



**NY Power  
Authority**

**Canal  
Corporation**

**MINUTES OF THE JOINT REGULAR MEETING  
OF THE  
POWER AUTHORITY OF THE STATE OF NEW YORK AND  
NEW YORK STATE CANAL CORPORATION**

**January 26, 2021**

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Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held via video conference at approximately 9:20 a.m.

**Members of the Board present were:**

John R. Koelmel, Chairman  
Eugene L. Nicandri, Vice Chairman  
Anthony J. Picente, Jr.  
Tracy McKibben  
Michael A.L. Balboni  
Dennis T. Trainor

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Gil Quiniones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Adam Barsky	Executive Vice President and Chief Financial Officer
Joseph Kessler	Executive Vice President and Chief Operating Officer
Kristine Pizzo	Executive Vice President and Chief Human Resource & Administrative Officer
Sarah Salati	Executive Vice President and Chief Commercial Officer
Robert Piascik	Senior Vice President & Chief Information Officer
Keith Hayes	Senior Vice President – Clean Energy Solutions
Yves Noel	Senior Vice President – Strategy & Corporate Development
Philip Toia	Senior Vice President – Power Supply
Karen Delince	Vice President and Corporate Secretary
Daniella Piper	Vice President – Digital Transformation Office and Chief of Staff
John Canale	Vice President – Strategic Supply Management
Patricia Lombardi	Vice President – Project Management
Eric Meyers	Vice President – Chief Information Security Officer
Anne Reasoner	Vice President – Budgets and Business Controls
Saul Rojas	Vice President – Enterprise Resilience
Gerald Goldstein	Assistant General Counsel – Contracts, Licensing & Environmental
Victor Costanza	Senior Director – Configuration Control & Deputy CISO
Adrienne Lotto	Senior Director – Energy Security & Resilience Programs
Lawrence Mallory	Sr. Director – Physical Security & Crisis Management
Egle Travis	Sr. Director – Revenue & Pricing Analysis
Thakur Sundeep	Controller
Mary Cahill	Manager – Executive Office
Richard Goldsmith	Finance Project Manager
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Associate Corporate Secretary
Michele Stockwell	Project Coordinator – Executive Office

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Chairman Koelmel presided over the meeting. Corporate Secretary Delince kept the Minutes.

**Introduction**

*Chairman Koelmel welcomed the Trustees/Directors and NYPA and Canal staff members who were present at the meeting. He said that the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to the Authority's Bylaws, Article III, Section 3.*

1. **Adoption of the January 26, 2021 Proposed Meeting Agenda**

On motion made by Trustee Balboni and seconded by Trustee Trainor, the members adopted the meeting Agenda, as amended.

**Conflicts of Interest**

*Chairman Koelmel and members Nicandri, Picente, McKibben, Balboni and Trainor declared no conflicts of interest based on the list of entities previously provided for the members' review.*

2. **Motion to Conduct an Executive Session**

***“Mr. Chairman, I move that the NYPA and Canal Boards conduct an executive session to discuss the employment history of a particular person, pursuant to §105 of the Public Officers Law.”*** On motion made by Trustee Picente and seconded by Trustee Trainor, the members held an executive session.

3. **Motion to Resume Meeting in Open Session**

***“Mr. Chairman, I move to resume the meeting in Open Session.”*** On motion made by Vice Chair Nicandri and seconded by Trustee Balboni, the meeting resumed in Open Session.

Chairman Koelmel said that no votes were taken during the Executive Session.



#### 4. DISCUSSION AGENDA:

##### a. Strategic Initiatives

##### i. President and Chief Executive Officer's Report

President Quiniones provided an update on NYPA's response to the COVID-19 pandemic and NYPA's 2020 accomplishments in the face of adversity (Exhibit 4a i-A).

##### 1. COVID-19 Update

NYPA was able to keep its employees safe during the COVID-19 pandemic despite the difficulties and complications. The health and safety of the NYPA/CANAL employees was the Authority's number one priority in every decision made during that time. In addition, NYPA reliably operated its power generation and transmission system across the state.

NYPA developed and adhered to very specific COVID-19 countermeasure protocols. As a result, the Authority's employee positivity rates remain extremely low and below state averages. For example, NYPA has a robust testing and contact tracing strategy in place, in addition to educating its employees and making sure that they are following CDC and Department of Health guidelines. NYPA also partnered with SUNY Upstate Medical University in Syracuse, New York, on its saliva-based testing protocol and have been employing this testing approach across the Authority's power plants and control centers, statewide.

##### 2. 2020 Accomplishments

##### • Overall Performance

Despite the pandemic and the difficulties associated with it, NYPA met each of its performance metrics through December 2020. Some of the metrics were adjusted because of the COVID-19 pandemic, nevertheless, this result is a statement of great execution by the employees of NYPA and CANALS in collaboration with the Board of Trustees and the stakeholders.

##### • COVID-19 Response

NYPA accomplished the following:

- Implemented responsible "Return to Work" plans that included a safe, regional phased approach.
- Robust Contact Tracing Program.
- Communicated regularly with employees and customers.
- Launched Economic Development Customer Assistance Program, assisting customers by giving them a forbearance in paying their electric bills and expanding the hydro allocations to make their budgeting more predictable during the recession from the pandemic.
- Countermeasure protocols in place to guide the Authority's day-to-day operations.
- Coordination of shared activities with other entities, within and outside the state.

##### • Financial Management

- NYPA's \$1.2B Bond Issuance enabled the Authority to maintain a good and healthy liquidity to run its operations.
- The Authority maintained its credit rating and a strong Balance Sheet during the pandemic.

##### • Management of Capital Portfolio

At the onset of the pandemic and because of the pause, NYPA adjusted its capital programs when it had to shut down its projects, within NYPA and with its customers. However, after NYPA revised and adjusted its goals, the Authority was able to execute its capital programs.

- **VISION2030**

Based on feedback from the Board, NYPA recalibrated its Strategic Plan to the VISION2030 Strategic Plan which was submitted to and approved by the Board in December 2020. NYPA will now move into execution of the Plan which refreshed its mission, vision and values and established strategic priorities and foundational pillars.

- **DEI Plan**

Last May/June, NYPA responded to a call to action and developed a forward-looking, industry-leading diversity, equity and inclusion plan which was also reviewed and approved by the Board at the December 2020 meeting.

- **2021 State of the State**

In his State-of-the-State address in January, the Governor announced an extremely ambitious program to advance the State's energy and environmental goals from large-scale renewables to offshore wind manufacturing in Albany and Brooklyn, and the construction of the Green Energy Transmission Superhighway. NYPA will play a pivotal role in realizing this program, leading three of the five projects announced by the Governor, the Smart Path, AC Transmission Segment A, and Northern New York Projects

- **Transmission Expansion**

NYPA is responsible for leading three projects as the anchor of the Green Energy Transmission Superhighway Project as announced by the Governor in the State-of-the-State address as follows:

- 1) The Smart Path project from Massena to Croghan in the Adirondacks to provide a more resilient and reliable electric system;
- 2) Partnering with LS Power for the AC Transmission Segment A project from Marcy to New Scotland to address system congestion; and
- 3) The Northern New York Transmission Line to expand the deliverability of renewable generation and address congestion.

