



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

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**MUNICIPALIZING NEW YORK CITY'S
ELECTRIC GRID**



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EXECUTIVE SUMMARY

Although Investor-Owned Utilities (IOUs) have been the norm in New York City for the entire history of electrification, they pose some serious disadvantages compared with municipal utilities. Continued deferral of necessary repairs, a near complete lack of transparency, and little to no true accountability has made them a liability to the people of New York City. These issues are not unique to any specific utilities themselves, but rather, they are endemic to the investor-owned electric utility model, itself. To solve these issues, we must move to bring the utilities under public ownership and expand public control of the wider grid, from generation to distribution. To meet these goals, the following is recommended by this report:

Since New York State has a deregulated energy policy regime, our approach will need to be two-fold, including both city-wide and state-wide regulatory changes. First, we need legislative action that will move to condemn the section of the transmission and distribution (T&D) grid that covers the city of New York. A municipal or state bond will then have to be issued to buy the condemned grid assets from Con Edison (ConEd).

Second, we will need to ensure a just and expeditious transition to a renewable energy future. We must also ensure the transition is cost-effective. To maximize both, we should look to our already existing public utility, the New York Power Authority (NYPA), and expand their authority into development of renewable generation development and ownership. Their ready access to cheap capital through bond issuing will help keep costs down and their public ownership will keep the value generated by the assets in the public coffers. This will cut out the waste of needing to continuously pay out dividends. Further, whenever New York Independent System Operator (NYISO) identifies a need for new capacity, that NYPA must be given a first pass option to develop it themselves before putting out a general Request for Proposal (RFP) to the private sector.

Lastly, we must ban Energy Service Companies (ESCOs) from operating in the city and state or restrict them by law to conform to the recent New York Public Service Commission (PSC) restrictions and limit their customers to the Community Choice Aggregation market.

INTRODUCTION

If you are a New Yorker, you probably know that there were a series of unexplained blackouts in the summers of 2019 and 2020. You may have also been impacted by this summer’s recent blackout that effected a record number of customers, second only to the blackouts related to Hurricane Sandy. You may be curious why you don’t know more.

While many people are aware of the recent issues related to major power outages, very little is done to inform about how our energy system works, let alone how we can fix it. This report will provide you with a better understanding of our energy environment and what we can do to make it safer, greener, cheaper, and more accountable to the public through a process called “municipalization.”

What is an Electric Utility?

In essence, an electric utility is the infrastructure that lets us turn on the lights. Electric utilities deliver electricity to users by providing some combination of generation, sales, transmission, and/or distribution of electricity.¹ Below are some explanations of these functions.

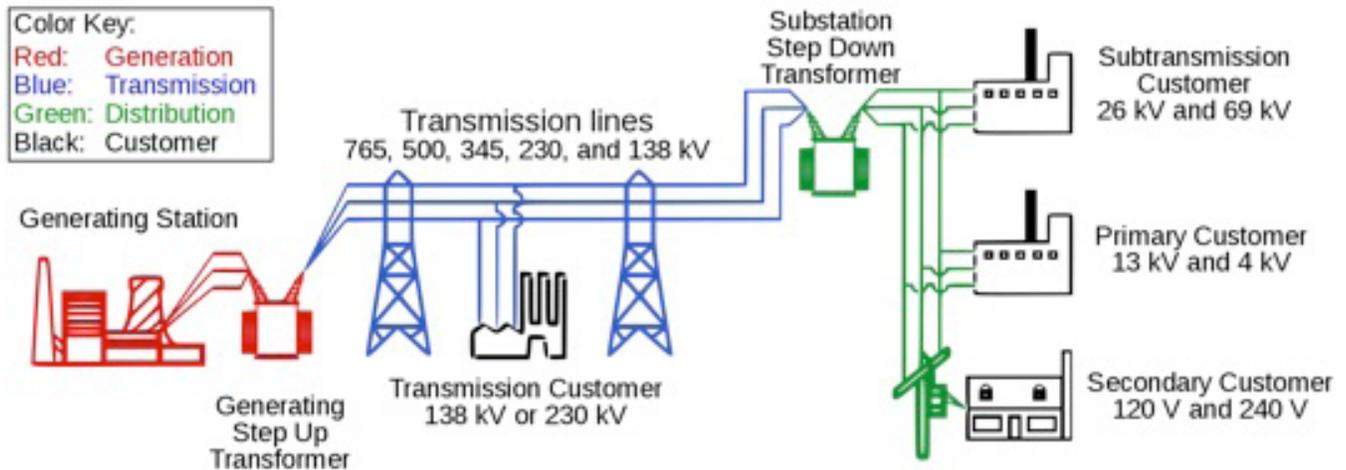
Generation is where electricity is created. Generation facilities can take the form of a large coal plant, a hydroelectric dam, a wind farm, or anything else that creates electricity.² A disproportionate amount of the energy used in downstate New York is generated upstate, then transported via high-voltage transmission lines.³

¹ www.businessdictionary.com/definition/electric-utility.html

² data.oecd.org/energy/electricity-generation.htm

³ www.eenews.net/assets/2017/05/19/document_ew_01.pdf

The process of getting electricity from where it is generated to where it will be used is called “transmission”.⁴ Once it is transmitted, the electricity then needs to go through a network of low-voltage lines that eventually lead to the end users. This is called the “distribution” network.⁵ See diagram below.



Source: Wikimedia Commons

In some markets, called “deregulated markets” such as New York⁶ and Texas⁷, there may also be a separate entity that handles the buying of electricity on behalf of customers. Broadly speaking, utilities can be either vertically integrated or deregulated. A vertically integrated utility is a single entity that handles each of these services and has a near monopoly on the entire process, though some vertically integrated utilities that own part but not all of the generation in their service area but are still the exclusive buyer of energy⁸. Vertically integrated utilities have been the norm for most of the history of the 9, but since the 1990’s there has been a push in some states to break up these vertical monopolies in a process called “deregulation”¹⁰. In a deregulated energy policy environment, utility companies are largely limited to the distribution section of the energy grid¹¹.

