

**ECONOMIC DEVELOPMENT & ENERGY COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE**

Minutes

A meeting of the Economic Development and Energy committee of the Suffolk County Legislature was held at the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, NY 11787 on Monday, June 3, 2002 in the Rose Y. Caracappa Auditorium at 10:30 A. M.

Members Present:

Legislator Jon Cooper, Chairman
Legislator Fred Towle, Vice Chairman
Legislator Vivian Fisher, Member
Legislator George Guldi, Member

Members Absent:

Legislator Allan Binder, Member

Also in Attendance:

Paul Sabatino, Counsel to the Legislature
Kathleen Whitley, CAP
Ken Robinson, Corleto & Associates, P.C.
Richard G. Gertler, Thaler & Gertler, LLP
Michael H. Sahn, Sahn & Ward, PLLC
Harold J. Levy, Thaler & Gertler, LLP
Gregory O'Neill, Hill, Betts & Nash, LLP
William Clair, Hill, Betts & Nash, LLP
Fred Bender, Suffolk County Economic Development
Bob Garfinkle, Suffolk County Department of Law
Alice Amrhein, Suffolk County Economic Development
Barbara LoMoriello, Aide to Legislator Cooper
Kevin Duffy, Budget Review Office
B.J. McCartan, Aide to Presiding Officer Tonna
All other interested parties.

Minutes taken by:

Eileen Schmidt, Legislative Secretary

(The meeting was called to order at 10:48 A. M.)

CHAIRMAN COOPER:

The meeting will come to order of the June 3rd Economic Development and Energy Committee. Legislator Guldi, if you could lead us in the Pledge.

SALUTATION

CHAIRMAN COOPER:

Okay. We have a number of speaker cards, but most of these have to do with the interviews for the law firms. The only one that's not is Kathleen Whitley from CAP. Kathleen, did you want to come up please?

MS. WHITLEY:

Good morning. I'm just here to briefly speak about and I see that there is going to be a little later on a Sense resolution for support of the LIPA's offshore wind project with a location yet to be determined along the south shore of Long Island. The reasons that we feel that it is important for CAP to participate in this partnership with LIPA at their invitation is that it is we feel a golden opportunity to weigh in on and oversee the first offshore wind project ever in the United States let alone New York. This is a tremendous step towards a sustainable energy future for Long Island and this is one that of course we all support. Our participation would assure with Gordian Raacke expertise that Cap and the Suffolk County Legislature would have accessibility to all details and regulatory steps as the wind project moves forward. Also CAP recommendations and oversight on behalf of the County would be a critical part of the approval process and that is very important for Suffolk County.

Community and environmental concerns would be properly and adequately addressed and the concerns and issues of Suffolk County residents, in particular, would be considered and assessed. And also proactive outreach education and inclusion would be extended to all stakeholders especially the public. This gives CAP and Suffolk County an opportunity to support and work with LIPA whenever possible. It adds to the credibility factor that we have not only when we opposed some of LIPA's positions, but when we see valid efforts in what they're trying to do. So I just briefly wanted to state today that we hope that you will continue to support and allow us to participate with LIPA. This is a very important project. It's a tremendous opportunity; it would be 100 megawatts of offshore wind that would provide substantial part of electricity for Long Island. You may or may not be aware that 200 megawatts of new portable power as I call it are going to be placed in Suffolk County. These maybe fueled either by oil, gas or possibly diesel and they're going to be situated in ten substations around Suffolk County. This is in answer to some outages that went out in two main cables across the Sound to Westchester and Connecticut. We are concerned again not only because there's a lack of a planning process on LIPA's part to account for such measures, but also we would like to see more of these renewable energy technologies to reduce the need for such actions in the future and if anyone has questions about our participation.

CHAIRMAN COOPER:

I have a question, Kathleen, was whether you had any idea optimistically as to when if the windmill project did move forward what timeframe we're talking about before we could begin implementation?

MS. WHITLEY:

I think Richie Kessel would like it to be up tomorrow, but it's realistically going to be at the least three to four years away and a lot of that has to do with regulatory processes. As with the Cape Cod project much of this is new ground breaking new water if you will or whatever the expression is, but a lot of us the federal level and the state level this is all brand new. So all that has to be worked through. We're hoping that the State of New York will take some measures to expedite the introduction of offshore wind and to not allow it to be hung up in so much regulatory processes, but that remains to be seen. But I would say three to four years, but we have a lot of work to do between now and then.

CHAIRMAN COOPER:

Thank you. Any other questions? Kathleen, thank you very much.

MS. WHITLEY:

Okay. Thank you, Jon.

CHAIRMAN COOPER:

Before we move to the interviews with the law firms we have a brief agenda so I thought we'd take care of that.

TABLED RESOLUTIONS

1050. Authorizing retrofitting of traffic lights and LED fixtures.

(Cooper) I'd like to make a motion to table that subject to call. Is there a second?

LEGISLATOR TOWLE:

Second.

CHAIRMAN COOPER:

All those in favor? Opposed? 1050 is tabled subject to call. **(Vote: 4-0-0-1 Absent: Binder)**

1478. Amending the 2002 Capital Budget and Program and appropriating funds in connection with reimbursement to LIPA for relocation of Long Island Power Authority (LIPA) facilities on Suffolk County Construction Projects (CP 5000). PRIME (Co. Exec.) Could I just have a brief explanation again, Paul, please?

MR. SABATINO:

1478 is asking that the budget the capital budget be increased from zero to \$450,000 to provide funding to reimburse LIPA for, I believe, the expectation is 50% of the cost that may arise out of relocating their facilities in connection with these projects. And the question is that the committee had raised two committee meetings ago really pertained to overall cost if you apply this new principle out across all of the possible capital projects and also

for some documentation with regard to what principles and practices applied when Lilco did the relocations and I think Legislator Guldi had asked a copy of the court decision that was being cited as the basis for it. I think the last question that came from Legislator Fisher was with regard to what was happening with Nassau County along the lines of this policy.

