

**ECONOMIC DEVELOPMENT & ENERGY COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE**

Minutes

A regular meeting of the Economic Development & Energy Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Wednesday, **December 10, 2003.**

MEMBERS PRESENT:

Legislator Jon Cooper - Chairman
Legislator Angie Carpenter - Vice-Chair
Legislator Allan Binder
Legislator Brian Foley
Legislator Lynne Nowick

ALSO IN ATTENDANCE:

Paul Sabatino II - Counsel to the Legislature
Joe Schroeder - BRO
Joe Muncey - BRO
Mitch Pally - Long Island Association
Edgard Laborde - Aide to Chairman Cooper
Ed Hogan - Aide to Legislator Nowick
All other interested parties

MINUTES TAKEN BY:

Donna Catalano - Court Stenographer

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(*THE MEETING WAS CALLED TO ORDER AT 11:45 A.M.*)

CHAIRMAN COOPER:

Good morning. I'd like to welcome everyone to the December 10th meeting of the Economic Development and Energy Committee. Legislator Foley, if you could lead us in the Pledge, please.

SALUTATION

CHAIRMAN COOPER:

Thank you. I think we're going to be spending a bit of time on the

issue of LIPA's proposed fuel surcharge. So I think instead of starting with that issue, I'd like to move to the agenda. Before we do that, for the public portion, I'd like to invite up Mitch Pally from the Long Island Association who would like to speak on Resolution 2043. Good morning, Mitch.

MR. PALLY:

Good morning. Thank you, Mr. Chairman. Thank you, Legislator Foley, Legislator Nowick for this opportunity. I'm speaking today not only on behalf of the Long Island Association, but also on behalf of Michael Hollander, President of the Long Island Convention and Visitors Bureau whose mother is ill and had to fly back down to Florida this morning. So Michael apologizes for not being here himself, but he asked me to express his support for the resolution. And I'm speaking on behalf of both organizations with regard to that.

We're here today to speak on behalf of Legislative Resolution 2043, which would authorize a memorandum of understanding between Suffolk County and the New York State Department of Transportation in relation to the construction of a rest -- what we call a Visitor Information Center at the rest area between Exits 51 and 52 on the Long Island Expressway. Tourism is Long Island's largest employer, and, in fact, it's the only private sector portion of the economy which has gained jobs in the last 12 months.

Since 1996 when the State Legislature passed the necessary state legislation, many of us have been working on the development of a modern Visitor Information Center on Long Island at the current rest area between exits 51 and 52 eastbound on the Long Island Expressway. We want to provide Long Island, Long Islanders and our visitors with a modern clean rest area as is done in almost every other portion of the State of New York. For the past three months, the Long Island Association, Long Island Convention and Visitors Bureau, Suffolk County and the State Department of Transportation have been working to complete a detailed analysis of the actual operational nature of such a facility.

In addition, we have been working with Dan Brown the President of the Concerned Citizen Group in the Dix Hills area to try to alleviate both the short and long term issues relating to the development of the new center. The resolution before you provides for a number of issues. But the main focus is to allow for a trade. Number one, a new home for the Suffolk County Highway Patrol, which as you know, is being -- I won't use the word evicted -- but whose lease is being terminated by Touro Law School and needs a new home.

Transportation would include within the Visitor Information Center and pay for all the capital costs involved in locating the headquarters of Highway Patrol in the Visitor Information Center. This would you allow the Highway Patrol to find a new home at no capital cost to the County, would increase security at the center since Highway Patrol personnel would always in the building, which meets one of the concerns of the local community and would allow the Highway Patrol to be located on a roadway which they current are responsibility for, namely, the Long Island Expressway.

To do this, we had to receive a waiver from the Federal Highway Administration to allow the administrative offices of the Highway Patrol to be located on an interstate highway. We have received such a waiver. In a joint request by the County and the state, the Federal Highway Administration in a letter from its regional administrator has indicated to the County and to the state that it would allow the Highway Patrol's Administrative Offices to be located in the center built along the egress to the Long Island Expressway.

Second, in return, for the state doing that, Suffolk County would allow DOT to connect the sewage line from the center to the Pilgrim State plant. This would reduce the cost of the overall project since a new sewage treatment plant would not have to be built on the area. This would also alleviate one of the concerns of the community, which was the building of a new sewage treatment plant to facilitate the operation of that facility.

In addition, Suffolk County would waive certain operational fees with relation to the sewer connection which would reduce the operating costs of the facility to the Department of Transportation. In addition, the resolution the MOU, which goes with the resolution, provides that the Department of Transportation would make a number of short term improvements to the property, which have been requested by the LIA, the LICVB and the local community, including new fencing, new lighting, no new parking signs along the ingress or egress to the facility, which have already been posted by DOT, the use of variable message signs to indicate to truckers limitations on idling time, which have already been done by DOT and new temporary bathrooms, which would be cleaner and provide better services to our residents. As I indicated, some of the short term improvements have already been made by the State Department of Transportation and the others will be made in the spring -- spring time.

In addition, we are still working with our Congressional representatives; Congressman Israel, Senator Schumer and Senator Clinton and the local community to alleviate other issues relating to the truck use of the property. All of these issues are not within the purview of the State Department of Transportation or Suffolk County, but are relating to federal rules and federal laws, and we are still working with them because they require Congressional action to be

taken. We are hopeful that such Congressional action can be taken to allow us to impose some restrictions on the use of the property by trucks, but I cannot tell you that is going to happen at the moment, since that requires Congressional actions, which has not yet taken place.

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This resolution, we believe, is of great benefit to Suffolk County, to the State Department of Transportation, to our tourism industry, to the residents of the community, and to all the residents of Suffolk County. In fact, Dan Brown of the local community, who I met with yesterday, would have been here today, except for the fact that his wife had an operation yesterday, and he indicated to me his strong support for the resolution and urged its passage. Both the LIA and the LICVB urge your meet passage of this resolution, because we believe it's in the best interests of everyone involved. I thank you very much for giving me the opportunity, and I'd be more than happy to answer any questions anybody has on the issues.

CHAIRMAN COOPER:

Thank you very much, Mitch. Are there any questions?

LEG. BINDER:

Mitch, how are you doing?

MR. PALLY:

How are you?

LEG. BINDER:

Good. I read through the resolution. As you know, you and I spoke and Mike Hollander and we've had some discussions on this. One of the things I am concerned about and somewhat upset about is that I would have expected the County Executive and/or his people to have gotten in contact with me before sending it over having some discussions -- I mean, it's wonderful having discussions with you guys, always love to have those discussions, but the County Executive spent literally no time informing the Legislator from the district, myself, on an issue that's important to my district, about this, they didn't inform, they've had no discussions with me, they haven't reached out to me, they have had no interest in working with me. So while I think that our discussions I was interested in going forward, I'm a lot less interested today having not had one discussion with anyone in the County Exec's Office with -- about this legislation.

I am also disappointed that there are no references to the trucks. Though it is not in the purview, it would seem to me that there would be caveats that -- that -- about -- and I even mentioned this, that my concern about going forward unless the truck issue is addressed, there

should be caveats that say that there's a question about going forward, unless there's severe restrictions, either on diesel particulate emissions or getting them off the site itself. There are technologies as we've spoken about to reduce or eliminate those emissions. But there's nothing in this document from this legislation that says to me that in -- in the event that nothing's done, it seems to me they're going to go forward anyway.