⁴ learn.pjm.com/electricity-basics/transmission-distribution.aspx

⁵ learn.pjm.com/electricity-basics/transmission-distribution.aspx

⁶ www3.dps.ny.gov/W/PSCWeb.nsf/All/52770E53410005A185257687006F39D2?OpenDocument

⁷ www.choosetexaspower.org/choose-your-power.html

⁸ hepg.hks.harvard.edu/faq/vertically-integrated-utility

⁹ blog.aee.net/how-much-do-you-know-about-your-electric-utility

¹⁰ blog.aee.net/how-much-do-you-know-about-your-electric-utility

¹¹ energysmart.enelxnorthamerica.com/regulated-and-deregulated-energy-markets-explained

In deregulated markets like New York, utility companies are focused on delivery alone, while generation and energy sales are the responsibility of many independent companies and authorities that compete in a market. To set its rates, a utility company must periodically file an application to the Public Service Commission to apply for new rates in what is called a “rate case.”¹² This is where rates are set for different sets of customers which includes both operating expenses and a fair rate of return for their investors.¹³

Now, IOUs don’t make money selling electricity, so how do they generate income for their shareholders? The answer is a guaranteed rate of return (usually between 7-10 percent) for qualified infrastructure investments.¹⁴ Essentially, every time a capital investment is made, the utility is entitled to earn the guaranteed rate, regardless of its actual impact or value for those who pay for this rate of return, the ratepayers. It should be noted that the rate of return is generally speaking, a cost above and beyond the actual cost of capital, so it explicitly generates profit.¹⁵

This leaves a space for companies to own utility-scale generation assets, a space for companies to buy and sell energy directly to customers, and a space to coordinate transmission to ensure the grid always has the right amount of energy to match demand. Generation and sales are generally provided by fully independent companies competing directly in a market place. Transmission is handled by a combination of private developers and NYISO, our not-for-profit Transmission System Operator (TSO).¹⁶

The management of transmission capacity is handled by what is known as a “transmission system operator” or “TSO”. In New York state, like in other deregulated markets, the TSO handles a market meant to ensure in advance that energy is secured for all customers in the state.¹⁷ There are different kinds of markets that TSO’s can use to ensure capacity needs are met, but New York uses what is called a “capacity market”.¹⁸ In essence, the capacity market is structured in a way that ensures future capacity by offering a minimum price for the availability of electricity at a future date (in this case, 6 months into the future) plus opportunity to make additional money by the actual sales of your produced energy.¹⁹ When markets are open, the TSO announces how much capacity they will need, then electricity generators place closed bids into the auction based on what prices they can offer for a set amount of electricity to be available for delivery in the future. In the energy

¹¹ energysmart.enelxnorthamerica.com/regulated-and-deregulated-energy-markets-explained

¹² www3.dps.ny.gov/W/PSCWeb.nsf/0/364D0704BEEC5B7D85257856006C56B3?OpenDocument

¹³ marketbusinessnews.com/financial-glossary/fair-rate-of-return/

¹⁴ americaspowerplan.com/wp-content/uploads/2016/07/CostValue-Part1-Revenue.pdf

¹⁵ americaspowerplan.com/wp-content/uploads/2016/07/CostValue-Part1-Revenue.pdf

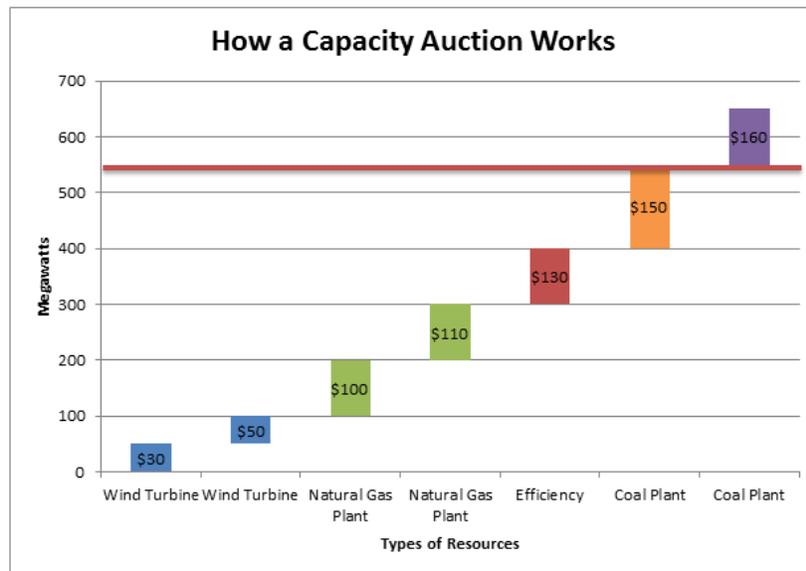
¹⁶ www.sciencedirect.com/topics/engineering/transmission-system-operator

¹⁷ www.nyiso.com/what-we-do

¹⁸ www.cmegroup.com/education/articles-and-reports/introducing-the-nyiso-eletricity-capacity-market.html

¹⁹ www.cmegroup.com/education/articles-and-reports/introducing-the-nyiso-eletricity-capacity-market.html

market (referred to as the “spot market”), a price (called the “clearing price”) is set based roughly on where the lowest bids meet the demand curve. See the below chart where the bold red line is the demand curve. In this example auction, the orange bid is the last in before meeting demand. In this case, the clearing price would be \$150, and all generators that made it in under the bid will be paid at the rate of their clearing price. The lower the clearing price, the lower the cost of energy to consumers. It is worth noting that in this market, actual generation of energy and strategies to store electricity or to reduce demand (such as demand response) all count as energy generated and any entity able to offer these services can participate in these auctions.