CHAIRMAN COOPER:

All right. Is there a motion on 1478?

LEGISLATOR GULDI:

I'm still waiting for the answers to that whole panoply of questions. The legal precedence, what's Nassau doing. The overall fiscal impacts and the detail on the projects that are on the bill before us because I was far from satisfied that the cost reflected a reasonable prudent or even remotely related to the work as described. So what order do you want to take those in?

MR. GARFINKLE:

With respect to the actual work contemplated to be done I think DPW is in the process of trying to get the actual cost estimates and projections for the County Legislature. And I know I spoke with Bill Shannon several days and he was having difficulty getting some of the information from either KeySpan and or LIPA.

LEGISLATOR GULDI:

Hold on, hold on. They want to get paid, but they don't want to give us the information is that what you're saying?

MR. GARFINKLE:

No. I think he wanted both historical and going forward. So --

LEGISLATOR GULDI:

I wanted both I wanted the detail on the projects that were before us. Let's start looking at those. I want to know how many men, how many trucks and how many hours it took to do the \$455,000 worth of what I smell as a rip off of taxpayers of Suffolk County.

MR. GARFINKLE:

And that information, I believe, is being obtained by Public Works. I can't speak for them and I know I had spoken to Bill Shannon. He was attempting to get all that information for you.

LEGISLATOR GULDI:

When can we expect it?

MR. GARFINKLE:

I'll ask Department of Public Works I'll ask them. I was here to respond to the legal issues only, but I will ask them.

LEGISLATOR GULDI:

Okay. Do you have the legal precedents that you wanted that you talked

about?

MR. GARFINKLE:

I got some of the legal precedents, but I'd like to give the structure of what we're talking about which in reviewing the budget review analysis one of the concerns that they had was that number one, the precedent that would be set by authorizing agreement such as this --

LEGISLATOR GULDI:

Let's back up a minute. My recollection was that the LIPA takeover statute put LIPA in LILCO's position without change vis a vis Suffolk County. This change is vastly material and adverse to the taxpayers of Suffolk and is yet another shift of LIPA expense to Suffolk taxpayers. Show me the part of the takeover and the legislation that authorizes this charge.

MR. GARFINKLE:

There are two positions that are being taken.

LEGISLATOR GULDI:

No. I don't want to know positions. Show me the part of the deal document and statute. Do you have that?

MR. GARFINKLE:

The part of the statute that we are saying that would give rise to the argument that Suffolk County should not be obligated to make the payments is what I said to this committee several meetings ago was to me a credible argument can be made that the LIPA statute imposes upon LIPA the obligations that its predecessor Lilco had and that under both common law and -- under common law that the obligation of the utility a private regulated utility is to pay for the relocation cost when necessitated by municipality's request and that has been our position. LIPA has taken the position that number one, that there is a case that come out of Nassau County involving the county in a local water district that the county that the court said that when you got two effective municipal entities of quasi municipal entities the requesting party should be the one who bears the cost and that they're relying on that. LIPA also relies upon the fact that there's a provision in the LIPA statute that says when there is a conflict with any other law in the LIPA Act unless specifically addressed in the LIPA Act the LIPA statute will prevail. LIPA has the right to enter into contracts to set rates to collect revenues. Under Court of Appeals case involving the Shoreham takeover, I think it was Citizens for Orderly Energy versus Cuomo the Court of Appeals gave great latitude towards LIPA in its ability to structure what it deems to be best for its ratepayers and affords fiscal integrity. It's that -- one of the same arguments that we're and LIPA is making with respect to the challenge to the Shoreham Settlement Agreement. I think -- so you've got two positions that I think both have credibility to. I think the County has a very good position, but we're talking about when you have two positions possibly settling the matter for fifty cents on the dollar.

LEGISLATOR GULDI:

For the existing \$455,000 in claims, but does that or does that not create a precedent we're in for this forever?

MR. GARFINKLE:

Well, it creates a precedent to the extent that what we're asking for authorization to do is to enter into an agreement that would authorized us to make payments on fifty cents on the requested dollar amounts. We would have a right to audit it. We would have a right under our proposal for what we're looking for to hire consultants to challenge any of LIPA's cost estimates, reasonableness. We would have an expedited arbitration procedure so that if there was as dispute as to the necessity of the amount that's being requested by LIPA that there would be an impartial mechanism to arbitrate that.

LEGISLATOR GULDI:

So basically, hold on, we have conflicting legal arguments.

MR. GARFINKLE:

Yes, we do.

LEGISLATOR GULDI:

We have no precedent deciding this issue. Under the LIPA Act we have remote precedence regarding Nassau County Water District cases.

MR. GARFINKLE:

Correct.

LEGISLATOR GULDI:

Which don't have the provisions of the LIPA Act.

MR. GARFINKLE:

Correct.

LEGISLATOR GULDI:

And the proposal is to split it based on their bills. Well, --

MR. GARFINKLE:

Based upon the reasonableness of their bills.

LEGISLATOR GULDI:

Frankly, it sounds to me the lawyer who's willing to give you a 50% discount on the hours and only bill you for half the hours, but he gets to keep track of the hours.

MR. GARFINKLE:

That's not accurate.

LEGISLATOR GULDI:

It's illusory is my problem.

MR. GARFINKLE:

I believe we've addressed that issue in that if we are -- we would have the ability to question any of LIPA's bills the reasonableness of them and we'd be able to go before an arbitrator who would have by pursuant to the contract that we're proposing the arbitrator would have -- would be mandated to have the qualifications for cost analysis so that we would be able to challenge on a very expedited basis the reasonableness of any bill submitted to the County.