There's also another question I have on the resolution. In the resolution, it has a specific provision in the backup or in the attached memorandum for truck weigh stations. That to me is absolutely unacceptable. And I don't know if Brown had noticed that, and I haven't gotten to him and had discussion, but a truck weigh station precludes moving the trucks off. So how do we talk about eliminating the trucks, which is the biggest question in the area?

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And right in the memorandum itself, there's a discussion about the possibility, or it seems to me the probability, of a truck weigh station right at the site. So maybe you can --

MR. PALLY:

Sure. I will try to deal with them in the order, but if I miss the order, I apologize. Number one, obviously, as you know, I don't speak for the County Executive's Office. They do what they believe is appropriate to do. As I think you are aware, we have tried, myself and Michael Hollander, have tried to keep you up-to-date at all times in relation to the legislation and in relation to the development of the center and all the issues relating to the center. And we will continue to do that. That's why I continue my conversations with Mr. Brown at length, we met again yesterday, because I want to make sure that there are no surprises to anyone in relation to what is attempting to be done there.

The second issue -- let me raise the truck issue at the moment. The truck issue is an issue of federal law. And unfortunately, or fortunately, and I've had this discussion with Congressman Israel, I've had this discussion with Dan Brown, I've the discussion with the regional director. The Regional Director of DOT has assured me that whatever federal law allows him to do, he will do in relation to the operation of the facility. Unfortunately, depending on your point of view, unfortunately or fortunately, depending on your point of view, DOT or the County cannot by itself at the moment prohibit any truck that wants to stop there from stopping there, because it is on a interstate highway and because we have no other facility along the Expressway providing the same services. So we are precluded from federal law from doing that.

We have told Congressman Israel and I have told Congressman Israel on a number of occasions, whatever he believes Congress wants to do -- Congress could pass a law saying no trucks can stop there. There they can do that. Since it's an interstate highway, Congress can do whatever Congress wants to do. If they do that -- and I told him we would support such legislation and so will the CBB and I'm sure others will do that also.

The problem is going to be having to then build a same facility for the truck population some place else, because the issues is not just prohibiting them from using that facility, it's providing them with an alternative some place else. We have talked about the issue of perhaps building it on the property that the state reserved at Pilgrim State, which they did not sell. The state reserved certain property there for a multi model facility for rail freight issues.

There's a possibility that some of that money -- some of that could be used for a truck facility, since the trucks would all ready have to go there, assuming we have ever build the multi model facility. That's cost is estimated to be between the area of 35 to \$50 million because it's not just the building of the center, it's the access road that has to be built off of Sagtikos Parkway to do that. And to do that, you have to raise the limits on certain bridges, because you don't want the trucks, if they were going to go to Pilgrim, to go on Commack Road or the -- you them to stay on the Expressway onto Sagtikos right

in.

To do that, you have to raise certain of the bridges to do that. Obviously that -- because that parkway was never designed for that purpose. It can be made for that purpose, but it was obviously never designed for that purpose. Congressman Israel has put in to Congress a request for that appropriation. That has not happened yet. Part of the reason that has not happened is because the federal transportation legislation has not yet occurred, because they are still battling over how much it's going to be and how we're going to pay for it.

So all of those issues are, we believe, separate and apart. We have not had a problem in relation to any restrictions that we'll be able to place on the facility in relation to the use of trucks as long as they are legal. And the legality of those are going to be based upon what Congress or the Federal Highway Administration decides to do. This -- the center itself will be built -- we are very hopeful -- no matter what. The funds have been approached by the State Department of Transportation. They are in its five year plan to build the center. Our hope is that we can build it in a way that will facilitate a variety of other issues one issue obviously being

providing the headquarters of the Suffolk County Highway Patrol at the facility.

We think that helps the Highway Patrol, it helps the County, because the County will now not have to go out and buy or lease or build its own facility for the Highway Patrol, it helps the local community because, therefore, it guarantees a police presence at the center all the time, since the Highway Patrol is there all the time. It allows us, therefore, to provide for the sewer connection for the facility, which alleviates the necessity of building a sewage treatment plant at the facility, because by being able to tie it into Pilgrim, it alleviates that issue also.

So we think in the whole, while the resolution does not solve all the issues relating to the center, and I understand that, and some of those issue unfortunately are not in my purview to solve, they're not in unfortunately anybody in this room to solve including the people from State DOT, they're in Washington to decide what Washington wants to do. We think this resolution at this time allows the Department of Transportation and Suffolk County to move forward in moving the project in a manner in which it can help both parties. The design of the building and all of those things are related to whether the Highway Patrol is going to go in the building or not. The Highway Patrol goes in the building, the design of the building and how it has to be laid out is obviously different than if the Highway Patrol does not go in the building, because it has to have its entrance.

The Highway Patrol has certain needs, which we've talked to the Chief about in relation to square footage, in relation to what it needs in a building. If the county does not wants the Highway Patrol to go in the building, then obviously the Department of Transportation will go back and resigned the building without the Highway Patrol, which is the way the building was designed in the first place. Our hope is we think putting the Highway Patrol in the building is beneficial to everybody, and that's the one issue and the sewage connection that

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this resolution is concerned about.

The other issues will continue to be discussed, will continue to be negotiated and will continue to be hopefully some issues decided by Congressman Israel, Senator Schumer, Senator Clinton and our representatives in Washington, because they have to tell us -- not us -- they have to tell the State Department of Transportation what it can and cannot do.

LEG. BINDER:

Does it take federal law to provide for some of the technology I

talked about?

MR. PALLY:

Yes. Yes.

LEG. BINDER:

In other words, for them to do any kinds of --

MR. PALLY:

Electric hook up.

LEG. BINDER:

They -- they're not allowed to do electric hook up otherwise?

MR. PALLY:

They are not. That was one of the issues we have requested the federal government to allow us to do, that in case we cannot prohibit the trucks -- if Congress doesn't want it --

LEG. BINDER:

Not only electric, there's also the system that takes out the --

MR. PALLY:

Particulates, right. That whole system. We have looked at it, we think it's a great idea. Department of Transportation is more than happy to built it into the facility if Washington allows us to do so. Unfortunately at the moment, we need a waiver and/or change in state law to allow that to happen. That has not happened yet.

LEG. BINDER:

State law.

MR. PALLY:

Federal law. I'm sorry, federal law. So we're looking at this from two different perspectives. Number one, if Congress passes a law saying the trucks can't stop there, then the trucks won't stop there. That's issue one. If Congress doesn't pass that law to say the trucks can't stop there, but we're hopeful then it will at least allow us to build the technology into -- not necessarily the building, but the parking area around the building, to allow for the electric hook ups and the air pollution control measures so that the truck will be alleviated. Is it as good as not having the trucks parked there. I think you and I both agree the answer is no. Is it better then it is now? The answer to that question would obviously be yes.

Now, as you know, DOT has already put out their variable message signs indicating to the truck community that they are not allowed to idle

past five minutes, that being federal and state law. The Suffolk County Highway Patrol Chief has indicated they will enforce whatever regulations there are as long as the truckers were given notice that the regulations are there, which is why the new parking signs -- no parking signs on the ingress and egress went up and why the variable message sign is there, so any trucker going into it will know that that rule is going to be enforced.

LEG. BINDER:

My question -- I mean, my concern on that is how long it took them to talk about enforcing. This is literally years to get them to enforce, but that's another question.