Source: <https://energynews.us/2013/06/17/midwest/explainer-how-capacity-markets-work/>

Finally, in New York’s deregulated market you have companies that are focused on buying and selling energy for customers. These companies are called “energy services companies” (ESCOs). ESCOs neither generate, transmit, nor deliver energy. Their sole role in the market is to purchase energy directly from generators, bundle them, and sell them directly to customers. Often these companies sell their services by offering savings, price stability, rewards, or green energy content. While it is not required that you buy energy from an alternative supplier in New York, many customers do. If a customer does not actively select an ESCO company to buy from, they will simply get electricity at cost directly from the delivery utility for a small fee.²¹ While breaking up the utility’s hold on generation was meant to break down the issues related to vertical monopolies, opening up the energy supply market to ESCO’s was meant to break down the traditional issues related to the horizontal monopoly on customer base.²¹

²⁰ [www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/85E69A7B9CD1E35C85256DF1007567F3/\\$File/doc7547.pdf?OpenElement](http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/85E69A7B9CD1E35C85256DF1007567F3/$File/doc7547.pdf?OpenElement)

²¹ callmepower.com/ny/market-liberalization#

FLAWS IN THE INVESTOR-OWNED UTILITY MODEL

An investor-owned utility is like any other publicly traded company -- their primary goal is not to provide a safe and affordable public service, but to maximize short-term profits for shareholders. In the context of energy grid management in New York, this prioritization is manifested in a number of harmful ways.

Rising Rate Cases

The way that New Yorkers most tangibly feel the impact of this flawed model is in ever-rising bills. For example, typical residential electric bills from Con Edison will rise by an average 4.2 percent in 2020, 4.7 percent in 2021, and 4 percent in 2022.²²

These rate increases are determined by a non-transparent process called a “rate case” in which utility companies negotiate with the New York State Public Service Commission (PSC) to determine the amount that customers will be charged. The rate case begins when a utility submits a filing with the PSC to propose a rate increase with a justification for the need for the increase, usually rising costs of operating and maintaining its systems that they claim current revenues are unable to cover. Upon receiving this filing, the PSC will audit it and then submit a counter-proposal. Following this, an Administrative Judge is assigned to the case, holds hearings, receives briefs from both parties, and may make a recommendation. Ultimately, the PSC will make a decision within 11 months of the initial filing and set the rate paid by customers.^{23 24}

During this process, members of the public and advocacy groups may weigh in on the process in public hearings and meetings and file public comments, but neither the Administrative Judge nor the PSC has an obligation to incorporate the public’s input in their decision making.

The result of this process is an economic phenomenon known as regulatory capture, when a regulatory agency becomes dominated by the interests of the industries that they are intended to regulate. This occurs because utilities can arbitrarily set exorbitant rate increases in their initial filings, often citing capital projects that they themselves have initiated without input from the public, such as gas pipelines,

²² Shahrigan, Shant, and Bill Sanderson. “Con Ed on Verge of Three-Year Rate Hike; Prices Expected to Go up in January.” *Nydailynews.com*, New York Daily News, 9 Dec. 2019, www.nydailynews.com/new-york/ny-con-edison-rate-hike-20191209-digf6fhffazioypz4tf2xlqq-story.html.

²³ “Department of Public Service.” Major Rate Case Process Overview, 3 Sept. 2011, www3.dps.ny.gov/W/PSCWeb.nsf/0/364D0704BEEC5B7D85257856006C56B3?OpenDocument.

²⁴ Davis, Ragan. “Industry 101: Regulation in the Electricity Industry: Rate Case Process.” Red Clay Consulting, 22 Aug. 2017, redclay.com/2017/08/22/rate-case-process/.

as their rationale. Then over the next 11 months, the PSC will subsequently negotiate the increase down and be able to claim victory on behalf of the public interest. A compromise between an already high rate and an even higher rate, is no victory at all for New Yorkers. Ultimately, a private company with a profit-motive is setting the terms of the negotiation, and the process legitimizes these terms, no matter how unreasonable they are.²⁵

When one considers the profits that utilities like ConEd are able to make through these rising rates, the injustice of the mechanisms in place are made even clearer. In 2018, ConEd brought in a net income of \$1.382 billion dollars and distributed \$846 million dollars to shareholders.²⁶ Their CEO was compensated \$9.8 million dollars, and managers were paid bonuses tied to shareholder returns, further incentivizing the prioritization of shareholder value over serving the public good. This shareholder and executive compensation amounts to nothing less than a massive wealth transfer from ordinary New Yorkers to the highest of income earners.

Lack of Transparency

The obfuscation of the rate case process is exacerbated by protocols set by the PSC that restrict public access to its work. Governmental bodies in New York are subject to the Freedom of Information Law, which gives the public the “right to know process of governmental decision-making and to review the documents and statistics leading to determinations”.²⁷ However, the PSC has regularly refused to comply with FOIL requests filed by the public and in 2014, it ruled that “information in Annual Reports required to be filed by all electric companies under Public Service Law § 66(6) may not be released under the Freedom of Information Law with respect to companies ‘lightly regulated’ by the PSC”.²⁸ In practice, this has prevented the public from acquiring access to crucial information, including the revenues and profits of the companies that are funded by their monthly bills.

²⁵ Payne, Heather. “Game Over: Regulatory Capture, Negotiation, and Utility Rate Cases in an Age of Disruption.” SSRN, University of San Francisco Law Review, 28 Aug. 2017, papers.ssrn.com/sol3/papers.cfm?abstract_id=3025917.

²⁶ “What Con Ed Does With Our Money.” Public Power NYC, New York City Democratic Socialists of America, publicpower.nyc/what-does-con-ed-do-with-our-money.

²⁷ “Freedom of Information Law.” Committee on Open Government, Freedom of Information Law, Department of State, Committee on Open Government, www.dos.ny.gov/coog/foil2.html.