Chairman Koelmel opined that under President Quiniones' leadership, and the work of the team, as reflected in the report NYPA had an outstanding year given the dynamics and challenges of the COVID-19 pandemic which we continue to confront today. He said that this is reflective of the confidence level developed by President Quiniones and the team to navigate in spite of the circumstances. He congratulated President Quiniones and the team for an outstanding year and the many significant accomplishments that positions NYPA even better for the future.

**b. Chief Operations Officer's Report**

Mr. Joseph Kessler, Executive Vice President and Chief Operations Officer, provided highlights of Utility Operations' key performance metrics and updated the Board on three key initiatives. (Exhibit "4b-A"). He said that during this period, Utility Operations was able to maintain the reliability of both generation and transmission above the threshold set at the beginning of the year, prior to the COVID19 pandemic.

**Performance Measures – Year-to-Date**

Generation Market Readiness

- Generation Market Readiness factor was at 99.93%. This is above the target of 99.40%.

Transmission System Reliability

- Transmission System Reliability factor was 92.84%. This is above the target of 90.50%.

Environmental Incidents

- Year-to-date, there were 29 incidents. The Target is not to exceed 50 incidents.

Air exceedances, which were usually tracked separately, are included in the year-to-date Environmental Incidents performance measure.

Safety

DART (Days Away, Restricted or Transferred) is the Authority's safety metrics.

- The year-to-date DART Rate is 0.39. The target is 0.78.

**Next Generation Niagara Controls Upgrade Project**

The Next Generation Niagara Controls Upgrade Project is part of the \$1.1B Capital Improvement Program at the Niagara Power Project.

The following projects, with an estimate of \$213M on completion, are in progress:

- Demolition of the Unit Control Boards and Governor Cabinets which will be replaced with modern, state-of-the-art equipment.
- Main Control Room Upgrades which include new lighting, Operator workstations, and Video Display Wall.
- Unit 12 Upgrades continues. The unit will be returned to service May 2021.

**Lewiston Pump Generation Plant Life Extension & Modernization Program**

- Unit 10, the 11th unit overhauled under the Capital Program, was completed and returned to service on December 18, 2020 despite the impacts due to the unplanned 3-month pause due to the COVID-19 pandemic.
- PG-1, the first pump unit, outage commenced on January 4th.

- Program costs remain on target within the approved budget of \$460M.
- Program completion is on schedule for December 2022.

**c. Chief Commercial Officer's Report**

Ms. Sarah Salati, Executive Vice President and Chief Commercial Operations Officer, provided highlights of the report to the Board (Exhibit "4c-A").

**Electricity Supply – Year-End Results**

**Merchant Gross Margin**

2020 Merchant Gross Margin Target was \$335M. Actual 2020 Merchant Gross Margin was \$293M.

The three main factors that impacted the Gross Margin were:

1. Mild winter (the third warmest in recorded history).
2. COVID-19 Pandemic impacted demand. Peak demand was 10% below the control levels. On average, across the entire state, demand was down five to seven percent.
3. There were high levels of gas inventory resulting in a 37% reduction in the cost of fuel relative to what was anticipated in October of 2019, pushing gas price below \$1.00.

**NYPA's 2020 Energy and Capacity Hedging Program**

- The volume metric and systematic program and strategy put in place with the Enterprise Risk Management group in 2020, settled in NYPA's favor.

**Economic Development**

- NYPA's hydroelectric economic development programs allocation is at 82%.
- Typically, NYPA receives between 80 – 100 applications annually; for 2020, NYPA received 59 applications and was able to allocate hydropower that supported more than 9,000 jobs.

**Customer Offerings – Year-End Performance**

**Clean Energy Solutions**

- The COVID-19 pandemic impacted NYPA's constructions projects; however, the safety of the Authority's employees, contractors and local communities were placed first and foremost. The six-month delay was due to the formal pause, the reorganization of NYPA's contractors, the dispensing by NYPA's customers of the Cap X they had put on pause themselves, and, ultimately, the lower capacity and EHS protocols that were put in place to ensure that when NYPA's staff returns to work, it is done safely. The Authority also provided support directly to customers in the frontline such as hospitals, transit services, and government buildings overseeing the pandemic response.

**EVoive**

- The Board approved up to \$250 million to support the Governor's EVoive policies. To date, 25 public DCFC Charging Ports have been installed at 6 sites.

**2020 Contributions to Customers and Clean Energy Priorities:**

**Economic Development**

- The Economic Development Customer Assistance Programs, initially 1.0, and subsequently 2.0 which was approved by the Board in December, provides financial relief and price certainty to the Authority's customers.
- Approximately 50% of the customers have subscribed to the program.

Distributed Energy Resources and Flexibility

- The Authority has approximately 230 MW solar PV and 35 MW battery storage in the pipeline.
- In 2020, NYPA's focus was extending the pipeline to include Environmental Justice communities.
- As part of the organizational evolution, the Distributed Energy Resource advisory group worked with the New York Energy Manager in order to develop a more holistic meter service from digital and distributed energy.

Transmission and Renewables

- Commercial Operations team managed NYPA's relationship and in partnership with LS Power to achieve the development of over 200MW large-scale renewable and storage projects for New York.

eMobility

Commercial Operations will continue to support the 40% initiative for charging hubs across the state:

- Largest non-Tesla DCFC charging hub in the northeast at JFK.
- 14 bus chargers installed at three transit agencies.
- Master Bus Transit Plan with NYSERDA.

Ms. Salati ended by saying that 2020 was a strong year for the Commercial Operations group with a large portfolio of activities.

**d. Chief Financial Officer's Report**

Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, provided highlights of the report to the Board (Exhibit "4d-A"). He said that the numbers being reported are unaudited and therefore subject to change when the Auditors, KPMG, present the audited certified report at the Annual Board meeting in March.

**Preliminary 2020 Year-end Results**

**Net Income**

The Authority is closing at a Net Loss of \$16.8 million. This is driven by the loss of revenues from the impacts of the COVID-19 pandemic and warmer weather; impacts on transmission, which is mostly as a result of higher than planned HTP RTEP payment which was offset by an increase in the overall transmission rates for the rate year July 1, 2020 through June 30, 2021.

**Non-Utility Revenues**

- Non-utility revenues are off by \$13 million, because of the delay and pause from doing energy efficiency projects which resulted in lower fees.
- The drop in revenues is offset by an overall decrease of expenses based on the Authority's response to the pause due the COVID-19 pandemic and the increase in pension expense which is driven by timing of the State Comptroller for fiscal year April 1, 2021.
- The Authority was able to meet the fixed charge coverage ratio and the debt service coverage ratio. The Authority's bond issuance earlier this year enabled NYPA to meet its coverage ratios.