LEGISLATOR GULDI:

I'm unfortunately all too familiar with the vicissitudes and the advantages that one can obtain in construction contract arbitration. It's an area I enjoy practicing in because of the ability to use unreliable evidence and unfair surprise in the absence of discovery rules. I really have a ball doing it and have done extraordinarily well at it and I frankly, don't see how on earth I could possibly as a fiduciary of the taxpayers of Suffolk County buy into potential over the next several decades what's going to be millions upon millions of dollars of liability without clear legal precedent. Even at a 50% on the dollar let's split the baby basis. Secondly, I can't conceptualize how LIPA trustees as fiduciaries to the fiscal integrity of LIPA could give up a claim if it was a bonafide claim for half of millions and millions of dollars in their capacity as trustees without guidance or legal precedent. This thing really, really seems over the top to me. I don't even understand how we can entertain this.

MR. GARFINKLE:

Well, one of the proposed safeguards in the agreement would be that while we'd be authorized to requesting authorization to pay 50% of the verifiable and reasonable bills that there would be what's called a most favored nation clause which would indicate that if Nassau County ever received a reduced rate either by court assuming that it went into litigation by not signing an agreement or by a more favorable agreement between LIPA and Nassau County that Suffolk County would be the beneficiary of those lower rates.

LEGISLATOR GULDI:

Yeah, the trouble with that is it's equally elusory because there's no way to police whether or not Nassau's getting billed the same kind of hourly -- with the same sort of hourly efficiency that Suffolk is. It's totally intangible.

MR. GARFINKLE:

It maybe difficult and it requires monitoring. I would disagree that it's impossible --

LEGISLATOR GULDI:

Well, what's Nassau been doing since LIPA was created? Is there a pending claim against Nassau for anything?

MR. GARFINKLE:

My understanding is, yes there is, for various work that's been performed and that also --

LEGISLATOR GULDI:

Can we get the details of that claim since it's public between LIPA and Nassau County?

MR. GARFINKLE:

I will ask LIPA for that information.

LEGISLATOR GULDI:

All right. When can we get -- when can we expect to get information. I mean, I'm concerned --

MR. GARFINKLE:

I'll be speaking with LIPA later today and tomorrow so I'll find out and I'll get back to you, but if --

LEGISLATOR GULDI:

We asked for detail on this two months ago from DPW. I asked for the detail on the hours billed on the \$455,000 that's before us. Two months later you're telling me that theirs having some difficulty and we don't have data.

MR. GARFINKLE:

I don't have the data.

LEGISLATOR GULDI:

Doesn't strike me that we're exactly handling it expeditiously. How are you going to get an expeditious arbitration proceeding when you can't even get data for the Legislature in the first instance for more that two months?

MR. GARFINKLE:

The way you get expedited arbitration is pursuant to an agreement. All that needs to be done is notification the American Arbitration Society and there is an arbitration date set.

LEGISLATOR GULDI:

I understand that, but where's the data? How do you arbitrate without the data?

MR. GARFINKLE:

The data comes in on two fold. If you're arbitrating on the most favored nation status okay that would be a litigation matter that's not an arbitration matter.

LEGISLATOR GULDI:

Back up. How can we entertain the bill for half a million dollars without the data in the first instance?

MR. GARFINKLE:

When you're saying --

LEGISLATOR GULDI:

Who, who, who said okay lets put it before the Legislature without having the data on the bill?

MR. GARFINKLE:

If I understand you the data that you're talking about is the cost estimates that the LIPA's has provided to us in the reasonableness of them and what Nassau County is providing.

LEGISLATOR GULDI:

No. What you got before us is \$455,000 of completed projects. That's not cost estimates, that's actually data.

MR. GARFINKLE:

Correct.

LEGISLATOR GULDI:

That's hours of labor, functions, lists of material. How many men. How many trucks and how many wedges did they use? How on earth could this possibly be before the Legislature without us being in possession of that data on completed work?

MR. GARFINKLE:

I believe based upon preliminary analysis by DPW they were recently satisfied with the cost estimates for --

LEGISLATOR GULDI:

How did they do that without data?

MR. GARFINKLE:

You'd have to ask them. I don't know. I don't know what data they have or don't have.

LEGISLATOR GULDI:

Well, hold on. What happened two months ago when you sat here and I asked for the data? Who did you talk to since then?

MR. GARFINKLE:

I talked a couple of times to Bill Shannon over at DPW and I believe what he was attempting to do was to get future cost estimates. I didn't know with respect to the current ones. I will ask him I just don't know. You're asking a person about information that I wasn't requested to get and I know that Mr. Shannon has been working on it. Okay. I apologize for him not being here, but I can't answer that question. What I can answer is both the legal implications and if the committee would like to go into executive session the consequences if there's of not having a settlement and that I could certainly be able to address with you, but as much as --

LEGISLATOR GULDI:

I can't see how we could possibly entertain a productive executive session in

the absence of the details on the claims that are before us. It seems to me totally fatuous to even suggest so.

MR. GARFINKLE:

Okay.

CHAIRMAN COOPER:

Any other questions from the committee? Is there a motion on IR 1478?

LEGISLATOR GULDI:

Motion to table. I mean, I can't see -- motion to table -- what's our next meeting date?

MR. SABATINO:

Two weeks.

LEGISLATOR GULDI:

Two weeks. If you don't have the answers to my questions in two weeks could you please have Mr. Shannon and perhaps the Commissioner of DPW and the representative of LIPA here to discuss the details at our next meeting in two weeks?

MR. GARFINKLE:

I'll request them, sure.

LEGISLATOR GULDI:

Thank you.

MR. SABATINO:

Just a reminder. I think we also asked for, you know, Public Works to go back and check their road opening permits and any previous easement agreements because my recollection of working on these projects was that we always had agreements with LILCO which explicitly identified the obligation of LILCO to make those payments. So those were the other documents we had requested at the last executive session.

CHAIRMAN COOPER:

I'll second the tabling motion. All those in favor? Opposed? IR 1478 is tabled. **(Vote: 4-0-0-1 Absent: Binder)**

Sense 4-02 (Non P) - Memorializing Resolution Requesting State of New York to Authorize Lottery for Suffolk County (Cooper) I make a motion to table subject to call.

LEGISLATOR GULDI:

Second.