MR. PALLY:

Unfortunately, there's an amalgam of state and federal laws on the matter, many of which conflict. And that's been the issue, but I think we've at least gotten to the point where they are -- they are going to enforce what the department has requested they do enforce as long as the notice was given to the truckers, and that notice is being given now by State DOT both with the parking signs and the variable message signs.

LEG. BINDER:

Talk about truck weigh station.

MR. PALLY:

Well, the weigh is an issue that is not my issue.

LEG. BINDER:

It's my issue.

MR. PALLY:

The weigh station is a police issue. I understand that. The weigh station is a police issue, okay? Obviously, our hope would be, you know, LIA and CVB, that the facility not be used as a truck inspection facility, okay? That's not my decision to make obviously. That's a decision to be made by the Suffolk County Highway Patrol. And I assume this body could inform the Suffolk County Highway Patrol or talk -- work with the Highway Patrol about what the Highway Patrol can and cannot do there. And the State DOT, the State DOT is restricted by federal law in relation to be required to have truck weigh stations, okay?

LEG. BINDER:

What are they doing now?

MR. PALLY:

They use that.

LEG. BINDER:

No. There are other places. There's nothing going on there.

MR. PALLY:

No. No. They use that. If I'm correct, they use that now on an

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infrequent basis as -- there are certain times when they use that facility as a weigh station or a truck inspection station. I'm not sure it's a weigh station, a truck inspection station. They also use the new truck inspection station that's -- the rest area that was alleviated -- build into that at 63, I think it is -- 67, 67. Out there. Out there. They are also planning, my understanding is, to build such a station in Nassau County. So that Nassau County --

LEG. BINDER:

What does Nassau County do? Nassau has the same restrictions we do. What does Nassau County do?

MR. PALLY:

Now?

LEG. BINDER:

Do they do any inspections?

MR. PALLY:

Yes. They find a place and they do it.

LEG. BINDER:

They find a place.

MR. PALLY:

They find a place now and they do them. They do them along -- many times they will pull the trucks over, the Nassau County Highway Patrol will pull the trucks over and use whatever facility they have available to do it. But they do do -- they do alleviate -- try to have truck inspections.

LEG. BINDER:

See, I wouldn't mind truck inspections back towards 110, because there's commercial buildings and there's -- there's no residential. But my problem is -- here's my problem. And this is unfortunate that the bill gets to the -- to the committee here. I haven't had a discussion -- we haven't had follow up discussions about the memorandum that's in there. And I haven't had any, literally any, discussions with the County Executive or his office and -- on their interest. And so we're sitting here today, and I have a very big concern that it specifically states a weigh station in there. So it would be somewhat --

MR. PALLY:

Well, the weigh station is only there because obviously the weigh station is being used now there.

LEG. BINDER:

But if someone had the conversation with me from the County Exec's Office, I would say in the memorandum of understanding I'd like to say that there will not be a weigh station.

MR. PALLY:

But they can't do that.

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LEG. BINDER:

That they'll have it at -- oh, sure they can, because they can have it at another place.

MR. PALLY:

No. They are not allowed to do that. That's the point. The point is that is a state facility, okay? The County saying the County is not going to use it as a weight station -- whatever the decision, the County can make any decision they want to make.

LEG. BINDER:

Wait a minute. Wait a minute. Wait a minute. This is a memorandum of understanding between two parties, the other party is DOT, right?

MR. PALLY:

Right. But DOT is not allowed to do that at the moment.

LEG. BINDER:

They can't say that we will -- part of our understanding as the Department of Transportation, we will do a weigh station at 110 or somewhere else, but we won't be doing it there, because it's residential. They can have that understanding, and they haven't chosen to have that understanding. Don't say that they can't do it, they can. They can understand, we can understand, we can have an agreement.

MR. PALLY:

But then they're left with no other place to do it at the moment.

LEG. BINDER:

There are. As I just told you, there are other places to do it. I respectfully disagree. There are other places to have the weigh station; 67, 110, I can give you other places.

MR. PALLY:

But there is no --

LEG. BINDER:

Besides that -- besides that, my concern is, as you said, even if we can't get any of this truck questions taken care of, we want to go forward anyway, and that was what you just said on the record, you know, we plan to, we want to, we're looking forward to it. I have to tell you I have a real problem with that. I have a problem with going forward -- I am telling you, around that area from people I've spoken to, a number of people who live there, I'm talking -- now maybe it's coincidental that there are a number of pediatric leukemia cases around there, maybe it's coincidental that there are problems around there, and maybe it's just coincidental that the EPA considers the diesel particulate that is being constantly spewed out of there from trucks as we're trying to control, but still it's carcinogen. And it's right next to homes so people in their homes and children are breathing it in numbers and in amounts that are unacceptable.

I have a problem with saying that we're going to just go forward. We're just going to go forward even if we can't get any of this. I would rather the memorandum of understanding say that we'll go forward

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at the point that we've taken care of -- that doesn't mean that we have to spend \$50 million to do the Sagtikos bypass for the trucks. I think the community, myself, I think we can compromise and try to work out these other technological ways --

MR. PALLY:

And that is exactly what we're trying to do.

LEG. BINDER:

Well, but trying to do is one thing. If we start a ball rolling here where we're -- where -- without the understanding that if they can't get it, they're going to do it anyway. They're going to do a truck weigh station, that they're going to have trucks piled up and driving there and parking there, and so we'll try to -- so then the community has to rely on a Highway Department that at least to date hasn't done what they said over the years that I've been back and forth with them on asking them to do enforcement on. And now I'm supposed to rely on that going into the future --

MR. PALLY:

No. You don't have to rely on them, you rely on Congressman Israel.

LEG. BINDER:

No. I don't rely and that either. He's a minority Congressman in a

Congress of 435 members. And whether he can get this or not is questionable.

MR. PALLY:

But what I'm saying to you is if Congressman Israel believes that that area should not have a truck station --

LEG. BINDER:

Or an alternative.

MR. PALLY:

Or weigh station.

LEG. BINDER:

No, or have an alternative.

MR. PALLY:

Or any other alternative, then that's what the federal government should tell us to do.

LEG. BINDER:

But if they don't --

MR. PALLY:

If they don't --

LEG. BINDER:

Let me finish. Here's the deal. Congressman Israel is a minority Congressman in a 435 member House of Representatives. Maybe he can, maybe can't. He just voted against Medicare. Maybe he could have before, maybe he can't know. Don't know. He had friends on the Republican side, he doesn't now. Maybe he'll find ways to get it. I

don't know. But this is just reality. Maybe he can get it. But you are asking a community who's breathing in diesel particulate now to rely on the Congress to possibly get this thing to happen, and they are health is at risk. And this memorandum doesn't take that into account in any way.

MR. PALLY:

Yes, it does. In fact, it is -- they are much better off -- this community is much better off passing this resolution than not passing the resolution in three ways. Number one, passing the resolution allows the Highway Patrol to be located in the building. By locating the Highway Patrol in the building, you always have a police presence in the building and in the area. That will, number one, allow for police people to be there.

LEG. BINDER:

That's something we agree on.

MR. PALLY:

But I'm saying, without passing the resolution, you can't do that, okay?

LEG. BINDER:

Well, we can pass a different resolution at another time with provisions that take care of some of the concerns.