Mr. Barsky ended by saying that NYPA's Balance Sheet remains strong. The Authority's liquidity is high, over \$1.4B; additional bank lines of credit are available; and 300 days of cash on hand which are well above the targets of the rating agencies.

**e. Finance & Risk Committee Report**

Chairperson McKibben reported that the Finance Committee met on January 19, 2021, adopted minutes, received one staff report, and considered 8 items, 7 of which are now before the Trustees for adoption.

The items before the Trustees for adoption are:

- i. Integration of Canals into the current NYPA Other Post-Employment Benefit ("OPEB") Trust.
- ii. Capital Expenditure Authorization Request for the Marcy-New Scotland Transmission upgrade in the amount of \$208,320,800.
- iii. Capital Expenditure Authorization Request for the Smart Generation and Transmission initiative Communications Backbone Program in the amount of \$24,752,178.
- iv. Capital Expenditure Authorization Request for the Transmission Life Extension Modernization Program Niagara Switchyard Project in the amount of \$121,000,000.
- v. Capital Expenditure Authorization Request for the Transmission Life Extension Modernization Program Niagara Protective Relay Replacement Project in the amount of \$18,300,000.
- vi. Capital Expenditure Authorization Request for the Blenheim-Gilboa Power Project Unit Circuit Breaker Replacement in the amount of \$10,544,000. In addition, a contract award in the amount of \$1,458,135 to ABB Enterprises Software Inc. to disconnect existing and install new ISO Phase Bus work.
- vii. Capital Expenditure Authorization Request for the St. Lawrence-FDR Power Project Long Sault Dam Positive Restraint Barrier Project in the amount of \$11,831,700. In addition, a contract award in the amount of \$8,100,000 HOHL Industrial Inc. to install the positive restraint barrier.



i. **Transfer of Canal Corporation OPEB Liabilities into the NYPA Trust**

The President and Chief Executive Officer submitted the following report:

**"SUMMARY"**

The New York Power Authority's ('NYPA') Chief Financial Officer recommends that the NYPA Board of Trustees approve the addition of Canal Corporation's Other Post-Employment Benefits ('OPEB') Liabilities into the NYPA OPEB Trust effective January 1, 2021. Such an action will provide considerable benefit to NYPA largely by removing a significant liability from the NYPA Balance Sheet and providing more borrowing capacity to fund NYPA's strategic investments consistent with Vision 2030.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve this action.

**BACKGROUND**

Other Post-Employment Benefits refers to the provision of health care coverage and other benefits by government agencies to retired employees and often to their spouses and other dependents. Aside from these benefits being provided to currently retired employees and their dependents, the government agencies also carry an obligation to provide benefits to currently active employees upon their future retirement, subject to certain eligibility rules defined by the government agency. In many cases, these benefits are reflected in collective bargaining agreements and are therefore contractual obligations.

The future obligation to provide post-employment benefits to both active and retired employees create a liability of the agency. These obligations represent a multi-year stream of future benefits payments for retiree health care. NYPA adopted GASB 75 in 2017 which required reporting of future stream of any unfunded liabilities on its balance sheet.

Because the OPEB liabilities represent a multi-year stream of future benefits payments for retirees, spouses and dependents, the determination of the liabilities is provided through an actuarial assessment. The actuarial assessment is based upon an estimate of future benefits obligations that is discounted to the present value. The present value of the future obligations, when unfunded, is reported as an OPEB liability on the agency Balance Sheet.

To mitigate the potential impacts to NYPA's financial standing and credit ratings resulting from unfunded OPEB liabilities, in 2007 NYPA created the Power Authority of the State of New York Other Post-Employment Benefits Trust Agreement ('Trust Agreement'). The Board approved the initial funding of the Trust with \$100 million out of the Operating Fund and up to \$125 million of funding obtained through proceeds from the Authority's Commercial Paper Series 3 Notes. \$100 million was deposited into the Trust in 2007 and \$125 million was added in 2008.

**DISCUSSION**

NYPA assumed ownership of the NY State Canal Corporation in January 2017. The Canal Corporation has accrued OPEB liabilities for its current and future retired employees and beneficiaries. However, the Canal OPEB liability was never funded. Therefore, the full Canal Corporation OPEB liability appears on the NYPA consolidated Balance Sheet. The 2021 projected OPEB liability for the Canal Corporation is \$342 million. As is the case with NYPA, the Canal Corporation OPEB liability is determined based upon an actuarial analysis considering employee and retiree demographics, the retirement benefits provided to Canal Corporation retirees, projections of future healthcare costs and other relevant factors.

As the actuarial analysis is based upon a projection of multi-year healthcare benefits payments, these costs are present valued to the current year for reporting of the OPEB liability on the Balance

Sheet. According to GASB 75, the present value rate used to discount the future projected benefit payments is based on the AA-rated Municipal Bond 20-Year Index rate (currently about 1.68 percent).

GASB 75 allows the use of a higher present value rate for Qualified Trusts. The discount rate used for the NYPA OPEB Trust is about 7 percent. At the much higher discount rate, OPEB liabilities have a much smaller present value. Therefore, less funds are required to be accrued in the Trust to pay for the OPEB liabilities. Canal Corporation OPEB liabilities, because they are converted to present value at a much lower discount rate, are considerably higher than they would be if pre-funded through a Qualifying Trust. Therefore, the impact to NYPA is twofold. First, the unfunded OPEB liabilities are reported on the NYPA Balance Sheet. Second, they are also larger in magnitude because of the lower discount rate used to compute the liabilities.

### FISCAL INFORMATION

Since 2007, NYPA has contributed \$340 million to its OPEB Trust. The Trust has performed well with a projected value by 2021 of \$732 million. NYPA's OPEB liabilities are projected to be about \$537 million in 2021, leaving an estimated surplus of \$195 million. Because the NYPA OPEB liabilities are fully funded, there are no OPEB liabilities for NYPA's core business appearing on the NYPA Balance Sheet, providing an enhancement to NYPA's financial position, and borrowing capacity.

The Canal Corporation's OPEB liabilities on the NYPA Balance Sheet limit NYPA's borrowing capacity. Without the OPEB liability on the NYPA balance sheet, there would be more capacity to borrow additional funds without impacting the target debt to equity ratio consistent with the Transmission rate cases. Removal from the Balance Sheet of the 2021 projected OPEB Liability of \$342 million could increase borrowing capacity by an equivalent amount and increase NYPA's investment capacity by up to \$684M, which could be used to fund NYPA's strategic programs under Vision 2030.

The combination of the existing surplus in the NYPA OPEB Trust along with the negative impact of the unfunded Canal OPEB liabilities on NYPA's borrowing capacity suggest a reasonable solution to move the OPEB liabilities into the NYPA Trust Fund. There are significant benefits of including Canal Corporation in the OPEB Trust including lower expense on income statement (\$20M/year over 5.6 years), lower liability on the Balance Sheet (liability goes to zero from \$342M), the flexibility to optimize Trust surplus and improved capital capacity (\$684M).