CHAIRMAN COOPER:

All those in favor? Opposed? Sense 4-02 is tabled subject to call. **(Vote: 4-**

0-0-1 Absent: Binder) Moving on to,

Sense 39-02 (Non P) - Sense of the Legislature resolution supporting Long Island Power Authority (LIPA) Windmill Project. (Binder) I make a motion to approve.

LEGISLATOR TOWLE:

Second.

CHAIRMAN COOPER:

All those in favor? Opposed? Sense 39 is approved. **(Vote: 4-0-0-1 Absent: Binder)** Co-sponsor me please.

LEGISLATOR TOWLE:

Co-sponsor.

LEGISLATOR FISHER:

Co-sponsor.

CHAIRMAN COOPER:

Do you want to co-sponsor, George?

LEGISLATOR GULDI:

(inaudible)

CHAIRMAN COOPER:

Well, we have three co-sponsors right now.

LEGISLATOR GULDI:

(inaudible)

CHAIRMAN COOPER:

Well, you can co-sponsor it later if you'd like.

Home Rule Message 7-02 - Home Rule Message requesting New York State Legislature to amend Section 224(18) of the County Law to authorize Suffolk County to establish a Foreign Trade Sub-Zone in Nassau County. (County Executive)

LEGISLATOR FISHER:

Explanation.

LEGISLATOR GULDI:

Is this Nafta takeover of Nassau? We're going to bring some third world accounting to Nassau is that what we're going to do? Can we get an exchange rate going?

MS. AMRHEIN:

Good morning. I'm Alice Amrhein, Commissioner of Economic Development and next to me is Fred Bender one of our development specialist who's been

working on the Foreign Trade Zone issue and Fred will give you a background on this resolution.

MR. BENDER:

DuPont Pharmaceuticals is now Bristol Myers came to us approximately two years ago and asked for this trade sub-zone status. Under federal law Suffolk County is the grantee for a foreign trade zone, which is the zone, located in the Town of Islip. Sub-zones two zones can exist virtually anywhere. Nassau County having no point of entry and at the time no interest in pursuing a three-year application to do this is concurring with us. We have letters from their Legislators both sides and the County Executive endorsing the project. Essentially, Nassau with no point of entry probably would not get a foreign trade sub-zone. Suffolk is able to endorse this. Federal foreign trade sub-zone's board can approve this and what it does for the company is this. They import a great deal of foreign material for drug research. They're doing age drugs at this site in Garden City. It's a fully secure FDA site. The importation of these goods commands a heavy duty. The goods are actually burnt in the process. They're not converted to any usable medicine. The goods used in producing these drugs the research drugs which are not into the public sector at all are actually burned in the process. They're not used for any usable goods. DuPont pays a duty on the importation of these goods essentially, wasting that money. In this case if they sub-zone status they're fee from paying duty on any items that do not reach the market place. These not reaching the market place they would be freed from literally hundreds of thousands dollars yearly in cost. It's perfectly doable. We have the concurrence from Nassau County. The State has resolutions endorsing this and the Federal Foreign Trade Sub-Zone's board finds it perfectly appropriate.

LEGISLATOR GULDI:

Motion.

CHAIRMAN COOPER:

I'll second it. All those in favor? Opposed?

LEGISLATOR FISHER:

How does that translate into savings for the consumers? I just want to extrapolate how that helps the public?

MR. BENDER:

It reduces the cost of the development of these HIV drugs --

LEGISLATOR FISHER:

-- but, but by how much? You know what I'm trying to say is do we have any kind of determining scale of savings -- has anybody done any modeling on what kind of saving it would translate into?

MR. BENDER:

I would suspect that the company could come up with some sort of model, but it would be purely speculative because the amount of money they -- use

that term again burn in the process to develop a drug is unforeseen. I don't believe they set a market of X amount of dollars to develop a drug and develop it within those perimeters. They simply are throwing money into it and sometime endless processes and there's no guarantee that the drug will reach the market. It maybe very difficult to get that, but it would substantially reduce the cost of the development of a drug.

LEGISLATOR FISHER:

Okay. Not that I don't trust pharmaceutical companies it's just that so often if there is a savings it translates into corporate profits rather than savings to the public. So I'm hoping that this will translate into savings to the public rather than lining corporate coffers. We don't have a guarantee as to where the saving will be going.

MR. BENDER:

That would be an answer DuPont or Bristol Myers to make and they would have been here if we were in contact with them late last week and unfortunately a notice of the meeting got to them too late and their marketing --

LEGISLATOR FISHER:

-- do you think there might be a possibility that they might attend on the 11th for the General Legislature? I would just like to ask --

MR. BENDER:

-- yes --

LEGISLATOR FISHER:

-- we haven't known the pharmaceutical industry to be very grandiose in the savings to the public when they have savings and so for them to realize the savings in R&D and not give us some kind of sense as to how much savings the public will realize from it. Although I voted to approve this I would like to have some kind of public statement that the public will realize a savings.

MR. BENDER:

I'm sure that a representative of the company their attorney's will be available on the 11th. They expressed a desire to be here today and asked that we give their message that they are accessible and would be here --

LEGISLATOR FISHER:

-- that's terrific --

MR. BENDER:

-- on the 11th.

LEGISLATOR FISHER:

Thank you.

LEGISLATOR TOWLE:

Legislator Cooper. Just to share Legislator Fisher's concerns you mentioned

hundreds of thousands of dollars. Is there a specific number that they're going to wind up saving?

MR. BENDER:

The hundreds of thousands comes from my general discussions with their attorney, with their production managers. I would have to leave it to them if they could possibly give you a model or a projection on savings.

