Ministry of the Attorney General
Briefing Note
Legal Services Division
Legal Services Branch – ENERGY/MEDG/MRIS/MOI/ADO

Overview of Long Island Power Authority

Long Island Power Authority (LIPA) is a not-for-profit public utility and the owner of transmission and distribution networks in Long Island, New York. It is established by statute and the state governor has power to appoint board members. LIPA has entered into a management contracts with the Public Service Enterprise Group (PSEG), a publicly traded utility company in New Jersey, and PSEG's subsidiary now manages the billing and day-to-day operations of the distribution network.

Summary of LIPA Reform Act

Section 1(8) of Part B of the Long Island Power Authority Reform Act, 2013 (the LIPA Reform Act) provides the legislative purpose of the act, which is "to refinance outstanding debt of LIPA, a significant portion of which relates to the cost of constructing and financing the now abandoned Shoreham nuclear power plant". The Act authorizes the creation of a restructuring bond issuer for the limited purpose of "issuing securitized restructuring bonds to purchase restructuring property to finance the cost of purchasing, redeeming or defeasing a portion of the outstanding debt". This section also makes it clear that it is the intention of the legislature to provide a statutory pledge (found in s. 9 of the LIPA Reform Act) that until the restructuring bonds are paid in full, "the state will not in any way take or permit any action to revoke, modify, impair, postpone, terminate or amend this act in any manner that is materially adverse to the owners of the restructuring bonds".

The definitions in section 2 of the LIPA Reform Act provide some clarity to the mechanisms for the securitization regime. Restructuring bonds are issued by the "restructuring bond issuer" (which is established under section 4 of the LIPA Reform Act and known as the "Utility Debt Securitization Authority", or UDSA) and secured by the "restructuring property", which is essentially the property interest in a future revenue stream. In section 2(13), "restructuring property" is defined to include the property rights and interests in the "transition charges". As defined in s. 2(21), transition charges are established and may be amended from time to time in accordance with a restructuring cost financing order, and they are a component of the delivery line on the utility bills.

Section 3 provides the procedures for issuing restructuring bonds by the restructuring bond issuer, and includes appeal procedures and public hearing provisions. Section 4 provides the authority to establish the UDSA as a public corporation, the scope of its activities and its governance structure. It should be noted that section 4(2)(a)(i) provides that "the restructuring bond issuer shall only issue and sell restructuring bonds once" (please also see summary of 2015 amendments below). The UDSA also issues the restructuring cost financing orders in accordance with section 5.

Section 6 sets out the features of the restructuring bonds. Section 6(1) limits bond purchaser's remedies to the restructuring property, i.e. the property interest in a future revenue stream. The restructuring bonds are tax-exempt (section 6(2)), and are not debt of the state (section 6(3)).

Section 7 governs the restructuring property and creates a property interest and security interest in the future revenue stream arising from "transition charges". Section 7(1)(c) provides that "[t]he restructuring property may be transferred, sold, conveyed or assigned to the restructuring bond issuer. All or any portion of restructuring property may be pledged to secure the payment of restructuring bonds", and "revenues from the collection of transition charges shall be applied solely to the repayment of restructuring bonds and other ongoing financing costs."

Section 8(2) provides that any owner of the transmission and distribution network or any other entity that collects the delivery charges on behalf of the owner shall impose the transition charges on the consumers, and shall remit such revenues to the owner or pledgee of the restructuring property.

Section 9 provides the pledge from the state not to take actions to impair the value of the restructuring property. Sections 10 to 17 include procedural provisions such as conflicts, third-party billing and standing.

Summary of 2015 Amendments to LIPA Reform Act

The LIPA Reform Act was further amended in 2015 to permit the issuance of additional restructuring bonds by UDSA or a separate "Utility Debt Securitization Authority No. 2" up to an aggregate maximum amount (including the previously-issued Restructuring Bonds) of $4.5 billion. Any additional issuance of restructuring bonds, whether issued by UDSA or by a new issuer, will be separately secured by distinct collateral pursuant to a new financing order and transaction documents.

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