MR. PALLY:

The problem is is that time is of the essence at the moment, because we -- because number one, the Highway Patrol is being evicted and number two, we have to move this project along for the Highway Patrol and for the Visitors Center to be constructed. So number one --

LEG. BINDER:

Are they going to be evicted before the construction?

MR. PALLY:

Yes. They're always going to have to find some short term place to do that, but --

LEG. BINDER:

We can do that anyway with another resolution.

MR. PALLY:

What I'm saying is they are better off because it allows the Highway Patrol to be there. The Highway Patrol being there provides additional security in the area and provides police presence to enforce whatever regulations they are allowed to enforce, because there will always be police officers there, unlike now, when police officers are not there all the time, because it's not their job to be there all the time.

LEG. BINDER:

We agree.

MR. PALLY:

Number two, it will allow the state to design and build a facility

with the sewer connection so that a sewage treatment planted plant does not have to be built there. A sewage treatment plant -- without the sewage treatment plant, it allows for the area to be smaller, because you don't need an area for the sewage treatment plant. Number

two, whatever perceptions there are in the community about what the sewage treatment plant will do, whatever those are, smells, whatever, those are more perceptions than reality, but whatever those are will be alleviated, because there will be no sewage treatment plant there. The connection will be made to Pilgrim State Facility.

And number three, it puts everyone on record as saying in the resolution that the truck issue is still up in the air, we understand that, okay, and we have asked and are continuing to ask and continuing work with Congressman Israel, Senator Schumer's Office, Senator Clinton and the Federal Highway Administration in alleviating the truck issue. The problem is, of course, is that this is an interstate highway, and we are precluded in many cases from taking some actions that either the state or the County might want to do by itself. So that we have to allow for the federal government, the state government and the County government to try to work out a variety of these issues. This is not a state issue, this is not an LIA's, unfortunately. This is a Federal Highway Administration and federal government issue.

We are trying to alleviate as many of those as possible. We believe that the passage of this resolution will allow the project to move forward with these improvements, because without the passage of the resolution, it can't move forward with these improvements and indicate to the federal government that the project is moving forward in a way that we also want to alleviate the truck issues. We think that's the signal that Suffolk County and the State Department of Transportation should send to the federal government. Passage of this resolution at this time in this form does that in our opinion.

LEG. BINDER:

I'll let you know that I have -- I have problems with it, though, I wanted to be -- as we spoke, I wanted to be for it.

MR. PALLY:

I understand. As I said, we will continue to do whatever -- you know, what we think in keeping everybody apprised as to what we hear from anybody in relation to it. Thank you.

MR. SABATINO:

Mr. Chairman, just a technical point on the debate, because this is an important issue. The title of the resolution is a little bit misleading. It's not actually authorizing an agreement, it's authorizing the County Executive to take preliminary steps to work with State DOT. The actual memorandum of understanding, whatever it turns out to be, is going to have to come back for a subsequent vote. So I just want to make sure -- listening to the debate, I think there might have been a sense that this resolution approves the final plan and it's a done deal. So if that helps in terms of the debate -- in fact, the title of the bill should just be changed on the record to

make it accurate.

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MR. PALLY:

And that was one of the -- and that was one of the issues we had with the County Attorney, indicating to everyone that that's what had to happen, and we said fine. But at least it sends -- this allows the process to move forward. It does not finish the process. It allows the process to move forward. I thank you for the assistance.

MR. SABATINO:

When we get to the vote, we'll just change the title on the record so it's accurate, otherwise people might have the impression of something different.

CHAIRMAN COOPER:

Legislator Foley, you have a question?

LEG. FOLEY:

Question.

MR. PALLY:

Yes, sir.

LEG. FOLEY:

Thank you, Mitch for that colloquy with -- I won't call it a debate, but a colloquy with Legislator Binder. You look at the first resolve clause, it says quite clearly that this resolution does not commit the County to commence or approve an action, that's the first point I would raise. But secondly, and I would ask of Counsel, along the lines that since this is not a memorandum of understanding that we're approving today, should one of the -- the last resolve clause mentions the fact that the appropriations of funds or commitment of resources by County of Suffolk, so forth and so on, are subject to the approval of the County Legislature? Should also in that last resolve clause, Counsel, should state clearly that -- that a memorandum of understanding is subject to future approval by the County Legislature? I mean, it speaks of appropriation of funds as well as commitment of resources. Maybe that's implied, but do we want to say it in a more, you know, to say it in a more direct manner to include the verbiage after commitment resources, including but not limited to a memorandum of understanding?

MR. SABATINO:

Well, no. It actually states in the next -- the next -- the next

LEG. FOLEY:

I'm looking at the last resolve clause.

MR. SABATINO:

Right. In the next part of the clause it says, and also the approval of -- that's what I was just driving at, also the approval of the agreement is subject to Legislative approval. That's why I wanted to -- again, the title make it sound like you are approving it, but you are not. So both the appropriation of money or the commitment of resources and your vote on a memorandum would come up later.

LEG. FOLEY:

Thank you.

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MR. PALLY:

Right. All we're trying to do at the moment is to move the process along to allow the design and engineering work to be done subject -- with the caveat that the Highway Patrol would be in the building and that the sewer connection would allow to be built. All of the other issues -- and in fact, other issues relating to that will be subject to the final memorandum of understanding whenever that is, and that will come back to the County Legislature for its approval or not approval as they see fit, yes.

LEG. FOLEY:

Just state on the record, Mr. Chairman, that certainly Mr. Pally has put a lot of work into this subject to last debate we had about a year ago on this. I just wanted to -- however this may -- whatever the result is of today's committee meeting, I just want to state on the record and commend you for trying, to use another transportation term, bridge all the competing interests that have come to play with the project.

MR. PALLY:

I appreciate it. Well, you know, we continue to try to do it. We will continue to try to do it. We're hopeful that the County Legislature and this committee and next week will allow the process to move forward. The environmental work that is going to be is dependant upon the passage of resolution, then we can -- then there will be a lengthy discussion relating to the environmental work, the design of building and all of those other facets. But this at least allow that process to move forward with an understanding that the Highway Patrol and the sewage issues by themselves will to some degree be -- at least a commitment is made to consider that happening. All of the other things -- in fact, there is variety of other issues; the Convention and Visitors Bureau location, you know, that still have to be resolved. And all of those will come back to the County Legislature for its approval when those are ready to be done. But this -- this piece will allow the process at least to move forward to the next

step. That's why -- that's why it's here.

LEG. FOLEY:
Thank you.

MR. PALLY:
You're welcome.

CHAIRMAN COOPER:
Mitch, do you know whether -- you had mentioned that Dan Brown, the head of the local civic association, was strongly in support of this resolution. Do you know whether he considered some of concerns that were expressed by --

MR. PALLY:
He and I have had -- we have had numerous discussions relating to all of these issues, including the issues that Legislator Binder brought up. And he has been -- in fact, he has part of the some of those discussion with DOT, with myself, with Mr. Hollander and with others and with Congressman Israel's Office and with Supervisor Petrone. We meet -- in fact, the two of us are kind of like a traveling road show,

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we go around and meet with everybody who we have to meet with. And he understands. I don't know want to speak for him. I don't want to put any words into his mouth.

The meeting I had with him yesterday, and he would have been here himself today other than for that, he indicated to me that he supports the resolution because he understands that this takes care of two issues and two issues only, being the Highway Patrol and the sewage treatment plant, both of which he strongly supports and that all of the other issues are still being resolved and are still subject to discussion, to work by Congress, to an advanced memorandum of understanding between the parties to approval by the County Legislature.