²⁸ Project, New York's Utility. “PSC Upholds Secrecy of ‘Lightly Regulated’ Electric Company Profits.” New Yorks Utility Project, 14 Aug. 2014, utilityproject.org/2014/08/14/psc-upholds-secrecy-of-lightly-regulated-electric-company-profits/.

Energy Inefficiency, Environmental Degradation, and Safety Risk

In the current investor-owned model, Con Edison has a profit motive to deliver as much energy as possible to as many people as possible in order to cover fixed costs and make profits. Thus it is disincentivized from introducing programs that would reduce energy inefficiency, as it would also reduce their sales and their profits. This conflict of interest, known as the throughput incentive, increases costs for consumers and increases pollution.²⁹

In addition to having an incentive to deliver as much energy as possible, Con Edison currently has a 9.00 percent guaranteed rate of return on infrastructure investment. This incentivizes them to invest heavily in gas infrastructure that the City does not need in order to inflate the base of their investments.³⁰ For example, gas utility National Grid has heavily pushed for the construction of the fracked gas Williams Pipeline, which would exacerbate the climate crisis and put frontline communities, predominantly those of more color, at environmental risk.

National Grid claims that new gas infrastructure is necessary because gas demand is rising, but a report by policy expert Suzanne Mattei recently found that gas demand is actually flat, and is expected to decrease over the next decade due to efficiency measures and the falling costs of renewables.³¹ Additionally, recent research has projected that natural gas generation will lose its competitive price edge in the next decade, risking the possibility that much of the gas infrastructure being built today is at risk of becoming stranded assets well before their full usable lives.³²

National Grid eventually decided to cancel their plans for the pipeline after their clean water permit was rejected in New York multiple times³³. They went on to propose alternate ways to fill their projected need, including increased compression on the already existing Iroquois pipeline, alternative infrastructure solutions to meet the need, and some non-infrastructure solutions such as demand response. It seems evident that they pushed a single solution that they preferred rather than present several options that may work better for the community.

²⁹ Sullivan, Dylan, and Donna DeCostanzo. "Gas and Electric Decoupling." NRDC, National Resource Defense Council, 4 June 2019, www.nrdc.org/resources/gas-and-electric-decoupling.

³⁰ Jamison, Mark A. "Regulation: Rate of Return." SSRN, University of Florida - Warrington College of Business Administration, Public Utility Research Center, 30 June 2008, papers.ssrn.com/sol3/papers.cfm?abstract_id=1100074.

³¹ Mattei, Suzanne. "FALSE DEMAND: The Case against the Williams Fracked Gas Pipeline." 350.Org, 350.Org & 350 Brooklyn, Mar. 2019, 350.org/wp-content/uploads/2019/03/Stop_Williams_False_Demand.pdf.

³² Maloney, Peter. "Generation: Despite Headwinds, Natural Gas Reliance Set to Grow in Much of US." Utility Dive, 15 Oct. 2018, www.utilitydive.com/news/generation-despite-headwinds-natural-gas-reliance-set-to-grow-in-much-of/530937/.

³³ <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/061220-new-york-activists-target-national-grid-gas-project-after-williams-shelves-pipeline>

An example of ConEd's lack of responsibility is the oil spill that occurred on the Farragut substation in 2017, in which 30,700 gallons of oil poured into the East River.³⁴ Even more devastating was the 2014 gas explosion in East Harlem, which killed 8 people and injured and displaced many more.³⁵ Because ConEd is a monopoly, they are unable to be held accountable by customers for mistakes or unpopular decision-making that harms New Yorkers because they are unable to choose a different distribution provider. The ratepayers are held captive by their stranglehold on the market.

ESCOS

Given the above impacts, any alternative to ConEd may sound appealing. In the 1990s, the PSC introduced ESCOs with the aim of improving price and quality to customers through competition in the marketplace.

However, two decades into this deregulation, it is clear that ESCOs provide little to no cost advantages. Federal data from the U.S. Energy Information Administration shows that in 2014, New York's ESCOs charged the country's highest residential electric rates and 14 percent more than New York's utility companies.³⁶ Additionally, in order to obtain customers, ESCOs regularly often engage in unsavory business practices including targeting elderly people and non-English speakers with door-to-door sales that deliberately manipulate the vulnerable into signing on the dotted line.³⁷ While the PSC has recently issued a ruling that cracks down on exploitative ESCO practices, there are serious concerns around the enforceability of this rule.

It is clear that the intended benefits of opening up the energy market to ESCOs did not have its desired effect. Given that both the investor-owned model and the retail access market are failing New Yorkers, we turn our eye to a potential solution -- the municipal utility.

³⁴ Hogan, Gwynne. "30,700 Gallons of Oil Still Missing in East River Spill, Officials Say." DNAinfo New York, DNAinfo New York, 11 May 2017, www.dnainfo.com/new-york/20170511/williamsburg/con-edison-oil-spill-east-river-keeper-water-quality-dec/.

³⁵ Mcgeehan, Patrick. "Con Edison and New York City Are Faulted in East Harlem Explosion." The New York Times, The New York Times, 9 June 2015, www.nytimes.com/2015/06/10/nyregion/consolidated-edison-is-largely-liable-in-deadly-east-harlem-explosion-regulators-find.html.

³⁶ Kriss, Erik. "NY's ESCOs Charged Highest Electric Prices in Nation Last Year; AARP Urges Probe." AARP, 28 Dec. 2015, states.aarp.org/new-york/nys-escos-charged-highest-electric-prices-in-nation-last-year-aarp-urges-probe.

³⁷ Campbell, John. "Why Is Albany Letting These Energy Companies Scam Thousands of New Yorkers?" The Village Voice, 2 Feb. 2016, www.villagevoice.com/2016/02/02/why-is-albany-letting-these-energy-companies-scam-thousands-of-new-yorkers/.

Parts of the Current System that Work and Parts that Don't.

