.

<sup>70</sup> See LIPA’s 2014 performance report at <http://www.lipower.org/pdfs/company/trans/LIPAprformance-report14.pdf>.

available on the Office of the State Comptroller's Open Book New York website.<sup>71</sup> This information includes the vendor name, the contract amount, the contract start and end dates, and a brief contract description.

The reports required by the 2013 LIPA legislation on LIPA and PSEG procurements in excess of \$250,000 have been submitted in March 2014, September 2014, and March 2015, and identify the third party, a description of the services or goods to be procured, and the duration of the contract.<sup>72</sup>

## ***Renewable Energy and Energy Efficiency Measures***

The 2013 LIPA legislation required LIPA to continue and expand its renewable energy and energy efficiency measures in coordination with PSEG, the Power Authority of the State of New York (NYPA) and the New York State Energy Research and Development Authority (NYSERDA). The stated goals were to cost-effectively reduce system-wide peak demand, minimize long-term fuel price risk to ratepayers, lower emissions, improve environmental quality, and conform to New York's climate change and environmental goals.

LIPA's 2015 Approved Operating and Capital Budgets identified a reduction of 10.8 percent from 2014 in the Efficiency and Renewables program, which it attributed to the transition of the Long Island solar rebate program to NYSERDA's NY Sun program.<sup>73</sup> The budget documents indicate the expectation of a 70 MW reduction in peak demand, reflecting a 17 percent increase over the reduction achieved in 2014. LIPA anticipates this reduction will be accomplished at a lower net cost because of the transfer to NYSERDA's program.

Funding for this program in the 2015 budget is estimated at \$83.9 million, reflecting 2.3 percent of LIPA's use of revenue dollars (before deductions for grants and other income).<sup>74</sup> Budget documents say that PSEG "expects that the funding level approved for 2015 will allow it to continue to achieve program goals." Figure 12 shows a five-year history of LIPA's approved budget funding levels and projected actual results for the Efficiency and Renewables Program.<sup>75</sup>

Since 2012, projected actual results have fallen short of approved budget levels. Actual results were not available from LIPA's budget documents for 2013 and 2014, and projected actual results for 2015 are not yet available.<sup>76</sup> As noted with LIPA's storm cost

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<sup>71</sup> See the Office of the State Comptroller's Open Book New York website, NYS Active Contract Search, available at <http://www2.osc.state.ny.us/transparency/contracts/contractsearch.cfm>.

<sup>72</sup> To view the March 2015 Contract Report from LIPA and PSEG, visit LIPA's website at <http://www.lipower.org/pdfs/company/trans/ComptrollerReport033115.pdf>.

<sup>73</sup> See LIPA's Adopted 2015 Budget, pg. A-4.6(a), at <http://www.lipower.org/pdfs/company/investor/2015budget.pdf>.

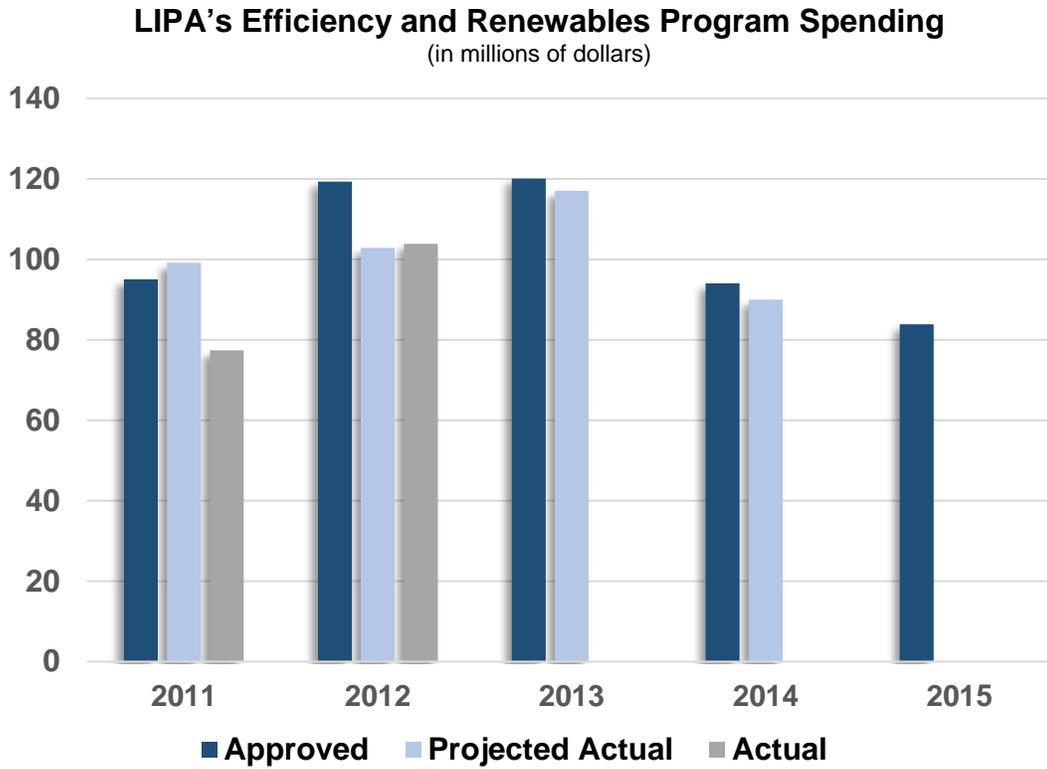
<sup>74</sup> See LIPA's Adopted 2015 Budget, pg. 9, at <http://www.lipower.org/pdfs/company/investor/2015budget.pdf>.