He understands all of that, and he indicated to me that he supports this resolution in this form at this time because it will take at least those two issues, which he strongly wanted to have happen and say this is the -- this is the goal that everybody has; number one, putting the Highway Patrol in the building, and number two, allowing -- allowing the building to be tied into the sewage treatment planted at Pilgrim so that a separate sewage treatment plant would not have to be built. The other issues I'm going to -- you know, we still have discussions, we have goals that we would like to accomplish, but we understand that those other discussions will continue to go forward.

CHAIRMAN COOPER:

Thank you, Mitch.

LEG. CARPENTER:

If I could, Mr. Chairman. Mitch, you know I've been very, very supportive of this concept for probably the last eight years when we first started on this with then Legislator Blydenburgh. I'm listening to what Legislator Binder says, and certainly I think all of us can relate to that, that our first concern has to be to the people in our district and who we represent. Is there anyway of reconstructing this so that the resolution basically addresses those two issues only that you say you have a need to move forward with quickly, and that is a commitment or a demonstration on the part of the County that there isn't a problem with hooking up to the sewer district and secondly, that you want to partner and have the Highway Patrol in the building and all of the other issues that you say are still on the table with the community that Legislator Binder articulated will be in discussion and hopefully come up with a positive resolution? But at least for those two things that you say you need to show that we're committed to as a county; Highway Patrol and sewer that that would be only what is addressed in the resolution, perhaps we can do that and have a CN.

MR. PALLY:

I would ask Mr. Sabatino, because the resolution itself, the three pages of the resolution, only discusses the Highway Patrol and the sewer connection. It does not discuss any of the other issues. The other issues are discussed in the summary, which is connected to the memorandum because the County and state are working toward this in relation to the allocation of costs and other things. Eliminating the second three pages is to me -- but I don't want to speak for the Counsel, you know, whatever the Counsel says, all I want is the

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passage of the first three pages. And the first three pages only discuss -- they discuss three things. It discussed, number one, the Highway Patrol; number two, the sewer connection; and number three, it says in a number of places that any further memorandum of understanding is subject to the approval of the County Legislature. There's nothing in the first three pages that discuss any of the others issues unless I missed it.

LEG. BINDER:

The whereas clause where it says the memorandum of understanding will incorporate terms of the agreement between the County of Suffolk and New York State is outlined in the attached term summary sheet.

MR. PALLY:

Right.

LEG. BINDER:

Well, the problem is with that whereas clause, we're agreeing to --

MR. PALLY:

If the Counsel says we can eliminate the attached sheet, then you can eliminate the paragraph, but I don't want to speak for the Counsel. It's there for -- I mean, the County Attorney's Office obviously drafted this, okay, with the understanding -- because what they are trying to do is to work with -- between the County and the state as to who is going to do what and who is going pay for what. This is not -- the last three pages is not the final memorandum of understanding, okay? And it's still subject to finality between the parties and then presenting it back to the County Legislature. So the first three -- the last three pages are strictly an indication of where we are today in the discussions between the parties.

They are not the final agreement, because as you and I both indicated, Legislator Binder, some of these discussions are still -- could still be impacted by whatever Congress decides to do or not do or the parties decide to do. So as I said, my point is that the first three pages is the only point that is necessary to move the process forward by this County Legislature at this time.

The other pieces are points of discussion, and I think the County Attorney -- I don't want to speak for the County Attorney -- but I think he drafted them in in this way because DOT has already accepted them, and he wanted to make sure that the County gave a symbol -- signal they were already accepting the distribution of the costs, because that affects, obviously, the location of the Highway Patrol, who's going pay for the bills, you know, those types of things. Because as you can see from the memorandum, that's the main focus of the last three pages.

LEG. BINDER:

Right. So here's the problem. Without the memorandum you are not going to get the specific question of allocation of costs, because that's not in the resolution itself.

MR. PALLY:

Right. Which is why it's there.

LEG. BINDER:

Right. So here's the point. If someone in the County Executive's Office had bothered to come and actually sit down and talk to me about this before they put it in, we could have attached a summary of essential terms that was -- to me, the other things are not essential.

MR. PALLY:

I understand that. Most of the things are just administrative issues.

LEG. BINDER:

But the problem is -- the problem is that in a sense what you are asking the Legislator from the area to do is give you an open ability to -- in a sense, we're saying we want to go forward and maybe the trucks can't be resolved, so it will be too bad, and I guess they'll have to breathe it in anyway. If we were focused on the two things, if they -- as I said, if they came and actually sat down and talked to me about it, and we wanted just those essential terms in the memorandum of understanding, as Legislator Carpenter was talking about, only referred to those things which are actually in the resolution, not weigh stations and all these other things, we could have been -- but once you put this whereas, you have to include everything that's attached, so that's number one problem. And maybe there's a CN that could be coming on Tuesday that can make changes to this that I might be comfortable with, but it would be nice to get a call. Number two, I would also suggest that the whereas that says that the memorandum of understanding and any commitment has to be subject to the approval, I don't want it as a whereas, that's a resolve. That should be resolved that --

MR. PALLY:

I think it is the last resolve.

LEG. BINDER:

I understand, but --

MR. PALLY:

Is it not? The last resolve resolves it.

LEG. BINDER:

Okay. So leave it as a resolve, so whereas -- they're repeating themselves.

MR. PALLY:

It's already in the -- which is our point, that we understand that if they make the --

LEG. BINDER:

So if they'd like to come back to me before Tuesday -- what I'm going to do, and I'll ask Counsel, maybe he can make it a parliamentary inquiry, if I could -- if it was under our rules to -- assuming and understanding that we're not going to have the same rules maybe in January, but if I was to table this to a January meeting of whatever the subsequent committee is, does that waive the rule of termination of the legislation at the end of year, and then -- so we would know two things, number one, that it wouldn't be terminated, number two,

that while it's alive, there still is possibility for a CN on Tuesday.

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All those things can happen, is that -- is that a good analysis?

MR. SABATINO:

Yes. We've done it in the past. In the odd numbered year, the odd numbered rule can be waived by tabling a bill until to a date certain. So you can make that particular motion on the day of the vote. One other technical point just to help you out, because listening to the dialog, I think that maybe there's understatement and overstatement at the same time.

LEG. BINDER:

We're in the Legislature, we expect that.

MR. SABATINO:

Well, no. In terms of the resolution --

LEG. BINDER:

It was joke. Sorry, I was just joking. You're not in a joking mood today.

MR. SABATINO:

I'm in pain today. No. Listening to Mr. Pally's comments, I think he thinks that he is locking in the sewers and --

MR. PALLY:

No. All I'm Doing is -- all this does is allow the process to move forward with the -- with the --

MR. SABATINO:

But you make the statement -- no. This might be helpful to you, you may have the wrong resolution. That's my only point. Aside from Legislator Binder's concerns, which I do believe, as I stated before, are addressed in the resolve clause. I mean, I think his concerns are addressed because that resolve clause does deal with the subject too, that language. But when I first looked at the resolution, I was wondering why the memorandum of understanding was attached. It looked initially as though -- again, the title is saying we're authorizing an agreement.

I thought the point of the resolution was to get that agreement in place, but it clearly is not, because the way it's worded is it's only authorizing preliminary steps by the County Executive with DOT to scope things out in the final fashion. But you have stated repeatedly that the importance of this resolution that it locks in two -- it takes care of two issues, which are the sewers and the weigh station

for the police. But it doesn't, because -- because it's not approving the agreement.