Since the introduction of energy de-regulation, prices have largely been brought down for residential customers³⁸ in New York. Competitive bidding has provided an incentive to cut costs and use the lowest cost energy that the previous vertically-integrated monopoly model could not do. Keeping different aspects of the grid separated into different sections with no single company (for the most part) permitted to own vertically corresponding aspects has kept consolidation to a relative minimum. Any reform in the system should maintain these aspects.

WHAT IS A MUNICIPAL UTILITY?

While the majority of the US is served by investor-owned utilities like Con Edison, there are other models for utility ownership that take the grid out of the hands of investors and place them into the hands of the people or municipalities that use them, including co-operative models and municipalization models. In the US there are thousands of public utilities serving about 1 in seven Americans across nearly every state.³⁹ There are two common models for public utilities, co-operatives and municipal utilities. Municipal utilities are like IOUs, but they are publicly owned by a local or regional government such as a city or county, much like our local water utility here in New York City.⁴⁰ Though many municipal utilities have existed for over 100 years, some cities are looking to take back their grids from legacy IOUs to start a municipal utility.⁴¹

Municipalization Process

The road from converting an investor-owned utility to a municipal utility is a process that can take many forms and different paths, depending on the position the local IOU is in prior to launching a municipalization effort, the structure of the state's energy policy regime, and other factors. In an analysis prepared for the Washington, DC Department of Energy and Environment by Synapse Energy Economics, they summarize the basic structure of a municipalization effort in terms of four phases, "Investigation", "Acquisition", "Transition", and "Fruition." While we will explore these in more detail, it is important to note that this is a bit of an oversimplification. As is the case with any major legislation, power must be built from community support and legislation must be passed.⁴²

³⁸ financeguru.com/news/new-york-deregulated-energy

³⁹ www.publicpower.org/public-power/stats-and-facts

⁴⁰ bigthink.com/politics-current-affairs/municipal-electricity-utility?rebelltitem=3#rebelltitem3

⁴¹ bigthink.com/politics-current-affairs/municipal-electricity-utility?rebelltitem=2#rebelltitem2

⁴² www.publicpower.org/system/files/documents/municipalization-forming_a_public_power_utility.pdf

- 1 “Investigation”:** A feasibility study is conducted to explore how a municipalization effort may be undertaken, evaluating the economic costs and benefits, and identifying how it may or may not align with the goals of the community;
- 2 “Acquisition”:** Should the community decide to move forward after the feasibility study, the next step is to begin to acquire the local utility’s assets. This includes identifying which assets need to be acquired, the valuation of those assets, negotiating a final price, and the paying of said price. This can often be a difficult and drawn-out process and can be a significant part of the entire municipalization effort;
- 3 “Transition”:** Once the assets are valuated, the price negotiated, and cost paid, the process of transitioning the assets and operations can begin. During this phase, the municipality begins to undertake the steps to begin operating as a utility. This includes sourcing energy (if the utility is in a deregulated market or does not have sufficient generation resources locally), separation of the utility from the incumbent utilities that surround it, finding and solving previously unknown issues inherited from the incumbent IOU, and ensuring you have the appropriate staff in place;
- 4 “Fruition”:** With everything in place and the utility fully under municipal control, now begins the process of striving to meet the highest standards of service and reaching for the goals set out in the “investigation” phase.⁴³

Current Efforts

The city of San Francisco is hoping to purchase PG&E for \$2.5 billion.⁴⁴ This purchase was inspired when the utility company filed for bankruptcy in January of 2019. The money for the equipment would come from bonds which were approved by voters in June 2018. San Francisco Public Utilities Commission said customer rates would be the same or lower than current rates. However, PG&E is not very interested, stating that, "While we don't believe municipalization is in the best interest of our customers and stakeholders, we are committed to working with the City and will remain open to communication on the issue."⁴⁵

⁴³ doee.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/An%20Analysis%20of%20Municipalization%20and%20Related%20Utility%20Practices.pdf

⁴⁴ San Francisco Offers to Buy PG&E Electric from the City for \$2.5 Billion, by Sonja Hutson, KQED News, www.kqed.org/news/11773007/san-francisco-offers-to-buy-pge-electric-grid-in-the-city-for-2-5-billion

⁴⁵ San Francisco Offers PG&E \$2.5 B for City’s Grid, by Robert Walton, Utility Dive www.utilitydive.com/news/san-francisco-offers-pge-25b-for-citys-grid/562487/

The union representing the PG&E workers presents another potential barrier, as the deal might affect their pensions.

Con Ed, which has a franchise agreement with the city of Chicago, has a contract that is up for renegotiation at the end of 2020.⁴⁶ The agreement, established in 1947, allowed the company to have a franchise on electricity in the City of Chicago.

In October of this year, the Mayor of San Jose officially asked the city council to look into the possible municipalization of the city's power grid, as well as exploration of the role that San Jose Clean Energy and city partners can play when the grid provided by PG&E is turned off. Mayor Liccardo expressed interest in independent power systems such as microgrids, and other measures.⁴⁷

In 2010, Pueblo, Colorado approved its 20-year franchise with Black Hills, which allows the city to condemn Black Hills' electric facilities in the city 10 or 15 years after the signing of the agreement.⁴⁸

Pueblo is in the beginning stages of considering the purchase. Pueblo conducted a feasibility study which analyzed buying three areas, which contain about 223,250 customers. The feasibility study estimated that it would cost about \$868 million to buy all of Black Hills' assets across Colorado, while the purchase of the assets in Pueblo County would be \$561 million. The feasibility study assessed that purchasing the assets within the city of Pueblo would be \$348 million.⁴⁹

⁴⁶ San Francisco Offers PG&E \$2.5 B for City's Grid, by Robert Walton, Utility Dive <https://inthesetimes.com/article/22033/chicago-democratic-socialists-comed-municipalization-electric-utility>