The decision to transfer the OPEB liabilities into the NYPA Trust is not irrevocable and NYPA could later choose to reverse the decision if other factors change.

### RECOMMENDATION

The Executive Vice President and Chief Financial Officer and the Finance and Risk Committee recommends that the Trustees approve the Transfer the Canal Corporation's Other Post-Employment Benefits ('OPEB') Liabilities into the NYPA OPEB Trust by an amendment to the OPEB Trust Agreement to include payment of benefits to retirees of NYPA and its subsidiaries.

While other options have been examined, no other near-term options exist that can provide as much long-term advantage to NYPA as the one that has been recommended. NYPA will continue to pursue efforts to reduce the costs for providing retiree benefits. However, such efforts will provide benefits to NYPA regardless of the decision to transfer Canal Corporation's OPEB liabilities to the NYPA Trust.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

*Mr. Adam Barsky, Executive Vice President and Chief Financial Officer, provided highlights of the recommendation to the Board.*

On motion made by Trustee McKibben and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the Executive Vice President and Chief Financial Officer be, and hereby is, authorized to enter into that certain First Amendment to Power Authority of the State of New York Other Post-Employment Benefits Trust Agreement to amend that certain Other Post-Employment Benefits Trust Agreement dated November 21, 2007 (the “*OPEB Trust Agreement*”) for the purpose of expressly including service providers of the Authority’s subsidiaries thereunder and otherwise updating the OPEB Trust Agreement, subject to the approval of such amendment by the Executive Vice President and General Counsel or his designee; and be it further**

**RESOLVED, That the Executive Vice President and Chief Financial Officer is hereby authorized to execute and deliver any and all other agreements, papers or instruments on behalf of the Authority that may be deemed necessary or desirable to carry out the foregoing, subject to the approval by the Executive Vice President and General Counsel; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**ii. Smart Generation & Transmission Strategic Initiative –  
Communications Backbone Program –  
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve additional capital expenditures in the amount of \$24,752,178 for the Communications Backbone Program ('Program'). The increased funding would be in addition to the \$153 million currently authorized by the Trustees, bringing the total Program cost to \$177,782,358.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures in the amount of \$24,752,178 for continued implementation of the Program.

**BACKGROUND**

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures more than \$6 million require Trustee approval.

The Program was initially identified as a foundational element of the Authority's Smart Generation & Transmission ('Smart G&T') Strategic Initiative. The goal of the Program is to establish a dedicated, redundant communications network that builds on the Authority's existing infrastructure and is integrated into the long-term asset strategy while leveraging available infrastructure from independent dark-fiber service providers to reduce dependency on commercial telecommunication providers. With VISION2030, the Program continues to be a key enabler to achieving NYPA's strategic priorities among, including the development of new products and services.

Once completed, the Authority will have a dedicated, robust, secure, and scalable communications network that supports:

- Replacement of legacy point-to-point circuits that will inevitably need to be retired.
- Increased data flow from a host of intelligent end-point devices deployed throughout the Authority's generation and transmission assets.
- Enabling capabilities of key components of the Strategic Vision including the Integrated Smart Operating Center ('iSOC') and the Emergency Energy Control Center; and
- Improved analytics to promote improved business and operational decisions.

At the onset of the Program, the Authority evaluated three options when considering a solution for an improved communications system. The first option was to continue with a total leased solution. Second, a total-owned solution, in which the Authority would deploy fiber optical ground wire ('OPGW') along all its transmission lines. Last, a hybrid solution utilizing a mix of fiber OPGW, digital microwave networks, and dark fiber leasing.

The hybrid solution offers the Authority the best value, including many of the controls and security benefits of a fully owned solution while reducing implementation costs and resource needs. The scope of the hybrid solution is to install OPGW, microwave communications, and utilize capitalized leases for dark fiber in the Authority's regions. The redundant network will leverage existing infrastructure and new installations including fiber OPGW which will be installed on the Authority's existing transmission towers. A new redundant microwave system will be installed in Northern NY and a new system will be installed in the Southeast NY region, leveraging existing Authority infrastructure as well as tower leasing sites for optimum communication and stability. Leasing of dark fiber provides a secondary fiber path to all major sites in each region.

## DISCUSSION

Capital expenditures in the amount of \$153,030,180 were previously approved by the Trustees for implementation of Program as follows:

- \$19.78 million - March 2017,
- \$77.5 million - October 2018, and
- \$52.72 million - December 2019

OPGW has been installed on the following NYPA transmission lines: NR2, CCDA, DART44, GF5, GNS1, MMS, PS1 and PV20 which totals to completing installation of OPGW for approximately 210 miles out of 530 miles. Furthermore, the engineering for all OPGW work has been completed except the MSU section that has been descoped. Also, fiber electronics Phase 1 has been installed, and all equipment for Phases 2 and 3 have been purchased. A lease fiber connection from CEC to Plattsburgh has been completed. Lastly, a lease connection from Dolson Ave to White Plains has been commissioned.

After the spring 2020 outage work was canceled and contracts were paused, due to the COVID-19 pandemic, the Program cost and scope was re-evaluated, and the Estimate at Completion has increased to \$177,782,358 due to the following changes:

- Increased cost:
  1. OPGW installation cost increase:
    - a. Fall 2019 & Spring 2020 outage cancelations.
    - b. Additional constraints required per regulatory permits.
    - c. Addition of aviation subject-matter experts.
    - d. Contingencies required for installation during the summer peak period, with potential 72-hour recalls.
    - e. OPGW third party tie-in implementation re-evaluation.
  2. Increase in the cost of the Northern New York microwave installation:
    - a. Unplanned, unforeseen station upgrades.
    - b. Temporary migration to and from the DANC dark fiber to commission the project.
  3. New fiber lease connection between Plattsburgh and Albany was added as secondary path out of Northern New York to increase network resiliency. This was not an option at the onset of the Program but was added since MSU was descoped.
  4. The original estimate of 3% for project direct cost has been increased to 6% based.
  5. Capital indirect costs increased from 5% to 12%, due to the Authority's policy change in July 2020.
- Decreased cost:
  1. OPGW installation on MSU1, MW1, and WPN1 transmission lines have been removed from the project scope.

## FISCAL INFORMATION

Payment associated with this Program will be made from the Authority's Capital Fund and approximately 65% of the cost will be recovered under the Authority's FERC approved formula rate. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

# RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Technology & Innovation, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Strategic Operations, and the Program Director recommend that the Trustees approve additional funding in the amount of \$24,752,178 to continue implementation of the Communications Backbone Program.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures for continued implementation of the Program.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.”