<sup>75</sup> See LIPA's Adopted Budget detail under the Budget Information tab at <http://www.lipower.org/financials.html>.

<sup>76</sup> LIPA no longer includes prior year actual results in its budget documents. However, reports prepared by Opinion Dynamics Corporation and Energy & Resource Solutions, Inc. for LIPA and PSEG titled "Long Island Power Authority Efficiency Long Island and Renewable Energy Portfolio - 2013 Annual Evaluation Report" and "Long Island Power Authority Efficiency Long Island and Renewable Energy Portfolio - 2013 Program Guidance Document" provide certain data on efficiency and renewable programs. See <http://www.lipower.org/papers/reports.html>, Additional Reports.

information, the recent elimination of actual to budget comparisons in LIPA's budget documents makes it difficult for the public to evaluate LIPA's actions and proposals.

**Figure 12**



Source: LIPA

## Conclusion

Major changes currently underway in the management and operations of LIPA will have a lasting impact on LIPA's customers and thus on both the quality of life and future economic growth on Long Island. However, many questions remain unanswered with respect to the short-term and long-term implications such changes hold for customer bills and service quality.

These include the impact of the renegotiated OSA between LIPA and PSEG and the debt restructuring undertaken by UDSA. Also uncertain are the implications of PSEG's assumption of more responsibilities for day-to-day operations on Long Island and its greater control over expenditures. When and if costs will be controlled, how quickly much-needed service upgrades will be provided, and whether storm responses will be improved and related costs properly accounted for continue to be a concern.

So far, the long-overdue improvements promised to LIPA ratepayers have yet to be achieved, and it is unclear whether LIPA ratepayers are better or worse off than before the transition began in the wake of the 2013 LIPA legislation. While a new Long Island Office of the Department of Public Service was created, it does not have regulatory powers comparable to other service territories in the State. LIPA's ratepayers are not benefitting from regulatory oversight, access to information, and cost control mechanisms that are as strong as those enjoyed by other utility customers in the State.

LIPA customers are facing higher bills, with new categories of charges as well as a proposed three-year rate increase, and bearing a debt burden that is projected to increase. In some regards, ratepayers have less transparency and accountability from their electric service provider than existed under either the previous LIPA structure or its predecessor, LILCO, which was a regulated utility subject to oversight by DPS.

The restructured LIPA board bears responsibility for approving proposed budgets and rate increases, and for ensuring that LIPA's customers receive reliable, economical and responsive electric service. Fulfilling these responsibilities will require meticulous oversight of the financial and operational matters now under the day-to-day control of PSEG. At the same time, board members must also ensure high standards of accountability to the public, on the part of both LIPA and PSEG.

LIPA's 2014 performance measurements do not identify any specific efforts to limit or reduce costs for ratepayers, or to provide reliable and responsive electric service, raising the question as to whether the board is sufficiently prioritizing these critical mission goals. Periodic evaluations of measurable progress toward more affordable electric service would give ratepayers and policy makers a clearer picture of whether LIPA is successfully addressing that bottom line concern.

In 2016, LIPA will mark the 30<sup>th</sup> anniversary of its original statutory creation. Cost advantages result from LIPA's status as a public entity, including the lower-cost financing available via tax-exempt debt, as well as eligibility for federal reimbursement for certain storm and disaster costs. However, the goal of affordable utility service on Long Island has not yet been attained and longstanding problems persist. Investigations, audits and reports performed by the Office of the State Comptroller and others over the past decade

have clearly made the case that fundamental changes at LIPA were needed to improve oversight and accountability, strengthen consumer protections, and provide much-needed rate relief for LIPA customers.

Any recommendation that results from DPS reviews is required to be implemented unless LIPA makes a determination that it 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 2013 LIPA legislation empowered DPS to "inspect all premises and facilities owned or operated by the authority and the service provider, review all books and records of the authority and the service provider, interview all appropriate personnel, and require annual reporting." DPS should take full advantage of this authority and expand its efforts in these areas. The 2013 legislation also calls for DPS to initiate its next comprehensive management and operations audit of LIPA by December 2016. Given the lack of progress in meeting the LIPA reform goals, DPS should consider initiating that audit as soon as practicable.

In addition, to address the challenges that continue to plague the LIPA service territory, strong consideration should be given to increasing the powers and duties of DPS, instituting more robust consumer protection and advocacy provisions, providing opportunities for greater local dialogue and participation, and ensuring LIPA sufficiently prioritizes ratepayer needs with respect to cost, service and other issues. Finally, efforts should be made to reduce, not continue to increase, the debt burden on LIPA ratepayers. Future generations of Long Island and Rockaways residents should not continue to be excessively burdened with the costly decisions of the past.