⁴⁷ San Jose Mayor Wants to Explore City Owned Utilities, by Maggie Angst, The Mercury News <https://www.mercurynews.com/2019/10/17/san-jose-without-pge-mayor-wants-to-explore-city-owned-utilities/>

⁴⁸ Report Details Municipalization Benefits in Pueblo Colorado, by Ethan Howland <https://www.publicpower.org/periodical/article/report-details-municipalization-benefits-pueblo-colo>

⁴⁹ Pueblo Municipalization Feasibility Study <https://www.pueblo.us/DocumentCenter/View/23419/Pueblo-Municipalization-Study-Report-Draft-Final-01-14-19>

CASE STUDIES

While there are more than 200 municipal utilities in the US and more than 900 co-ops, very few of these were established in recent decades.⁵⁰ While most of these municipalizations were established in relatively small communities, some major cities and one entire state have publicly-owned utilities, including Los Angeles, San Antonio, Austin, Cleveland, and the State of Nebraska.⁵¹ While most of these utilities have been around for a long time, and many in smaller cities, some larger cities have either attempted municipalization or are beginning to pursue the option today, including cities like San Francisco and Chicago, as well as the entire State of Maine.⁵² Each municipalization effort faces unique conditions and there is no single playbook or set of best practices for the process, but these case studies demonstrate how municipalization could unfold in New York City.

LIPA

Throughout the majority of the 20th Century in Long Island, the Long Island Lighting Company (LILCO) was the electric and gas utility. The utility experienced a myriad of failings that led to a public takeover of the utility. These included sky high costs, poor emergency response capabilities, and heavy investments in the Shoreham nuclear plant, which never became active.^{53 54}

In 1985, Governor Mario Cuomo passed the Long Island Power Authority Act, which created the Long Island Power Authority (LIPA), a municipal subdivision of New York State responsible for electricity provision in Long island. LIPA fully took over LILCO in 1998, purchasing the entirety of their electric transmission and distribution system. Their remaining assets merged with Brooklyn Union Gas to form a new publicly traded utility company – KeySpan – which was then purchased by National Grid. National Grid now holds the KeySpan contracts with LIPA.⁵⁵

⁵⁰ www.electric.coop/electric-cooperative-fact-sheet/

⁵¹ www.utilityconnection.com/page2e.asp

⁵² www.utilitydive.com/news/chicago-considers-municipalizing-comed/559505/

⁵³ Fagin, Dan. "Long Island's & NYC's News Source." *Newsday*, 2007, www.newsday.com/community/guide/lihistory/ny-history-hs9shore,0,563942.story.

⁵⁴ Lambert, Bruce. "The End of Lilco, as Long Island Has Come to Know It." *The New York Times*, *The New York Times*, 28 May 1998, www.nytimes.com/1998/05/28/nyregion/the-end-of-lilco-as-long-island-has-come-to-know-it.html.

⁵⁵ "LIPA Issues Request for Proposals for Operation of on-Island Generation Capacity." *Power Engineering*, 28 Aug. 2019, www.power-eng.com/2001/03/08/lipa-issues-request-for-proposals-for-operation-of-on-island-generation-capacity/#gref.

The acquisition of LILCO was financed through bond offerings. LIPA was set up with a nine-person governing board, with five members appointed by the Governor and four members appointed by the State legislature. LIPA started out with exemption from state public utility regulation. Therefore, LIPA has been able to set their own rates and plan their own investments, with the direction and approval of the governing board. In 2010 a competitive procurement process for new management services was introduced.

LIPA functioned relatively well in terms of reliability until Hurricane Sandy, but bungled the response to the storm. It failed to plan for the storm, which exacerbated outages and slowed power restoration. This debacle led to Governor Andrew Cuomo passing the LIPA Reform Act (2013). This act transferred operations to investor-owned utility operator PSEG (a 10-year, \$5.3 billion contract). Today, LIPA itself mostly handles finances but still owns all of the infrastructure. At this point the PSC and the Department of Public Service were given an advisory role. Since this new structure has been put in place, it has been relatively smooth sailing since then in terms of rates and reliability, though there is very little direct accountability to the customers served. While this state authority was an improvement, it lacks the accountability of a municipally controlled utility.

Massena Energy

The last successful local municipalization in New York state was the City of Massena's takeover of a section of Niagara Mohawk's (today's National Grid) distribution grid in 1981 under Article 14-A of the New York State General Municipal Law . When Massena raised the idea of municipalization in 1968, there was major pushback from Niagara Mohawk, which argued that Massena residents would experience skyrocketing electricity rates.⁵⁶ In 1974, following an intense public relations campaign, the people of Massena voted for municipalization in a referendum. After the vote, Niagara Mohawk took the case to court, resulting in a costly 6-year litigation that resulted in a settlement.

Upon being implemented in 1981, Massena's municipalization immediately proved the fearmongering wrong. Immediately, residents received an electricity rate reduction of 20 percent.⁵⁷ These lower rates have continued to the present day. From 1990 to 2016 Niagara Mohawk/National Grid's average residential rates increased 78 percent, whereas Massena's raised only 49 percent.⁵⁸

⁵⁶ La Bella, Jeanne. "New York Anniversaries." Public Power, 2006.

⁵⁷ Public Power for Your Community. American Public Power Association , 2016, www.publicpower.org/system/files/documents/municipalization-public_power_for_your_community.pdf.

⁵⁸ Ibid.

Boulder, CO

The City of Boulder, Colorado has been trying to municipalize for almost a decade, with the climate crisis being its primary reason for doing so. The City has set ambitious goals-- moving to 100 percent renewables by 2030 and cutting its 2005 levels of emissions by 80 percent in 2050.⁵⁹ Its utility, Xcel, had initially expressed unwillingness to reduce its dependency on coal-generated energy.⁶⁰

In November of 2019 the city proposed to purchase the power grid from Xcel Energy to acquire the company's electric utility assets for \$94 million.⁶¹ The city appealed for dismissal of the June condemnation litigation, and if the offer is not accepted, the city can refile a condemnation action in District Court.