LEGISLATOR TOWLE:

There's got to be some scale I guess that they're looking at and that's obviously why they're advocating for this to be approved. So (a) I'd want that at the meeting on the 11th first and foremost and like Legislator Fisher I would like some commitment from them publicly either on the record or particularly in writing before the 11th informing us what their intentions and plans are. I mean, it's nice to give them a couple a hundred thousand dollars a year or whatever it turns out to be break and I'm supportive of that particularly if it's going to keep jobs in the region and keep a company here that's doing business, paying taxes, blah, blah, blah, blah. But I'd be curious, you know, what their overall intentions seem to be. I find it highly unlikely that, you know, if we approve all of a sudden their medications are going to go down by a few pennies, you know, it doesn't seem like it's that big of a savings to a major company like this to transcend into cost reduction in a product. It seems to be more of an incentive to be more of an incentive for them to stay and do business in the area.

MR. BENDER:

The incentive here is to keep them. It's a FDA secure facility. It would be even further secured once they're under the Treasury regulations and the zone is implemented. The manpower there is close to 300 people and 80 of those people are Suffolk County residents. Bristol Myers is a large company and one of the concerns our department has is it is a large company with resources and many locations across the nation. We'd like to do all we can as we do for any company on the Island see that they stay here.

LEGISLATOR TOWLE:

Yes. I think that approach is more realistic than, you know, there's going to be a reduction in product cost to the consumers. I mean, I just don't see that happening for a couple a hundred thousand dollars a year that we're saving them, but, you know, let them address that.

MR. BENDER:

Given -- one more thing. Given the significant resources they put into this project of securing sub-zone status it's a long and costly application with the federal government, with the professionals they retain to put this through it to resolve in some significant savings to them to even approach this kind of project.

LEGISLATOR FISHER:

Thank you.

LEGISLATOR GULDI:

Add me as a co-sponsor to the resolution.

CHAIRMAN COOPER:

Add all four as co-sponsors, please. Okay, we have a motion and a second. All those in favor? Opposed? Home Rule Message 7-02 is approved. **(Vote: 4-0-0-1 Absent: Binder)** Now we can move to the rest of the speaker cards. We'll begin interviews of the law firms regarding the LIPA-Shoreham Settlement Agreement. First we have Ken Robinson from Corleto & Associates. Good morning.

MR. ROBINSON:

Good morning. Good morning Legislator Cooper and members of the committee.

MS. SCHMIDT:

You have to speak closer to the mike.

MR. ROBINSON:

Good morning, how's that?

MS. SCHMIDT:

Good.

MR. ROBINSON:

Okay.

CHAIRMAN COOPER:

If you could first please state your name and your place of principle business.

MR. ROBINSON:

Okay. My name is Kenneth Robinson I'm of counsel to the law firms of Corleto & Associates. My office is on 35 Roosevelt Avenue in Syosset, New York. The law firm has offices in White Plains as well as Danbury, Connecticut.

CHAIRMAN COOPER:

And Mr. Robinson what is the size of your law firm?

MR. ROBINSON:

We have six attorney's, several paralegals on Long Island and there's one attorney and a paralegal and our proposal would be to -- for me to be primarily responsible if we were chosen to represent the County on this matter and then would support being provided by the lawyers and the support personnel in Danbury.

CHAIRMAN COOPER:

Could you give us an overview of the background of your firm and the types of cases that your firm handles and your areas of expertise?

MR. ROBINSON:

Okay. Sure. When I came out of law school in 1978 I was hired by the City of New York primarily engaged in utility regulation. On those days it was basically battling with Con Edison and Brooklyn Union Gas on behalf of the ratepayers of the City of New York. I then spent four years working with Attorney General Robert Abrams doing utility regulation around the State of New York mostly regarding Brooklyn Union Gas and LILCO back then since I was from Long Island. We also did utility regulation around the state. We did it on behalf of not New York State as a ratepayer as much as on behalf of the consumers of the State of New York using the State of New York's *Parens Patriae* power. So we got involved in many utility rate proceedings. Challenged Consolidated Edison when the Indian Point Plant went down a number of years ago. We cooped about \$25 million for a New York City ratepayers because of the Indian Power Plant never should've gone down under the facts. Basically, they did a lot of work and they didn't realize that the Hudson River water was salty and was corroding the pipes and that was a result of the power outage and under the fuel surcharge clause they were buying very expensive fuel oil and they had to re-coop that back. In addition and part of our package we engaged in litigation with the State of Minnesota and several other states going up to the major oil companies on oil overcharge monies where the major oil companies were overcharging and we were able to re-coop ultimately about \$40 million back for the State of New York in terms of their -- came back to the consumers of the State of New York in that case Standard Oil of Indiana also known as Amoco.

A number of years ago and as a subcontractor if you will to one of the other firms that is going to make a presentation before you we were privileged to represent Suffolk County during the Shoreham phase-in proceedings when the question was what was going to happen to Shoreham? How was it going to get involved and so we were one of the lawyers that were very much involved in the Public Service Commission hearings going on at that time and how ultimately the rates were going to get phased in and what was going to happen and whose going to pay for what. So we were very much involved in that. Over the years we have represented industry groups, different large consumers in proceedings before the Public Service Commission on utility issues. Right now we're involved in fights on interruptible service where the utility companies are supposed to notify you that your interruptible customer we want you to switch to fuel oil. The notice provisions are very haphazard. A lot of money's involved. One of the cases we're not involved in that one, but one of the cases that's filtering into the system right now is the Hicksville School District got hit with a million and a half dollar surcharge by LILCO because they didn't switch over. So we've been engaged in a number of battles with the utility companies over the years and primarily the other side of the practice is it's in the energy area usually in the petroleum industry. So you usually are adversaries have been the major oil companies. So what we're use to doing is a lot of commercial litigation both in terms of federal court and state court where the adversaries are large, where the stakes are very high. We believe efficient, very cost effective in terms of representing, you know, our clients when the adversaries are of that nature. We've represented other municipalities. We've represented the Town of Southold

and some of their land use battles. We represented the Village of Sea Cliff when they were fighting with the City of Glen Cove over the Cross Island Ferry that was taking everybody to the gambling casinos in Connecticut. We've worked with the Town of Gardiner when they were very much concerned about airplanes and parachuting and the noise and it was a lot of federal litigation regarding that. So we've worked with municipalities. We've been engaged in a series of actions concerning the utility companies including, you know, the Shoreham issues, some of which, you know, are an issue, now are use to going against large adversaries and use to being successful and would love to have the opportunity again to represent the County of Suffolk and try to level the playing field and, you know, have, you know, secure a benefit to the Suffolk County ratepayers.