MR. PALLY:
Right.

MR. SABATINO:
So if you really need something stronger, then this is not the right resolution. And the MOU is really meaningless.

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MR. PALLY:
I don't want to speak for the Department of Transportation, they can speak for themselves if they want to. But this was drafted between -- by the County Attorney in consultation with the Department of Transportation. And the Department of Transportation believes this is appropriate in its current language to allow the Environmental Impact Statement work to go forward on the development of the building in its current form, because it -- while it clearly does not commit anybody to finally saying the Highway Patrol is moving in there on January 1st, 2006-7 whatever it is, all of those things are subject to further discussion, further memorandum of understanding and all of that, it allows the department to have a statement from the County Legislature that is sufficient to allow it to move forward on those two issues. That's the point.

LEG. BINDER:
My concern is not the locking in. My concern is that we would be making a statement beyond the resolution itself when we say that we agree -- because it says, one of the whereases is that it will incorporate terms of agreement as outlined in the attached term summary sheet. I don't want -- I might not want us to be making a statement that goes as far as the attached summary sheet.

MR. PALLY:
That means -- that means the memorandum of understanding which will be forthcoming. It does not mean this memorandum of understanding.

LEG. BINDER:
I understand, but it says, it will incorporate terms, in other words -- and we vote for incorporating the terms that are attached. It says in the attached sheet.

MR. PALLY:
I understand that.

LEG. BINDER:
That's why I want to limit what's in the attached sheet to things I'm

comfortable with. And all they had to do is talk to me, as I said, and we probably could have not had this problem today.

MR. PALLY:

As I said, I'm not going to apologize for the County Executive.

LEG. BINDER:

No, you don't have to. I just want to hit him a couple of times as long as I have the microphone. Because it's dumb. It's a dumb thing to do for -- and, you know, it happens. County Executives think that they will just put things over here and then --

MR. PALLY:

That's why you know we have kept you -- I've met with you many times on this issue and will continue to do so.

LEG. BINDER:

Right. But you didn't have this.

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MR. PALLY:

No. I only had this when the County Attorney gave it to us.

LEG. BINDER:

Right. We talked. It was all verbal. Right. It was all verbal, and so my point is we might be able, if they're interested in talking to me now, to between now and Tuesday work out a Certificate of Necessity that I could be comfortable with that would change this attached sheet and the summary of essential terms would be something I could live with, then at that point --

MR. PALLY:

I understand that.

LEG. BINDER:

So my motion is going to be -- I'm going to make a motion to table this, I'm going to wait for Legislator Carpenter, I don't want her to be out of this. But I would make a motion to table it to the January meeting of this committee or any successor committee thereto that will deal with economic development issues. The first meeting, whenever that takes place in 2004 and that we deal with it -- that we have it tabled to then. So that's my motion to table. And just as long as I've got the microphone, I'll finish, is that it would be my hope that the County Executive would have his people speak with me between now and Tuesday to work out a possible CN so that it might not even be necessary to take it up in January. We might be able to take it up Tuesday under CN business.

MR. SABATINO:

One technical point. Because it takes the full Legislature to waive that rule, it will require another vote on the day of the meeting.

LEG. BINDER:

If there is no -- I appreciate that. If there's no CN --

MR. SABATINO:

It's fine for today, but it will take one more vote on Tuesday.

IR 2043. Authorizing the County Executive to enter into a memorandum of understanding with NYS Department of Transportation in furtherance of their construction of a rest stop facility along I-495, Long Island Expressway. (COUNTY EXEC)

LEG. BINDER:

I will take that up myself. If there is no CN on Tuesday and that we can't do it, that we're looking to continue to leave this as a tabled resolution to January, then I will make the motion -- I commit to the members that I will do that, instead of letting it die at the end of the year. I will make a motion to make sure it comes up again in committee in January.

LEG. CARPENTER:

I second that motion.

CHAIRMAN COOPER:

We have a motion to table to the first meeting in January and a

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second. All those in favor? Opposed? IR 2043 is TABLED until January. (VOTE: 5-0-0-0)

MR. PALLY:

Thank you.

CHAIRMAN COOPER:

Thank you very much, Mitch.

MR. PALLY:

No problem.

LEG. BINDER:

I would guess you'd probably want to go and talk to them across the street.

MR. PALLY:

I will let them know, obviously, that there are certain things they

have to do.

LEG. BINDER:

It's part of the process. Thanks.

IR 2054. Approving the change of project for Downtown Revitalization Round III funding for the Greater Patchogue Chamber of Commerce and Round IV Funding for the Westhampton Beach Performing Arts Center. (COUNTY EXEC)

CHAIRMAN COOPER:

All right. Now that we're on the agenda, we'll move on to the last two agenda open items. IR 2054.

LEG. FOLEY:

Motion.

CHAIRMAN COOPER:

We have a motion and a second. All those in favor? Opposed? 2054 is APPROVED. (VOTE: 5-0-0-0)

IR 1872 A Charter Law creating Suffolk County Department of Aviation. (GULDI)

CHAIRMAN COOPER:

Can we take up IR 1872? I think the public hearing was recessed.

LEG. BINDER:

Motion to table.

CHAIRMAN COOPER:

Second. All those in favor? Opposed? IR 1872 is TABLED. (VOTE: 5-0-0-0)

That's it. Now we can move on the issue of LIPA fuel surcharge. Gordian, would you like to address the committee on this issue?

MR. RAACKE:

Good morning. Before I actually speak about the proposed LIPA fuel surcharge, I just wanted to bring another issue to your attention which concerns the contract with the -- with CAP for assisting you -- assisting the Suffolk County Legislature with LIPA oversight. As you know, our contract expired in 2002, and in January of this year, you decided not to extend our contract, and then in August -- I believe it was in August of this year, the Legislature voted to reinstitute our contract at a meeting on September 24th. The work rules were changed requiring me to submit to this committee work requests that would have

to be approved for any work that I would doing before commencing the work. I submitted a number of work requests to you since that date.

I was also asked to prepare a blueprint work plan throughout the rest the year to present to you a plan as to what kinds of activities we should engage in to assist you in LIPA oversight, which I had submitted to you on November 11th. I wanted to bring to your attention the fact that ever since you decided to -- to reinstate our contract, that I've not been authorized to do any work as per these work authorizations. As a result of that, I'm concerned that I am unable to fulfill my responsibilities under the contract and that I'm -- that I'm seriously concerned about my ability to effectively monitor LIPA, that the ability to assist you has been severely restricted.

So I want to get some guidance from you as to how you plan to proceed -- since this committee is in charge of directing my work, how you plan to proceed throughout the rest of the year, which, of course, there is not a whole lot of time left in this year, and what, if any, plans you have for us beginning in January when obviously LIPA is going to deal with a fuel surcharge and a two and a half billion dollar budget and several other important points. So if you could give me some guidance on that either now or after we discuss the fuel surcharge issue, I would appreciate that.

LEG. BINDER:

Mr. Chairman, I've signed a number of them, and I send them off.

CHAIRMAN COOPER:

We have not gotten to three on any of them.