On motion made by Trustee McKibben and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, that pursuant to the Authority’s Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$24,752,178 are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the capital costs of the Smart Generation & Transmission Initiative Communications Backbone Program.**

<u>Capital</u>	<u>Expenditure Authorization</u>
Smart Generation & Transmission Initiative Communications Backbone Program	<u>\$24,752,178</u>

**AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**iii. Transmission Life Extension & Modernization Program –  
Niagara Switchyard Life Extension & Modernization Project –  
Revised Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to authorize capital expenditures in the amount of \$121 million for continued implementation and completion of the Transmission Life Extension and Modernization Program – Niagara Switchyard Life Extension & Modernization Project (‘Project’). The total estimated Project cost is \$276 million. The Trustees approved \$154.7 million in 2014. This request will release the final balance of the capital expenditures for the Project.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures.

**BACKGROUND**

In accordance with the Authority’s Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require Trustee approval.

The Transmission Life Extension and Modernization (‘TLEM’) Program is a multiyear program that will upgrade the Authority’s existing transmission system to maintain availability, increase reliability and ensure regulatory compliance. The TLEM Program encompasses transmission assets in the Central, Northern, and Western regions and has been divided into several projects at an estimated cost of \$726 million.

The Niagara Switchyard is a critical component of the Authority’s Transmission system. The existing equipment at the Niagara Switchyard are at or near the end of life and require replacement. The Project, which commenced in 2014, is structured to prioritize the replacement of poor performing systems and sequenced in conjunction with planned equipment outages, internal resource availability and external utility upgrades.

**DISCUSSION**

The Niagara Switchyard Life Extension & Modernization Project is a multiyear project within the TLEM Program and includes replacement or upgrades to the 115kV and 230kV Switchyard equipment, including:

1. Oil Circuit Breakers (115kV & 230kV)
2. 13.8kV Switchgear
3. Autotransformers
4. Disconnect Switches and Motorized Disconnect Switches
5. Grounding (Sections)
6. Measurement Transformers
7. Insulators
8. Conductors

The Project is structured to align with the Niagara Protective Relay Replacement Project. Through 2020, two Autotransformers, sixteen (16) 115kv Circuit Breakers, nine (9) 230kV Circuit Breakers the 115kV Bus, disconnects switches and other ancillary equipment have been replaced. Beginning in 2021 the remaining project activities will replace two (2) Autotransformers, five (5) 115kv Circuit Breakers, twenty-one (21) 230kV Circuit Breakers, the 13.8kV Switchgear, motor and manually

operated disconnect switches and other ancillary equipment. Completion is targeted in 2025, subject to approved outages. Completion is targeted in 2025, subject to approved outages.

Capital expenditures in the amount of \$154.7 million were previously authorized, of which \$105,610,052 has been spent through November 2020. The current request of \$121 million includes the remaining balance of capital funds needed to complete the Project, scheduled through 2025 and is comprised as follows:

Engineering/Design	\$ 10,650,000
Procurement	\$ 39,720,000
Construction/Installation	\$ 43,080,000
<u>Authority Direct and Indirect Expenses</u>	<u>\$ 27,550,000</u>
TOTAL	\$121,000,000

The total estimated cost to continue and complete execution of the project is \$276 million, of which \$266.9 million was previously presented to the Trustees in May 2014. The higher estimate is due to the increase in indirect costs as a result of the Authority's Policy Change adopted in July 2020, which increased the indirect capital allocation from 5% to 12%, retroactive to January 2020.

#### FISCAL INFORMATION

Payments associated with this Project will be made from the Authority's Capital Fund and will be recovered under the Authority's FERC approved formula rate. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

#### RECOMMENDATION

The Senior Vice President Operations Support Services and Chief Engineer, the Senior Vice President – Power Supply, the Regional Manager – Transmission, the Vice President – Project Management and the Program Director recommend that the Trustees approve capital expenditures in the amount of \$121 million for the continued implementation and completion of the Niagara Transmission Life Extension & Modernization ('TLEM') Project.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures for continued implementation of the Project.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

On motion made by Trustee McKibben and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$121 million are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further**



**RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the Transmission Life Extension and Modernization Program Niagara Switchyard Life Extension and Modernization Project.**

<u>Capital Authorization</u>	<u>Expenditure</u>
Niagara Switchyard LEM Project	<u>\$121,000,000</u>

**AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**iv. Transmission Life Extension & Modernization Program –  
Niagara Protective Relay Replacement Project –  
Revised Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to authorize capital expenditures in the amount of \$18.3 million for continued implementation and completion of the Transmission Life Extension and Modernization Program – Niagara Protective Relay Replacement Project ('Project'). The total estimated Project cost is \$44.2 million. The Trustees approved \$25.9 million in 2012. This request will release the final balance of the capital expenditures for the Project.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures.

**BACKGROUND**

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require the Trustees' approval.

The Transmission Life Extension Modernization ('TLEM') Program is a multiyear program that will upgrade the Authority's existing transmission system to maintain availability, increase reliability and ensure regulatory compliance. The TLEM Program encompasses transmission assets in the Central, Northern, and Western regions and has been divided into several projects at an estimated cost of \$726 million.

The Authority is facing a growing need to replace existing protective relaying systems at its facilities. This is due to many factors including unavailability of spare parts, lack of original equipment manufacturer support and poor reliability. This Project will continue to replace the existing protective relay systems at the Niagara Switchyard.

**DISCUSSION**

The Niagara Protective Relay Replacement Project is a multiyear project within the TLEM Program and includes protective relay upgrades to the 115kV and 230kV switchyard equipment. The protective relay system is a critical component of the power system and ensures its reliable and safe operation. The protective relay systems at the Niagara Switchyard are at or near the end of life and requires replacement. The Project, which commenced in 2012, is structured to prioritize the replacement of poor performing relay systems and sequenced in conjunction with planned equipment outages, internal resource availability and utility upgrades.

This Project was initiated in 2012 and through 2020, protective relays have been upgraded in Bays 11,12,13,15,16,17,19, 20, 23 and the 115kV Bus sections. The remaining project activities include replacement of protective relays for Bays 10, 14, 18, 22, 24, 25 and 26 and the 230kV Bus sections. Completion is targeted in 2025, subject to approved outages.

Capital expenditures in the amount of \$25.9 million were previously authorized, of which \$23,236,620 has been spent through November 2020. The current request of \$18.3 million includes the remaining balance of capital funds needed to complete the Project, scheduled through 2025 and is comprised as follows:

Engineering/Design	\$ 2,220,000
Procurement	\$ 2,460,000
Construction/Installation	\$ 4,980,000
<u>Authority Direct and Indirect Expenses</u>	<u>\$ 8,640,000</u>
TOTAL	\$18,300,000

The estimated cost to continue implementation and complete the Project is \$18.3 million. A total estimate of \$52.2 million was previously presented to the Trustees in October 2012. Through lessons learned and efficiencies gained, the new Project total estimate is \$44.2 million, which represents a decrease of \$8 million from the previous estimate.