CHAIRMAN COOPER:

Thank you, Ken. Do you know of anything that could put your firm in a conflict of interest situation with Suffolk County either because of personal relationships or current litigation your in?

MR. ROBINSON:

No. We are presently not representing anybody in any actions against the County of Suffolk. We're presently not representing the County. We're certainly not representing the Long Island Power Authority in any manner because most of the actions we have are the other way. So, no, neither I nor anybody else in the firm.

CHAIRMAN COOPER:

Thank you. Would you consider performing this work on a contingency fee basis if your firm was selected?

MR. ROBINSON:

We don't have the ability to do that. I can't undertake the dedication of personnel or as was as an actions that's being contemplated by the County Legislature is going to require the retention of at least one or more experts in terms of utility regulation, financial experts, economic analysts. And unfortunately, we're not of the size like some of the, you know, let say larger personal injury law firms that we could fund the litigation and recoup, you know, recover the expenses at the conclusion of the litigation if we were successful. By the same token I think it's my experience it's more effective to have an attorney that is not necessarily doing it on a contingency basis. My understanding is the Legislature would like to have some sort of fixed idea of what the legal expenses are going to be and I think that would be a much more effective way of litigating this type of action because I think that would give the County an idea ultimately of what it's likely to recover.

CHAIRMAN COOPER:

And can you let us what the normal rates are for compensation for the various members of your firm including paralegals?

MR. ROBINSON:

We charge \$250 an hour for myself and my partner, Anthony Corleto. \$175

to \$180 an hours for the associates and about \$80 for the paralegals. What we have done historically whenever we represented a municipality is we work on discounted basis of those rates with the understanding that unlike representing businesses you're not adding on or legal fees as a cost of doing business. So if we were selected we would certainly be willing to sit down and work out a billing schedule and billing rates and come up with a budget not only in terms of the legal time, but also the expert time that's going to be required for a case like this.

CHAIRMAN COOPER:

Thank you. Any other questions from the committee? Thank you, Ken. We are going to if you can stick around we're first going to start with questions in open session and then we're going to move to executive session so don't go anywhere.

MR. ROBINSON:

Okay. Thank you.

CHAIRMAN COOPER:

Next I'd like to invite up Michael Sahn from Sahn and Ward. Good morning.

MR. SAHN:

Good morning, Legislator Cooper, members of the committee, good morning. Thank you for the opportunity to appear before you today and it's a privilege I know a number of the other attorneys who are appearing in their colleagues and fine attorneys, so I'm privileged to be part of this group to appear before you.

CHAIRMAN COOPER:

Well, if you were taking notes it's basically the same questions. You may want to start off with an overview of your firm.

MR. SAHN:

I can give you a little bit of background concerning myself and my firm. We provided you with our firm profile, which outlines the number of people in our firm and our expertise. I have two partners, John Ward and Dan Baker and one associate, Karen Roth. Also participating in this litigation if we are chosen by the County will be my counsel David Rosenberg. All of us have very extensive and vast experience with respect to not only litigation, but municipal and legislative background. Just to start off a little bit not to be repetitive of the information in our firm profile when I began practice it was with then supervisor of the Town of North Hempstead, Mike Tully. Later, as you know, Mike Tully became a State Senator 7th Senate District from New York and I served as deputy town attorney and counsel to the Board of Zoning Appeals. I also served as Commissioner of Planning in Research Development for the Town of North Hempstead. When Mike Tully was elected into the State Senate I served up until the time of his passing as an associate counsel. My partner John Ward has vast experience first with a major litigation firm in New York City. He was then with Farrell, Fritz involved in municipal litigation and joined me in 2000 in the year 2000. David

Rosenberg my counsel has very similar experience with respect to litigation. David has background in New York State Senate where he served as part-time staff. He was with the Appellate Division Second Department. David also served for many years as a litigator with the it's now the Certilman Balin firm and he and I have worked together closely on many matters of significant litigation.

We have handled a number of very extensive litigation's involving I should call it governmental or semi-governmental agencies. We were retained by a group of property owners in Roslyn Heights several years ago to represent them in litigation with the New York State Department of Transportation. The issue there was the proposed installation and construction of the sound barrier wall along the LIE in Roslyn Heights. As you may know there was similar litigation involving the DOT with respect to a proposed sound barrier wall out in the Hauppauge area that was the {G. Free} litigation in which the property owner was not successful. However we studied the matter and through our research and efforts we have been able to obtain an injunction against the construction of the sound barrier wall which is a precedent setting litigation in New York State. You will also note that we have a number of very well known clients in the private field and we also serve as outside counsel to the Metropolitan Transportation Authority in New York where we handle various litigated matters for them involving property that they own.

So we have experience I think on both the private sector side and the public sector side and we have the knowledge and background of governmental agencies and semi-governmental or quasi-governmental agencies. We have we believe the staffing the knowledge expertise to well represent Suffolk County. We can offer you perhaps a fresh approach. We have not previously represented the County. David and I are of similar age. My partners are younger. Our associates are younger, so we think we can bring a young, energetic, competent and very professional representation to the County. To answer the question that you asked Mr. Robinson who I've also known for many years and respect greatly in terms of fees, again, I would not want to represent the County or say to the County that we could commit to you on a contingency basis. Frankly, I don't think it's the most appropriate way to have a law firm retain by a municipality with respect to a matter that will be so extensive as this and represent a very, very substantial impute of time and expertise.