A district court dismissed the city's condemnation filing, which mirrored previous dismissals by the same court. The court stated that the city lacked jurisdiction, and would therefore need direction from the Colorado Public Utilities Commission.⁶²

During the tense discussions that followed, Boulder began to pursue shorter-term steps to exert influence on its energy infrastructure. These included intervening in proceedings at the state Public Utility Commission, pushing state legislation to allow local jurisdictions to pursue energy efforts, and pushing the investor-owned utilities to adopt more renewable technology.

Leading up to a citywide vote on municipalization, the city government established a new division to develop a plan. This division engaged in campaigning for the ballot measure through public education efforts and moving grassroots organizations to organize for the ballot measures.

After narrowly winning the vote, the city struggled with negotiating a price with the IOU. This fight led to unforeseen expenses, particularly for litigation. There is still no agreement, which has led to additional escalating steps, including a 2010 city decision to renew the utility's franchise. More recently the city got the utility to agree to a "stipulation" filed with the Public Utility Commission, which put the utility on the path towards renewables.

⁵⁹ "Boulder's Climate Commitment." City of Boulder, Colorado, Boulder Climate Initiatives Department, bouldercolorado.gov/climate.

⁶⁰ Johnson, Nathanael. "Lessons from Boulder's Bad Breakup." *Grist*, Grist, 26 Jan. 2018, grist.org/article/lessons-from-boulders-bad-breakup/.

⁶¹ Boulder offers Xcel \$94 million for assets necessary to form municipal Utility. <https://www.denverpost.com/2019/11/22/boulder-offers-xcel-94m-for-assets-necessary-to-form-municipal-utility/>

⁶² Boulder's plan to condemn Xcel assets, form municipal utility faces new setback <https://www.utilitydive.com/news/boulders-plan-to-condemn-xcel-assets-form-municipal-utility-faces-new-set/562293/>

POLICY RECOMMENDATIONS

We will have a two-fold plan, which merges what works from our current deregulated energy policy regime along with a combination of expanded public ownership of the grid and a continued place in the system for private ownership, development, and competition in the generation market. This will include both local legislation focused on the distribution grid, and state legislation focused on generation and energy sales.

First, we will tackle the local distribution grid. In order to ensure that the people of New York are properly served, we need a transparent entity directly accountable to the people it serves. As mentioned previously, Massena became a municipal utility through GMU § 360. This is one way we can take the utility under public control, but it does have a certain number of constrictions, such as needing to project bond costs. While this is the only way explicitly mentioned within the state law to create a municipal utility, there are at least two more options available.

A second way that this can be done is through a home rule request, the Office of the Public Advocate has submitted legislation for the city of New York to be granted control over an authority to take over the distribution and transmission assets of the local electric utility company. In this approach, a city ordinance can be passed in the New York City Council to request state action in the state legislature.⁶³ This is how the Village of Green Island was able to form the Green Island Power Authority (GIPA) back in 1986.⁶⁴ This has the advantage of a local/state partnership that could both hasten the process while ensuring local input and control.

Lastly, it is possible to skip local action and move directly to the New York State legislature. This is the method multiple municipalities in the North Country of New York used in 2010 to win a public distribution utility concurrent with the area of their combined borders, called the North Country Power Authority (or NCPA).⁶⁵ While this method has the advantage of simplicity, it gives a lot more power to the state over the municipality in shaping the governance of the authority. In the case of GIPA, the board is picked locally by the mayor with support from their village board. Conversely, the board of NCPA is picked by the governor with a majority of the seats picked by the Governor under the support of the local governments in its service territory.

⁶³ www.gothamgazette.com/city/6412-required-in-some-cases-home-rule-sheds-light-on-city-state-power-dynamic

⁶⁴ books.google.com/books?id=sUs1UwhMBzEC&lpg=PA3091&ots=9kdGFms18c&dq=%22Green%20Island%20Power%20Authority%22%20%22home%20rule%22%20%221986%22&pg=PA3091#v=onepage&q=%22Green%20Island%20Power%20Authority%22%20%22home%20rule%22%20%221986%22&f=false

⁶⁵ www.nysenate.gov/legislation/bills/2009/S2813

Since a major goal of a municipal utility is accountability to the people it serves, it is absolutely vital to have a utility that can operate separately from outside authorities, corporate or governmental. It is also important that such an authority have some form of democratic check on its powers to keep it accountable to the people it serves. While in the case of NCPA's board structure, there is still input from the local governments in the nominations for appointees, the Governor nonetheless had the ability to unilaterally shut down the authority in 2012 by refusing to appoint enough of the board to constitute a quorum. Since it is hard to get a state bill with a guarantee that the authority maintains complete local control without a home rule request, it is advisable to go with one of the first two options that do include the city in enacting the municipalization process.

In addition, the board of the municipal authority should be independent of direct regulation of the PSC, and should instead be accountable to a directly elected board, with candidates coming from geographic districts. As mentioned earlier, in the current IOU model profit is driven through the rate case process, which determines a set of investments that utility will make and guarantees a rate of return to investors which is above their total capital costs. In a municipalized utility, naturally this is no longer quite as relevant, as there are no shareholders to return a profit to. In addition, that municipal bonds are a cheaper method by which to raise capital,⁶⁶ (especially when Moody's has downgraded the credit rating of ConEd⁶⁷) and the savings to ratepayers is already apparent. Further, a current trend in the solar market is that solar has reached a point where solar energy is cheaper than coal energy.⁶⁸ This has made it an attractive investment for companies to develop solar fields and sell distributed solar systems. To help show the companies they go to for financing that they have a sound financial plan, these companies often approach IOUs to get a contract called a "power purchase agreement" or "PPA" that guarantees that the utility will buy their energy at a certain rate for a set number of years.⁶⁹ Recently, solar companies with PPA's from some large IOUs have gotten less of a boost from these agreements as IOU's lose their credit trustworthiness.⁷⁰ Having the utilities backed by PPAs from government entities may also potentially make them more attractive for investment.⁷¹

We should also ensure for a just transition for all utility workers. All union workers from the legacy employer companies should be offered via built-in clause during takeover and/or acquisition: a grandfathering option. This will ensure that the union workers retain their jobs and pension benefits as they transition to a public owned system. If they have 401k plans and other benefits, there needs to be a system which can roll over those benefits.