#### FISCAL INFORMATION

Payments associated with this Project will be made from the Authority's Capital Fund and will be recovered under the Authority's FERC approved formula rate. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

#### RECOMMENDATION

The Senior Vice President Operations Support Services and Chief Engineer, the Senior Vice President – Power Supply, the Regional Manager – Transmission, the Vice President – Project Management and the Program Director recommend that the Trustees approve capital expenditures in the amount of \$18.3 million for the continued implementation and completion of the Niagara Transmission Life Extension & Modernization Program – Niagara Protective Relay Replacement Project.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the additional capital expenditures for continued implementation of the Project.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

On motion made by Trustee McKibben and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$18.3 million are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs of the Transmission Life Extension and Modernization Niagara Protective Relay Replacement Project.**

<u>Capital Authorization</u>	<u>Expenditure</u>
Niagara Protective Relay Replacement Project	<u>\$18,300,000</u>

**AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**v. Marcy to New Scotland Transmission Upgrade Project –  
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to approve capital expenditures in the amount of \$208,320,800 for the Marcy to New Scotland Transmission Upgrade Project ('Project'), formerly referred to as the AC Transmission Project. This funding will support final engineering, property acquisition, procurement, and construction of the transmission line upgrades, upgrades at the Marcy substation, and the remaining system upgrades to the connecting Transmission Owners.

NYPA filed, and the Federal Energy Regulatory Commission ('FERC') approved a Project cost of \$280.9 million or 37.5% of the total Project cost of \$750M. LS Power Grid New York Corporation I ('LS') also submitted and received FERC's approval for the balance of the Project. To date, the Trustees have approved capital expenditures in the amount of \$31.1 million for the Project. At this time, the total Project cost estimate is expected to be \$239.4 million, but the costs will continue to be assessed as the design and construction progresses. If additional funds are required, a future request will be made to the Finance and Risk Committee and Trustees.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve capital expenditures for continued implementation of the Project. Project staff does not anticipate this need prior to 2023.

**BACKGROUND**

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require the Trustees' approval.

In 2016, the Authority, together with North America Transmission ('NAT'), started Project development and subsequently submitted responses to the New York Independent System Operator ('NYISO') issued AC Transmission Public Policy Transmission Needs Project Solicitation. A Participation Agreement ('PA') was entered into by the Authority and NAT on June 7, 2018. The PA was signed by NAT which changed its name to LS Power Grid New York LLC ('LS LLC'). In January 2020, LS LLC assigned its rights in the Project and the PA to LS Power Grid New York Corporation I.

On April 8, 2019, the NYISO Board of Directors selected the Project as the winning proposal for segment A of the Transmission Need. In consideration of maintaining its purchase option under the PA, the Authority continued to fund 33% of Project development costs until July 28, 2020 when the Authority exercised its ownership option. Upon exercising its option, the Authority is responsible for 37.5% of the total Project costs. A reconciliation process for the change in responsibility of percentage of costs is currently ongoing.

**DISCUSSION**

The Project will benefit New York State's electric consumers by enabling the delivery of environmentally desirable power required to meet state energy goals, relieving uneconomic congestion, and replacing aging infrastructure while enhancing New York state's already high standard of system reliability.

The Project is anticipated to be in-service by December 2023 and consists of the following:

- Replacement of approximately twelve (12) miles of conductor on existing Authority-owned 345kV structures;

- Removal of approximately eighty (80) miles of existing National Grid-owned circuits (115kV, 230kV and 345kV);
- Installation of approximately eighty (80) miles of new double- or two new single-circuit 345kV circuits;
- Installation of a new 345kV switchyard at Princeton;
- Removal of the existing National Grid-owned 230kV Rotterdam substation; and
- Installation of a new 345kV substation at Rotterdam.

The Project also includes the upgrade of substation facilities, as determined during the system impact and facility studies. These costs are not included in the \$750 million estimate but are the responsibility of LS and the Authority.

The Trustees are requested to approval of capital expenditures of \$208.3 million. This funding will be utilized for:

Engineering/Licensing/Proposal	\$ 1,125,600
Property Rights Acquisition	\$ 22,318,900
Procurement	\$ 46,185,600
Construction	\$ 137,102,800
Authority Direct and Indirect Expenses	\$ <u>1,587,900</u>
TOTAL	\$ <u>208,320,800</u>

#### FISCAL INFORMATION

Payment associated with this Project will be made from the Authority's Capital Fund and will be eligible for cost recovery as approved by FERC. The proposed spending has been included in the approved 2021 Capital Budget and Four-Year Capital Plan.

#### RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Project and Business Development, and the Project Manager recommend that the Trustees approve capital expenditures in the amount of \$208,320,800 for the Marcy to New Scotland Transmission Upgrade Project.

The Finance and Risk Committee, at its January 19, 2021, meeting, adopted a resolution recommending that the Trustees approve the capital expenditures for continued implementation of the Project.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

On motion made by Trustee McKibben and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the Authority's Capital Planning and Budgeting Procedures, capital expenditures in the**

amount of \$208,320,800 for the Marcy to New Scotland Transmission Upgrade Project, are hereby authorized in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer;

<u>Capital</u>	<u>Expenditure Authorization</u>
Marcy to New Scotland Transmission Upgrade Project	<u>\$208,320,800</u>

AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

**vi. St. Lawrence-FDR Power Project – Long Sault Dam  
Positive Restraint Barrier – Contract Award and  
Capital Expenditure Authorization Request**

The President and Chief Executive Officer submitted the following report:

**“SUMMARY**

The Trustees are requested to approve capital expenditures in the amount of \$11,831,700 and to approve the award of a two-year contract to HOHL Industrial Inc., of Buffalo, NY, in the amount of \$8.1 million for engineering, procurement, and construction services required to install a Positive Restraint Barrier upstream of the Long Sault Dam ('LSD') at the St. Lawrence-FDR Power Project (the 'Project'). Interim funding in the amount of \$1,000,000 was previously approved by the Chief Operating Officer to initiate the design and engineering of the barrier system and begin the geotechnical planning.

Capital Expenditures in the amount of \$1,000,000, for preliminary engineering and planning, were previously approved by the President and Chief Executive Officer, bringing the total estimated Project cost to \$12.8 million.

The Finance and Risk Committee, at its January 19, 2021, meeting adopted a resolution recommending that the Trustees approve capital expenditures and the two-year contract award, for the implementation of the Project.

**BACKGROUND**

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million require Trustee approval.

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts requires Trustee approval for procurement contracts involving services to be rendered for a period in excess of one year.

The LSD is a 2,960-foot-long curved concrete gravity structure with 30 gated spillway bays. At the south end of the spillways are three non-overflow blocks and an earth embankment. At the north end of the spillways are 16 non-overflow blocks, four of which contain service and equipment rooms.

The present operation of the LSD is to serve power generation, via operation of the spillway gates. The gates function to spill excess flows from the St. Lawrence River when necessary in the operation of the Robert Moses/Robert H. Saunders Power Dam. LSD spillway gates have been operated more frequently in recent years due to higher-than-normal river flows and to account for economic conditions as Zone D has a high concentration of wind generation. Power Dam operations must still meet river flow requirements by spilling at LSD when these situations arise.