What I would suggest and would be willing certainly to work with the County on is just as with the Metropolitan Transportation Authority we have a municipal rate which comes to the equivalent of 80% of our normal and customary billing rate and this is part of our negotiated retainer agreement with the MTA. So to give you some perceptive on that my normal billing rate and the same for David Rosenberg is \$325 per hour. My partner John Ward is at \$285 as a normal billing rate; Daniel Baker \$250 and associates range from 175 down to \$125 per hour. We have a part-time paralegal staff that we bill at a customary rate of 95 or \$85 per hour. So at 80% of those rates I think that would be from our perceptive and I would urge you to favorably consider it as a fair and appropriate billing rate for this kind of litigation which

would involve again, an extensive impute of time and expertise. I think that should cover most of the matters that you would initially have. Let me indicate just to answer Mr. Cooper one other question we don't believe we have any conflicts that would prevent us from representing the County. We are not representing the County at the present time. I discussed with David Rosenberg the fact that his wife Brenda is an employee of Suffolk County and I believe she has a position now over at the -- with the Commissioner of Labor, but David did not feel that that position would present any conflict of interest in representing the County in this matter. So I think that should cover most of the topics you asked about with Mr. Robinson and if there's anything else certainly be glad to answer.

CHAIRMAN COOPER:

Thank you, Michael. Any other questions from the committee. Thank you very much.

MR. SAHN:

Thank you very much.

CHAIRMAN COOPER:

And please don't go anywhere.

MR. SAHN:

Okay.

CHAIRMAN COOPER:

Thank you. Next speakers Richard Gertler and Harold Levy representing Thaler and Gertler.

MR. GERTLER:

May we stand at the lectern?

CHAIRMAN COOPER:

Sure whatever you wish.

MR. GERTLER:

Good morning. Richard Gertler representing Thaler and Gertler. I also have my partner Harold Levy here he may also be heard for part of the presentation. We're a small firm five attorneys, three paralegals. Our particular expertise is in the area of commercial litigation. Let me give you a little background of the members of our firm. Mr. Andrew Thaler is a bankruptcy trustee a panel trustee for over fifteen years with bankruptcy proceedings. He's entrusted as a fiduciary by the federal system. Besides that he is also the Dean to the Academy of Law of Nassau County. In fact, tonight he's being sworn in as a member of the Board of the Nassau County Bar Association. He's moving up the ranks in that organization. With regard to Mr. Levy he heads up our commercial litigation division. He's formally from the Mudd Rose firm and Breed, Abbott, Whitman firm. He's been handling litigation matters for a number of years, in particular most recently which is not reflected in the firm's resume he has been asked to chair a new

subcommittee of the New York State Bar Association the federal and commercial litigation section and --

LEGISLATOR FISHER:

Excuse me.

MR. GERTLER:

Yes.

LEGISLATOR FISHER:

Can you tell me your name?

MR. GERTLER:

I'm sorry. Richard Gertler.

LEGISLATOR FISHER:

Thank you. I'm sorry.

MR. GERTLER:

In addition as far as myself is concerned I've been involved with a number of litigation matters over the years and I also lecture for the State Bar Association. Recently, I lectured a few weeks ago concerning bankruptcies and foreclosures. I've also been asked -- I also lectured before the Nassau Bar Association and also recently as a sponsored program by Hofstra for CLE credit on various commercial issues. Just to bring your attention to our firm brochure very quickly. We normally don't have a standard brochure so we put something together quickly for the purpose of this forum. Essentially, we had annexed here a copy of our profile from Martindale-Hubbell in particular, Martindale-Hubbell says about our firm that this firm is also considered an expert in the field of commercial litigation earning Martindale-Hubbell's highest rating for their ability to prosecute complex and protracted matters before both federal and state courts. We find that is a very high consideration of our firm in the likes of things. We also attached to the firm profile a case that we had a few years ago which we think is somewhat similar to the matter that's presented by the Legislature. In particular it was a matter involving and in rem agreement in the City of New York and then certain tax ramifications we represented a client that happened to be in the context of bankruptcy case. After presenting our case we resolved a good portion of the case saving our client substantial funds and I annexed copy of the decision and letter that outlined what we did in that case and how we were able to successfully resolve it in favor of our client.

We also have a number of outstanding decisions; Appellate Court decisions, which I also annexed, to our profile in particular cases that have made decisions of the day. On more than one occasion we've been cited by the New York Law Journal cases that were decisions of the day or some decisions of notoriety. We've made law on numerous cases again our expertise is not necessarily particular with government issues. However we find that dealing with both bankruptcy matters and litigation matters that we have the where with all to handle any such matter especially, as handling bankruptcy cases

for trustees not only our partner, but other trustees. We've handled RICO cases. We've handled sale of summer camps, car washers. We've done very broad range of litigation matters. We feel that the issue at hand really is a breach of contract matter it's a matter of looking at the situation and trying to determine which is the best manner to approach this and come to some resolution in favor of the of Suffolk County.

CHAIRMAN COOPER:

Thank you. Mr. Levy did you want to add anything to that?

MR. LEVY:

Hello, yeah, I just -- can you hear me?

CHAIRMAN COOPER:

Yes.

MR. LEVY:

I'd just quickly add that when we got the kit on this matter one of the things that the letter said was included but was not was a settlement agreement. Without a full review of that settlement agreement it's going to be difficult for us or any of the other firms here to tell you exactly what's involved; what your potential for success is and how this matter should be litigated. We called up and requested it and found that it was although it reflected that it was part of the kit in the original letter that it was not part of the kit. It appears to us at this juncture without seeing that document that the bread and butter of your action going to be a contract dispute or enforcement of a contract and we believe that we are extremely well suited to handle that type of dispute. If the committee has any questions either of us would be happy to answer them.

CHAIRMAN COOPER:

Thank you very much. Any other questions? Thank you. And once again remain in the room. Finally, we have two representatives from Hills, Betts & Nash, Gregory O'Neill and William Clair.

MR. O'NEILL:

Mr. Chairman, Legislators, Sabatino --

MS. SCHMIDT:

Please speak closer to the mike.