LEG. BINDER:

Okay. Including this one, on LIPA oversight, I think the -- on the surcharge, to me the whole essential nature of what they're supposed to be doing is to look at something like the surcharge and do FOILS and find out what -- if this cost is justified and realistic. And to me, that's why we're supposed to have them. So I've signed this one and I've signed a number of the others. Right, and I send them off and I don't know what happens to them.

CHAIRMAN COOPER:

That's the purpose of the presentation today. Hopefully, Gordian can convince at least three members of this committee to sign off on this item that is before us. I have one signed form right now, I won't mention who. But one of the committee members has signed off on this.

MR. RAACKE:

I appreciate it. Just to be clear, I mean, I don't see my role here as trying to -- as trying to sell you on some idea of moving forward. I come to you to get direction as to what you want me to do. That was a point of contention in the past. I'm trying to do the right thing. I'm trying to play by the rules here. If you do not authorize me to do certain work, I can't do the work and I don't do the work.

But it also -- you know, I have to tell you that as a result of that, I cannot guarantee you that we can keep an eye on the activities that we are supposed to keep on eye. I can't do this on a volunteer basis. You know, it doesn't work maybe the way it has been working in the past where we had other sources of revenue to do some of the work we've been doing on LIPA oversight. So I'm waiting for your instructions on it.

On the issue of the fuel surcharge. First of all, to boggle your mind a little further, I wanted to mention that on October, I think it was just about October 10th, LIPA Chairman Rich Kessel appeared in Montauk at a meeting and told the audience there, a business meeting, that he may cut rates by 10%. I brought the article from the Long Island Business News along, because this is highly confusing I think. On one hand -- this was October 10th, Long Island Business News.

LEG. BINDER:

This October 10th, 2003? I missed that. Wow.

MR. RAACKE:

Then just a few weeks later we are told that LIPA is apparently planning to up for another three to 5% in addition to the 8.8% surcharge that we've already seen this year and the 5.8% we've seen in previous years. The first thing I should make clear is that I can't tell you that this proposed fuel surcharge and power purchase cost adjustment is not justified. The reason I can't tell you that is that we have not had the opportunity to examine this issue on the record during an evidentiary hearing.

The other important fact to keep in mind here is that the Public Authorities Control Board resolution that was adopted in 1998 when LIPA took over and that was accepted by the -- by the LIPA Board of Trustees specifically stipulates that any rate increase in excess of two and a half percent requires a full evidentiary hearing before the Public Service Commission. This is -- as I have spelled out to you in several memos previously, that is PACB Condition Number Five.

Important to note as well is that that condition number five does not exempt fuel costs. There's another condition in the PACB resolution that does exempt fuel costs, that's condition number four. That deals with a 14% -- that basically says LIPA has to guarantee us a 14% rate decrease over ten years time. That does exempt costs that would be arising as a result of higher oil prices and so forth. But this

condition does not exempt them. So I think it's important to continue to press for a full evidentiary hearing before the Public Service Commission, because that is the only way that we can hold LIPA accountable short of doing a hearing yourself. As the -- as the Legislature, of course, you could choose to do an investigation on

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this. If the Public Service Commission -- if LIPA could not be forced to run this -- to submit this proposal to the Public Service Commission in an evidentiary hearing, the Legislature might choose to do its own hearing on this and do its own investigation. But I think for the time being, we should be pushing for LIPA's adherence to Public Authorities Control Board resolution, specifically condition number five.

LEG. BINDER:

Is it your upon, and I would ask Counsel if it would be his opinion, that that is a legal requirement and whether the County Legislature would have standing and/or legal recourse to bring an action forcing LIPA to bring what they are calling surcharges before the Public Service Commission? Do we -- do we have -- do you think, and I'll ask Counsel, and maybe you guys can confer on the record --

MR. RAACKE:

I'd like to defer that to Counsel, because I'm not a lawyer.

MR. SABATINO:

Those -- those were the silver bullets, as you recall. There were the five conditions. In fact, when we -- when the Legislature adopted the referendum in 1999 for LIPA oversight, which is what led to, for example, having CAP resources allocated, one of the things that made the Charter Law eligible for the referendum was that there was a provision obligating elect officials to do things like enforcing the silver bullets. That was actually referenced in the Charter Law. So the point is that there would A) be legal authority to bring a challenge if the facts, you know, support what the violation of the bullet, which superficially would appear to be the case; secondly, you have the referendum backing it up, then thirdly, you have actually a statutory obligation to at least pursue it and look into it. So the answer is yes for those three reasons.

LEG. BINDER:

Then it would seem to me that we might actually, as you say, have a statutory obligation. Though I didn't vote for it, I guess I'll put that on the record at this late date. I didn't vote for the referendum. No. I was the only Republican that didn't vote for it. I didn't vote for it. I didn't vote for the authority to enter -- that was me. I was the only one that didn't vote for it. But I would

say that if it's -- if it's actually in the resolution and part of County Law requiring us to take action to enforce those so-called silver bullets, it would seem to me that we should move forward on that obligation. And we should probably as we go into the next year look at putting together a legal action to force them to go before the PSC and go have a full evidentiary hearing so people of Long Island will be fully informed of all the background and information as to why we need to have surcharge after surcharge.

CHAIRMAN COOPER:

Gordian, I just wanted to interrupt. I wanted to ask Joe Schroeder, shore as in-house expert on LIPA oversight, if you'd like to put your two cents worth in.

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MR. SCHROEDER:

Yes. I think that Gordian has made a good point in that there is certainly reason for the County Legislature to look at the surcharges. As I stated in a memo that you received this morning, I'm not concerned about looking at it, I'm concerned about how we address the issue. The fuel and purchase power surcharge is a component that was created by the Public Service Commission. It has been used by regulated facilities and is currently used by regulated facilities throughout New York State. We don't know the actual components that LIPA is including in recovering costs for in its surcharge. That's what we should be driving at, to get information as to what is actually being recovered. To dismiss the surcharge as -- or to categorize the surcharge as a rate increase is technically incorrect.

As I stated, it is a current mechanism by which utilities throughout the state that are regulated are passing costs along to customers and also passing credits along to customers. So, yes, I think the Legislature should be looking at it. No, I don't think this is a rate increase -- a surcharge -- a rate increase disguised as a surcharge, but there are certain components of this surcharge that may be better recovered through the base rates, and that's what we need to be driving at, to find out exactly what components of this surcharge should be best applied to base rates. That's my opinion.

CHAIRMAN COOPER:

The Long Island Businesses News article that referred to a potential 10% reduction in the base rate, is that still on the table? And the surcharge, the 5% additional surcharge has to be put into the mix with the 10% base rate reduction, in which case we could still potentially see an overall decrease?

MR. RAACKE:

That's a good question. I have no answer for you on that. I don't

know. I don't know. The article does not give a lot of detail. It says -- it says merely that, "LIPA Chairman Richard Kessel told business executives last week that he hoped to cut island electric rates by as much as 10% next year. Kessel didn't explain to the audience at the Long Island Business Development Council's annual meeting how he planned to achieve the savings." And then Mr. Cunningham, Burt Cunningham from LIPA is quoted as saying, "it is objective to lower rates further. That's why he directed the review to be done with a goal of seeing if there isn't an opportunity to do something in the range of 10%."

I did want to point out a couple of issues, additional issues here , regarding whether -- what's in the full cost and purchase power cost adjustment and the issue as to whether this is a rate increase or a surcharge. The Public Service Commission regulations allow for a very narrow range of cost to be included in fuel and purchase power cost adjustments. And they are the cost of fuel and purchased energy, of course. And in addition to that, fees paid to brokers associated with natural gas purchases. That's it to the best of my knowledge. At least that's the last time I checked, which was at the end of 2002. Correct me if I am wrong, Joe, if there's a new regulation on that.

