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Could ConEd and PSEG Long Island be replaced?

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8-10 minutes



Gov. Andrew Cuomo has recently suggested he could revoke the franchises of electric utilities in downstate New York following power outages. | AP/Shutterstock

Storm-related power outages revived talk of revoking franchises and public takeovers, but either would be slow and complicated.

Issuing a perennial – and increasingly empty-seeming –

threat, Gov. Andrew Cuomo has recently suggested he could revoke the franchises of electric utilities in downstate New York following power outages. The slow return of electricity from Con Edison and PSEG Long Island to tropical storm Isaias elicited the governor's ire, as hundreds of thousands of people lost power and tens of thousands remained without it a week later. And this time, Cuomo said he was "[serious as a heart attack.](#)"

This latest electric service debacle has also revived discussion of the municipalization of utilities and kicking out private companies like ConEd all together. New York City Mayor Bill de Blasio [floated the possibility](#) this week, suggesting that power delivery and grid operation could instead be handled by a public entity that would hopefully be more responsive to the public. Some progressives in the state Legislature, including state Sen. Julia Salazar and Assembly Member Robert Carroll are also calling for a municipal takeover, alongside left-wing groups such as the Democratic Socialists of America and Housing Justice for All, who recently held a rally on the issue.

The state Legislature will likely examine this and more at a hearing [scheduled for Aug. 20](#) on utilities' response to the recent storm. In the meantime, here's what you should know about the new and old attacks on private utilities.

Can the state revoke Con Edison's franchise?

The short answer is [technically, yes](#), but it's unlikely.

Con Edison holds a license to operate as an electric utility

issued by the state Department of Public Service's Public Service Commission, which also regulates utilities. Among the penalties the Public Service Commission can levy against the company is revocation of that license, although such extreme action has not been taken before against a utility in New York. The state came close to taking similar action when the commission voted to kick out Charter Communications, but the cable company eventually worked out a deal that [allowed it to stay](#). It would also likely take years, as ConEd would surely challenge the decision in court. If that were to happen, a new utility company could bid for the license and buy Con Edison's infrastructure, which would stay in place after it leaves. However, given the size and complexity of the grid in New York City, which includes underground operations, the number of other companies that could actually operate it are limited. National Grid, a gas and electric company, is likely the only other utility already operating in the state capable of taking over the grid, although large electrical utilities that operate other parts of the country could place bids as well.

However, the state may decide to fine ConEd for its failures, like a [2007 \\$18 million](#) penalty for a large 2006 power outage. Despite threats from Cuomo, the utility still hasn't faced repercussions from last year, when a swath of Manhattan went dark for [reasons initially unknown](#) to ConEd.

Is that the same for PSEG Long Island?

The state actually has less authority over what happens to

PSEG Long Island. The grid on Long Island is technically owned by the Long Island Power Authority, or LIPA, which is a subdivision of the state. However, LIPA has a contract that lasts through 2025 with PSEG to operate the grid for it, rather than the private utility holding a franchise agreement with the state. As such, it's also [not regulated by](#) the Public Service Commission. So there is no franchise to revoke, despite Cuomo's threats. LIPA is not directly regulated by the Public Service Commission either, thanks to a [2013 law](#). All decision making falls to the nine-person board of trustees, five of whom Cuomo appoints. The board has the power to end the contract agreement for a variety of reasons, although PSEG is permitted to dispute the reasons given for the termination.

What is this talk of a government takeover? Can that happen?

It theoretically could. Advocates [have argued](#) that a public utility company would be far more transparent, more open to converting to clean and alternative energy and more responsive to customer needs. They point to the New York Power Authority, a public-benefit corporation that creates low-cost energy distributed by Con Edison, as a natural successor to take over the grid. But such a switch would be challenging. There are several ways the state could take control of the grid, but they all [require a ballot referendum](#) under current state law. That itself would take multiple years to get passed, not including the likely years of planning and fighting leading up to a referendum.

LIPA is an example of a public takeover gone poorly. It took over for the island's original and long-time electric and gas utility the Long Island Lighting Company (LILCO), which was [notorious for its high rates](#) and was attempting to open a controversial nuclear power plant. The public authority was [created by the state Legislature](#) in 1986, although it did not actually take over operations until over a decade later in 1998, saddled with LILCO's debt. LIPA became the island's primary electric distributor as a state-run utility, but it contracts out to private companies to help operate the grid. Until 2014, LIPA operated under its own name. But even then, [National Grid](#), and before that KeyStone Energy, contracted with LIPA to handle a lot of the day-to-day management of LIPA's system. National Grid, which merged with KeyStone in 2007, generates the electricity that LIPA, and now PSEG, was in charge of distributing.

Having a public authority did [reduce rates initially](#), although today, Long Islanders pay [among the highest electric rates](#) in the Northeast. But it did not necessarily improve storm responsiveness, the issue at hand now. LIPA faced [intense backlash](#) for how it handled Superstorm Sandy in 2012 and highlighted the utility's [many failures](#) prior to the storm. It led to the [2013 LIPA Reform Act](#), which officially privatized the operation of the utility, handed over almost all management to PSEG and reduced LIPA to a holding company. LIPA rebranded as PSEG Long Island, a company that Cuomo said in a press release would help Long Islanders "with its award winning record of performance during disasters" – which is

ironic given Cuomo's recent statements about Isaias.

When de Blasio recently suggested a government takeover of Con Edison, he offered no details about how it would be run.

So what is actually happening right now?

Cuomo [announced an investigation](#) into Con Edison, PSEG Long Island and Orange & Rockland Utilities, a ConEd subsidiary, and Central Hudson Gas & Electric, looking at their storm preparedness and the reasons for the long delays in returning power. The end of the investigation could result in penalties against the companies. The state Legislature will also hold a hearing on the storm and the utilities' response on Aug. 20. Meanwhile, some lawmakers have introduced legislation to address some of the issues that arose from this most recent storm power outage. State Sen. David Carlucci, for example, introduced a bill that would require utilities to [reimburse customers](#) for spoiled food and medicine if power isn't restored within 72 hours. Older bills that would attempt to make headway in shifting utilities into public hands introduced prior to this storm also sit in the Legislature. The most significant would create the [Down State Power Authority](#), which would take over private downstate gas and electric utilities, excluding Long Island. It would be run by an elected board of trustees.