MR. O'NEILL:

My name is Gregory O'Neill. With me is my partner William Clair. We've from the law firm of Hills, Betts and Nash. We are temporarily located at 99 Park Avenue. I say temporarily we expect to be down in the Liberty zone of Manhattan by the end of the year. The last time you dealt with us we were in the World Trade Center where we were for thirty years, but to move on we are a firm of about 20 attorneys with four or five paralegals. Our firm is -- has always been a modest medium size firm. We've been in existence for 104 years. The names on the door are departed. The cases my firm has

handled included the Titanic, the Lusitania. Obviously, those lawyers are no long with us so we'll take credit for them as part of our tradition.

LEGISLATOR GULDI:

There is one serious distinguish between those litigations and the Suffolk County's position vis a vis LIPA. On the Titanic they had a band and a third of the lifeboats that they needed.

MR. O'NEILL:

Yes, sir, Mr. Guldi. We have represented governments. We represented the United Kingdom in the Torre Canon case. We represented the RAF. We've represented Suffolk County. We represented the Republic of France. The Suffolk County Water Authority and the Chugach Native Alaskan Corporations during the Exxon Veldez litigation. I personally I'm a trial lawyer. I probably tried between 100 and 150 cases to verdict. I've had perhaps I know I've had three class actions go to trial to verdict successfully and I've made motions in class actions and got them dismissed. I've done plaintiff and defense work in class action.

Starting in 1986 my firm was appointed a special counsel to Suffolk County and Suffolk County Legislature and we brought a RICO action against the Long Island Lighting Company; that was a class action brought by Suffolk County as a ratepayer on behalf of all other ratepayers. I've managed to find about 100 boxes, which were not with our firm, or in the storage in the building and I still have them. Many of the issues I assume will be the same in terms of qualifying Suffolk as a ratepayer state and having the standing for all the others. That case as some of you know some of you know very well went to trial. There was a potential \$4.3 billion verdict for the class. It was set aside at the Second Circuit not because we didn't prove fraud, but rather that we didn't have all the elements of RICO. There ultimately was a settlement of \$400 million for ratepayers brought about by your efforts. Fees were returned to Suffolk I think they were in the amount of about seven million and the Second Circuit gave Suffolk County accolades and in returning the fees said whatever they paid these attorneys they were worth it. We were invited back after the RICO case in the RICO appeal there was then an action pending against the County brought by the Long Island Lighting Company, Hunter and Williams were their attorneys and it was for -- it was a contract action and the claim was that the County had failed to develop an evacuation plan. They sort \$1.2 billion in damages at the same time the County was defending the tax cert. case. There was I believe my recall is a recommendation from the firm that originally was defending the case that it would take about \$200 million to settle that the litigation could go on for five years and be expensive. The litigation did go on for five years with my firm, but it wasn't quite so expensive as predicted, but we were asked at that time by counsel for the Legislature and by the County Attorney Thomas Boyle to come up with an alternative strategy. And the strategy was to develop counter-claims out of the contract, which mirrored in many ways the logic of LILCO's case. At the end of the day there was a drop hands and everyone walked away and the County did not pay the 200 million or anything on that claim.

We've been back or in representing the County in other areas we were at the PSC and giving opinions as required, but our true expertise is in trial and in litigation. Myself I've had since I left the County after the contract case I've had two major class actions go to trial. A \$50 million case I was defendant defense verdict and most recently some of you may remember the Legionnaire's Disease case in New York harbor aboard a cruise ship. I defended the cruise ship successfully and we proved that the manufacturer of a filter widely sold throughout the United States was defective although marked public health approved and it was the true cause of the outbreak. That's before the Second Circuit the cruise line received punitive damages as a result. Again, I don't want to overstate anything that I've done because I'm known by too many people still sitting here, but the case as presented is as counsel has said it's a contract case and my firm has done contract cases for a century so I thank you.

The other questions, I have no conflicts. On contingency, I would have to say to you that the resolution of this case may not be money. It maybe other things. You may be if you were -- have been overcharged. There maybe other ways to right that wrong and I think an attorney taking a contingency has the appearance of creating a conflict for himself and his own client, but that's my thoughts. But be that as it may I don't think I have the resources right now to take this on a contingency. Our rates for partners are 200 to 250. Our rates for associates are 150 to 200. Our rates for paralegals are 100 and I think they're competitive. I thank you.

CHAIRMAN COOPER:

And do you offer municipal rates or are those the municipal rates?

MR. O'NEILL:

Those are our rates. We don't have municipal rates per se, but in the past I've given you a discount and I've also proceeded pro bono for you to the Second Circuit.

CHAIRMAN COOPER:

Would you consider that in this case?

MR. O'NEILL:

I'll consider it, no, sir.

CHAIRMAN COOPER:

It was worth asking. Sir, is there anything you would like to add?

MR. O'NEILL:

No, thank you.

CHAIRMAN COOPER:

Any other questions from the committee?

MR. SABATINO:

We just need a motion now to go into executive session.

LEGISLATOR GULDI:

Motion to go to executive session to consider litigation strategies and approaches approving the participation of the respective firms that have appeared here in the same order that they appeared one at a time. Legislative staff, Counsel to the Legislature, Budget Review, Presiding Officer's reps.

CHAIRMAN COOPER:

I'll second the motion. All those in favor? Opposed? Motion is approved. **(Vote: 4-0-0-1 Absent: Binder)**

LEGISLATOR GULDI:

And you guys thought you were going to get out of going to the executive session. Shall we authorize amend that motion to permit closing the record by identifying to the stenographer the time at which we conclude the executive session rather than reconvene in public session since we have no other business? Is the amendment accepted at the second?

CHAIRMAN COOPER:

Second. All those in favor? Opposed? Amendment is approved. **(Vote: 4-0-0-1 Absent: Binder)**.

EXECUTIVE SESSION BEGAN AT 11:55 A.M. AND END AT 12:30 P.M.

(Having no further business the Ways and Means Committee was adjourned at 12:30 P.M.)

{ } denotes spelled phonetically.