Following a fatality near the LSD in 2019 and to ensure safety and minimize access by unauthorized persons, the Authority at the direction of the Federal Energy Regulatory Commission ('FERC') was tasked with installing a positive-restraint barrier system, upstream of the LSD. The Authority was required to submit a schedule for design to FERC for review by December 31, 2020 and complete construction by October of 2021. To meet this aggressive schedule, it is critical to award and start design immediately.

The scope of this Project includes engineering, design, fabrication, and installation of an approximately 4,500-ft boat denial barrier, upstream of the LSD. To support the installation and future maintenance of the barrier, design, engineering, and installation of a boat launch is also required and part of the scope.



DISCUSSION

The Authority issued Request for Proposal Q20-7073NF ('RFP') through the Ariba system, which was advertised in the New York State *Contract Reporter* on October 26, 2020. Twenty (20) firms were invited into the Ariba Event and eighty-two (82) firms viewed the RFP on the Authority's SSM website. A bid walk was held November 4, 2020, with eight (8) firms in attendance. One (1) addendum was issued November 13, 2020. Two (2) proposals were received on December 1, 2020.

<u>Bidder</u>	<u>Location</u>
HOHL Industrial Services	Buffalo, NY
JF Brennan Company	La Crosse, WI

Proposals were reviewed by an Evaluation Committee comprised of representatives from Engineering, Strategic Supply Management, St. Lawrence Maintenance, Program Controls, and Project Management. The proposals were evaluated based upon proposal completeness, experience, schedule, price, responsiveness to the requirements of the RFP, proposed team, and technical and commercial exceptions taken to the RFP.

HOHL's proposal was found to be compliant with the requirements of the bid documents. Additionally, HOHL provided quality control, environmental, and safety plans. HOHL can meet the schedule and has demonstrated execution of similar work for another customer.

Preliminary funding in the amount of \$1,000,000 was recently approved to start engineering and required geotechnical plans and surveys. The total capital expenditure authorization request is comprised of the following:

Preliminary Engineering	\$ 750,000
Detailed Engineering	\$ 496,900
Construction/ Installation	\$ 9,560,000
Authority Direct and Indirect Expense	\$ 1,974,000
Total	\$12,831,700

FISCAL INFORMATION

Payments associated with this project will be made from the Authority's Capital Fund.

RECOMMENDATION

The Senior Vice President and Chief Engineer – Operations Support Services, the Regional Manager – Northern New York, the Vice President – Strategic Supply Management, the Vice President – Project Management, the Program Director – Project Management and the Finance and Risk Committee recommend that the Trustees approve capital expenditures in the amount of \$11,831,700 and approve a two-year contract to HOHL Industrial, Inc., of Buffalo, NY, in the amount of \$8.1 million, to support the work associated with the Long Sault Dam Positive Restraint Barrier Project.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.”

On motion made by Trustee McKibben and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, that pursuant to the Authority’s Capital Planning and Budgeting Procedures, capital expenditures in the amount of \$11,831,700 are hereby authorized for the Long Sault Dam Positive Restraint Barrier at the St. Lawrence-FDR Power Project in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Authority will use Capital Funds, which may include proceeds of debt issuances, to finance the costs for the Long Sault Dam Positive Restraint Barrier Project;**

<u>Capital</u>	<u>Expenditure Authorization</u>
Long Sault Dam Positive Restraint Barrier Program	<u>\$11,831,700</u>

**AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority’s Expenditure Authorization Procedures, approval is hereby granted to award a two-year contract to HOHL Industrial, Inc. of Buffalo, NY, to provide construction services to complete the aforementioned project as recommended in the foregoing report of the President and Chief Executive Officer;**

<u>Contractor</u>	<u>Contract Approval</u>
HOHL Industrial, Inc. Buffalo, NY	<u>\$8,100,000</u>
(Q20-7073NF)	

**AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**vii. Blenheim-Gilboa Power Project – Replacement of Breakers for BG Units 2-4 – Capital Expenditure Authorization Request and Contract Award**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to authorize capital expenditures in the amount of \$10,544,000 and approve the award of a four-year contract to ABB Enterprise Software Inc., of Cary, NC, ('ABB') in the amount of \$1,458,135 to complete design, fabrication, testing, delivery, and installation of ISO Phase Bus work associated with three indoor SF6 generator/motor protection circuit breakers at the Blenheim-Gilboa ('B-G') Power Project (the 'Project').

Capital Expenditures in the amount of \$250,000, for preliminary engineering and planning, were previously approved by the President and Chief Executive Officer, bringing the total estimated Project cost to \$10,794,000. Also, Interim funding for the contract award to ABB, in the amount of \$200,000, was approved by the Executive Vice President and Chief Operating Officer in December 2020.

The Finance and Risk Committee, at its January 19, 2021 meeting, adopted a resolution recommending that the Trustees approve the aforementioned request.

**BACKGROUND**

In accordance with the Authority's Capital Planning and Budgeting Procedures, capital expenditures in excess of \$6 million requires the Trustees' approval.

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require Trustee approval for procurement contracts involving services to be rendered for a period in excess of one year.

B-G Unit-1 breaker was replaced in May 2019, due to a catastrophic sudden failure in September 2018. Following a root cause analysis and to mitigate the risk of another failure, the breakers for BG Units 2-4 will be replaced with newly designed breakers. Consequently, the ISO Phase Bus will be modified to accommodate the new breaker design and a maintenance link will be added to facilitate maintenance, as was done for Unit-1.

**DISCUSSION**

The scope of this project includes design, fabrication, testing, site delivery, removal of existing, and installation of three indoor SF6 generator/motor protection circuit breakers (plus one spare breaker), its associated ISO Phase Bus work and maintenance disconnect links at the B-G Power Project. ABB will design and furnish the three breakers under a separate equipment contract. B-G operations and maintenance crew and resources will remove the existing and install the new breakers. ABB will also design, furnish, and install the ISO Phase Bus work and maintenance disconnect links associated with breakers as part of the RFP described below. One breaker and associated ISO Phase bus work installation per year is planned starting 2021 with anticipated project closeout to occur by December 2024.

The Authority issued Request for Proposal ('RFP') No. Q20-7040MH, which was advertised in the NYS *Contract Reporter* on September 24, 2020. The Discovery tool of the ARIBA event was activated for this RFP. Thirteen potential bidders were invited/requested to participate to this RFP. On October 28, 2020, two proposals were received as summarized in the table below.