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MR. SCHROEDER:

Earlier this year, I did an evaluation, a side by side comparison of LIPA's proposed tariff changes with four separate utilities; two municipal, two non municipal all regulated by the New York State Public Service Commission. The language in LIPA's tariff was virtually identical to the language in the other four tariffs. There's a much wider range of costs -- surprisingly wider range of costs that are recoverable, recurring costs that are recoverable through the fuel and purchase power surcharge, including payments -- annual payments to the New York State ISO and other entities.

LEG. BINDER:

Can I ask if on these other entities, did they go before the PSC to get those surcharges approved, those tariffs?

MR. SCHROEDER:

Those tariffs are all approved tariffs by the Public Service Commission that I downloaded from the PSC website.

LEG. BINDER:

So I guess my point is that -- so every other one, because of the way they work, they had to go to the PSC and go through an evidentiary question, and they had to show all their cards, and they had to let everybody know why they were surcharging. The difference here is that we don't -- the question really is whether they are obligated with

these particular type of tariffs to go before the PSC and also do a full evidentiary hearing, and that's the question we have to --

MR. SCHROEDER:

Well, according to the LIPA Act, LIPA is not required to go before the PSC for approval of its tariffs. The issue here is there are legitimate questions relating to the surcharge, relating to the components of the surcharge; what costs are they recovering, not the surcharge itself. This is not a rate increase, it's a surcharge based on --

LEG. BINDER:

So what's included in it will determine whether it is a tariff or a rate increase.

MR. SCHROEDER:

The actual recovered costs that LIPA is recovering through these surcharges would determine whether or not it's appropriate for them to be included as surcharges or should they have been included as base rates. And that's what we should be looking at.

MR. RAACKE:

Let me read you an excerpt of the costs that are included in the -- in the fuel and purchase power cost adjustment tariff that LIPA has adopted, but of course, that tariff was adopted by LIPA, not reviewed by the Public Service Commission. Other than the fuel oil and natural gas and purchased power costs, you have items in here, and I'm just going to quote a few; wheeling and capacity charges, nine mile disposal and decommissioning costs, nothing to do with fuel in my book, nine mile wheeling charges, Y 49, Y 50 cable operating costs, you have maximum temperature event option insurance, you have emission

allowance purchases and on and on and on. I don't have to read through the whole list, it's in the year end report I submitted to you last year. You even have, you know, clean energy peak load reduction rebates in here. I should also tell you that the LIPA tariff has been amending several times. And to the best of my belief, has been amended without proper notice according to {SAPA}.

So this list of items that was -- that is to be included in the fuel cost and purchase power cost adjustment has grown over time. And it's my belief that LIPA is using this as a convenient mechanism to avoid the appearance of a rate increase. I should also mention that the definition of base rate increase versus a surcharge is not really an issue, because the public -- Public Authorities Control Board Resolution, the Silver Bullet, does not make that distinction. And once again, the condition number five that LIPA adopted and agreed to

abide by does not provide for an exemption for a fuel and purchase power costs adjustments. So while there may be some debate as to whether this can be labeled as a surcharge or a rate increase, LIPA should still be playing by the rules and by the resolution that it accepted that was imposed by the Public Authorities Control Board.

MR. SCHROEDER:

Just as an illustrated point, in April or May of 2000, based on my recollection, the wholesale price of electricity on the New York market went from \$30 a megawatt hour to \$3900 a megawatt hour. That's a function of deregulation. Every regulated utility in New York State that serves the New York Metropolitan area outside of LIPA service territory passed those costs directly on to consumers through this surcharge.

MR. RAACKE:

One last point I wanted to raise. During an evidentiary hearing or any process that you may institute, we would have an opportunity and you would an opportunity to examine certain impacts of LIPA's policies and LIPA's decision on this, among those, of course, the first question would be, you know, are these charges adequate and appropriate? We have at this point no accounting of how they have arrived at this three to 5% figure. But beyond that, we would, for example, be able to determine whether LIPA has made adequate and reasonable efforts to minimize the exposure to fuel price volatility and other purchase power costs.

We would have an opportunity to find out whether LIPA's determination of this mechanism has, in fact, led to higher costs to ratepayers in the long run. Don't forget that the 8.8, the 5.8 and most likely this increase is only part of the story. LIPA has been talking about -- each time they instituted this, LIPA has been telling us that they're absorbing the rest, that there are additional higher costs that they have incurred that they're absorbing. Well, they're not absorbing anything, they're going to defer that for later. I have a memo from LIPA, which I FOILED, which states explicitly that the deferral is going to cost ratepayers more money in the long term. We would be able to tell how much more this type of policy is costing us. So once again, I urge you to investigate this issue.

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MR. SCHROEDER:

Those are excellent points.

LEG. CARPENTER:

Mr. Chairman if I could. I saw a memo, I didn't bring it with me, but it seems to me what I got out of it -- and that was the memo that Budget Review sent to the Chairman sort of indicating that we go the

route of the Comptroller, State Comptroller, in pursuit of this information. And I would be more inclined to suggest that we do that first.

MR. SCHROEDER:

Well, the timing of the interest of the State Comptroller and two Legislative New York State Committees is fortuitous in that we should be asking them to help look into this matter, not only because it's a surcharge that we don't have any real oversight authority over, but also because the surcharge includes power purchase agreements with generators, which are contract that both entities look at.

LEG. CARPENTER:

I would suggest that we do that, and we do that quickly, because taxpayers are paying for the government to operate, and taxpayers are paying for the State Comptroller, and if this is part of what he should be doing, before we authorize additional taxpayer dollars to be spent for a consultant, I think we go the route that is there for us immediately.

CHAIRMAN COOPER:

For the record, I'd like to point out that my office has already been in touch with Alan Hevesi's office, put a call in this morning, hopefully we'll hear back this afternoon. I agree that it does make sense to try to get the State Comptroller's involvement in this because he carries a lot more weight than the County Legislature, unfortunately or fortunately depending on your point of view.

MR. RAACKER:

I should add, I've also notified the State Comptroller's office on this issue.

LEG. BINDER:

Mr. Chairman, I guess my point would be in the event that we don't get any movement out of the Comptroller's office, we might get it, we might not, I would hope that we can start moving forward and getting information on our own and gathering information, because I don't know what's going to happen. And we're going to hit the end of December, holiday time and going into January. And, so you know, it would be my hope that we could -- we could move forward and start gathering our information. We might be able to help the Comptroller with stuff our people have gathered so he comes in, we make it easier for him to get a jump start. So I want to go forward. And not everybody may -- obviously we might all have different opinions on that, but that's what my hope would be.

LEG. CARPENTER:

I agree with Legislator Binder, and I think that is precisely why the majority of us in the Legislature were supportive of adding the

position of Budget Review of energy specialist. And Joe's done a very credible job. And certainly you are in place and can go forward with starting the ball rolling on this and helping with the committee. So I thank you.

CHAIRMAN COOPER:

Are there any other questions from the members of the committee? There being known, this committee is adjourned. Thank you.

(*THE MEETING WAS ADJOURNED AT 1:05 P.M.*)

{ } DENOTES BEING SPELLED PHONETICALLY