⁶⁶ www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/109047-Municipal-Debt-What-Does-It-Buy-and-Who-Benefits-.PDF

⁶⁷ www.moody.com/research/Moodys-affirms-the-ratings-of-ConEd-CECONY-and-OR-outlooks--PR_414577

⁶⁸ www.businessinsider.com/solar-power-cost-decrease-2018-5

⁶⁹ www.epa.gov/greenpower/solar-power-purchase-agreements

⁷⁰ www.greentechmedia.com/articles/read/fitch-solar-projects-much-more-reliable-performers-than-wind-farms

⁷¹ www.brookings.edu/wp-content/uploads/2016/06/CleanEnergyFunds.pdf

Next, we should address for-profit ESCOs. Sadly, for customers that have opted-in to a ESCO product, it may seem like prices have gone considerably up over recent years. While ESCOs allow for customers to do things with very real value such as opt into paying a little more to get rully renewable energy or keep their bills stable through fixed pricing, for the most part, ESCO's have led to significantly higher prices for customers.

While the utility is required to provide service and energy to customers as the default, but is banned from making a profit from energy sales, how could a smaller private company provide cheaper deals to customers while making a profit without remarkable hedging? One study showed that ESCO customers pay millions of dollars more than those customers that do not use an ESCO.⁷² While only a quarter of utility customers choose to use ESCOs,⁷³ and the PSC recently submitted a ruling limiting which offerings ESCOs provide, it is unclear how useful ESCO's are to the wider market.⁷⁴ It is worth noting that a significant number of ESCOs have come out opposed to the PSC order.⁷⁵

It is clear that letting ESCOs directly market to customers is a bad policy, but there are options to fix this. Although the PSC recently enacted an order requiring all ESCOs only market products that either guarantee a lower price, provide for a set price, or provide a renewable product, the issue still exists, especially when many ESCOs are marketed directly to consumers in a quick interaction at a customer's door. One option is banning ESCOs altogether. While this would eliminate the issues ESCOs bring, it does not preserve the positive impacts they can make in increasing money invested in renewable energy.

A better option may be to restrict ESCOs to the community choice aggregation market. Community choice aggregation (CCA) is where a community or municipality band together to purchase bulk electricity together.⁷⁶ The purchasing of energy in bulk allows for cost savings and the potential to choose a cleaner mix of electricity.⁷⁷ While CCA is only available in certain markets in New York now, and New York City passed a law last year to study participation in CCAs,⁷⁸ restricting ESCOs to these markets allows for more scrutiny in considering which ESCOs the community will use while keeping the beneficial option of opting into clean energy products.

⁷² Testimony of William D. Yates, CPA, for Public Utility Law Project of New York, Inc., in CASE 12---E---0201 and CASE 12---G---0202, file no. 73.

⁷³ www.villagevoice.com/2016/02/02/why-is-albany-letting-these-energy-companies-scam-thousands-of-new-yorkers/

⁷⁴ dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BF0E89E33-284E-4D45-9860-506DDAA84795%7D

⁷⁵ go.politicoemail.com/?qs=c9b3abbc412e14a613ab2f67a72dae01fb1cfae8ea3d81859b970f58214d99f1dae3c5014d8e15831c7d01ea34bab15b

⁷⁶ www.epa.gov/greenpower/community-choice-aggregation

⁷⁷ www.epa.gov/greenpower/community-choice-aggregation

⁷⁸ legistar.council.nyc.gov/LegislationDetail.aspx?ID=3331784&GUID=C54A71AF-E076-4066-8730-6BB1C0D9D692&Options=ID%7cText%7c&Search=140

Lastly, we will need to ensure a just and expeditious transition to a renewable energy future while keeping costs to the ratepayer down. To do this, we move onto the supply of energy generation. To maximize both, we should look to our already existing public utility, the New York Power Authority. We should expand their authority into development of renewable generation development and ownership. Their ready access to cheap capital through issuing bonds will help keep costs down, and their public ownership will keep the value generated by the assets vested in the public interest, cutting out the waste of having to continuously generate extra funds to pay out profits for investors. I recommend that whenever NYISO identifies a need for new capacity, that NYPA be given a first pass option to develop it themselves before putting out a general RFP to the private sector. This will give NYPA significantly expanded ability to create new, low cost, green energy that can then be sold to its existing customers, as well as the general capacity market.

Other than their reduced cost of capital and other direct savings, there is an added set of market benefits to this proposal. Let's revisit the capacity market. As you may remember, the last bid received under the total capacity need, or the "clearing price," sets the price for all other market participants who bid under the clearing price. If we are able to provide cheaper renewable energy capacity to the market, we can bring down that clearing price with clean energy, providing lower costs to all ratepayers with cleaner energy. With the combination of state and local action, we can drive costs down while increasing both sustainability and accountability.

CONCLUSIONS

Investor-owned utilities have controlled our access to electricity for over a century with little or no interruption. Between this past summer's major blackouts, this year's rate hikes, and what seems like no repercussions for the utility companies, it is clear that we need a major systematic change. Taking the power back for the people of New York will not be easy. It is certain to get pushback from the industry and will be challenged in the courts, so expect to expend time and capital on legal, engineering, and financial analyses. It will take time, and it will need to be well managed, but if done correctly, this could have very serious payoff both financially and environmentally.

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