<b><u>Bidder</u></b>	<b><u>Location</u></b>
ABB Enterprise Software Inc. (ABB)	Cary, NC
Haugland Energy Group LLC (Haugland)	Plainview, NY

Proposals were reviewed by an Evaluation Committee comprised of representatives from Engineering, Quality Assurance, Strategic Supply Management, B-G Operations, and Project Management. The proposals were evaluated based upon proposal completeness, experience, schedule, price, responsiveness to the requirements of the RFP, proposed team, and technical and commercial exceptions taken to the RFP. Since the breakers are critical assets to the Bulk Electric System ('BES'), replacement must be procured from suppliers that are compliant with NERC CIP-013 requirements and qualified as BES equipment suppliers to the Authority. NERC-CIP13 review was completed and approved by the Authority's cross functional team; the review consisted of questionnaire related to Network Security Risk, Platform and Data Security Risk, Technology Risk, Cyber Threat, and Manufacturing and Development Risk. The RFP event was also reviewed for compliance with Executive Order ('EO') 13920 'Securing the United States Bulk Power System'. After reviewing the EO, it was considered not applicable to this Contract. Minority/Women-Owned Business Enterprise ('M/WBE') and Service-Disabled Veteran-Owned Business ('SDVOB') participation goals were waived on this RFP.

The committee concluded that ABB submitted the lowest-priced and technically acceptable bid. ABB has extensive experience in construction of this magnitude, has performed well on previous Authority projects, has demonstrated knowledge of the scope-of-work and is capable of completing this project in accordance with the schedule.

Preliminary funding in the amount of \$250,000 was previously approved to start this Project. The total capital expenditure authorization request is comprised of the following:

Preliminary Engineering	\$	50,000
Detailed Engineering	\$	262,500
Equipment Procurement / Fabrication	\$	5,500,000
Construction/ Installation	\$	1,935,000
Authority Direct and Indirect Expense	\$	3,046,500
<b>Total</b>	<b>\$</b>	<b>10,794,000</b>

#### **FISCAL INFORMATION**

Payments associated with this project will be made from the Authority's Capital Fund.

#### **RECOMMENDATION**

The Senior Vice President and Chief Engineer – Operations Support Services, the Senior Vice President – Power Supply, the Vice President – Project Management, the Vice President – Project and Business Development, the Project Manager and the Finance and Risk Committee recommend that the Trustees approve capital expenditures in the amount of \$10,544,000 and the award of a four-year

contract to ABB Enterprise Software Inc., in the amount of \$1,458,135 for engineering, procurement, and construction services for the ISO Phase Bus work at the Blenheim-Gilboa Power Project.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.”

On motion made by Trustee McKibben and seconded by Trustee Balboni, the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, that pursuant to the Authority’s Capital Planning and Budgeting Procedures, the Trustees hereby approve capital expenditures in the amount of \$10,544,000 for the replacement of breakers for the Blenheim-Gilboa (“B-G”) Power Project Units 2-4 in accordance with, and as recommended in, the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Authority will use capital funds, which may include proceeds of debt, to finance the costs of the B-G Units 2-4 Breaker Replacement Project.**

<u>Capital</u>	<u>Expenditure Authorization</u>
Blenheim-Gilboa Power Project Replace BG 2-4 Unit Breakers	\$10,544,000

**AND BE IT FURTHER RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a four-year contract to ABB Enterprise Software Inc. in the amount of \$1,458,135 for the design, fabrication, testing, delivery, and installation of ISO Phase Bus work associated with three indoor SF6 generator/motor protection circuit breakers at the B-G Power Project.**

<u>Contractor</u>	<u>Contract Approval</u>
ABB Enterprise Software Inc. Cary, NC  (Q20-7040MH)	   <u>\$1,458,135</u>

**AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**viii. Niagara Power Project – Next Generation Niagara Program –  
Mechanical and Electrical Upgrades Project –  
Shaft Procurement – Contract Award**

*This item was deferred.*

**f. Cyber & Physical Security Committee Report**

Chairperson Balboni reported that the Cyber and Physical Security Committee met prior to this Board meeting. The committee adopted the minutes of the July 2020 meeting. In addition, the Cyber & Physical Security Committee received a report on NYPA's security posture and its response to the widely reported cyber attack using a compromised version of the SolarWinds Orion product. NYPA was not using the vulnerable version of the SolarWinds product and an in-depth investigation has not identified any evidence to suggest that NYPA was impacted by this attack. NYPA's Cyber Security team continues to monitor the situation in close collaboration with the industry, state, and federal partners.

The Committee also received a report from Mr. Eric Meyers, the Authority's new Chief Information Security Officer, and understands his vision as it relates to the security of the Authority.

## 5. CONSENT AGENDA:

### a. Commercial Operations

#### i. Expansion Power Allocations

The President and Chief Executive Officer submitted the following report:

#### "SUMMARY"

The Trustees are requested to:

1. Approve: (a) an allocation of 3,600 kilowatts ('kW') of Expansion Power ('EP') to Life Technologies Corporation, a subsidiary of Thermo Fisher Scientific Inc. ('Life Technologies') to support the company's proposed expansion at its facility located at 3175 Staley Road, Grand Island (Erie County); (b) an allocation of 2,700 kW of EP to Stavatti Aerospace Ltd ('Stavatti') to support the company's proposed expansion at 9400 Porter Road, Niagara Falls (Niagara County); (c) an allocation of 5,000 kW of EP to Sucro Real Estate NY, LLC ('Sucro') to support the company's proposed expansion at 2303 Hamburg Turnpike, Lackawanna (Erie County); and (d) an allocation of 350 kW of EP to Trek, Inc. ('Trek') to support the company's proposed expansion at its facility located at 190 Walnut Street, Lockport (Niagara County). These projects are discussed in more detail below and in Exhibits '5a i-A', '5a i-B', '5a i-C', and '5a i-D'.
2. Authorize a public hearing, in accordance with Public Authorities Law ('PAL') §1009, on a proposed form of contracts ('Proposed Contract') with Stavatti, Sucro, and Trek that would, along with Authority Service Tariff No. WNY-2 ('ST WNY-2'), apply to the sale of EP to Stavatti, Sucro, and Trek. Copies of the Proposed Contract and ST WNY-2 are attached as Exhibits '5a i-B-1', '5a i-C-1', and '5a i-D-1'.

#### BACKGROUND

Under PAL §1005(13), the New York Power Authority ('NYPA' or 'Authority') may contract to allocate 250 megawatts ('MW') of firm hydroelectric power as EP and up to 445 MW of Replacement Power ('RP') to businesses in the State located within 30 miles of the Niagara Power Project, provided that the amount of power allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

Each application for an allocation of EP and RP are evaluated under criteria that include but need not be limited to, those set forth in PAL §1005(13)(a), which details general eligibility requirements. Among the factors to be considered when evaluating a request for an allocation of hydropower are the number of jobs created as a result of the allocation; the business' long-term commitment to the region as evidenced by the current and/or planned capital investment in the business' facilities in the region; the ratio of the number of jobs to be created to the amount of power requested; the types of jobs to be created, as measured by wage and benefit levels, security and stability of employment, and the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed.

The Authority works closely with business associations, local distribution companies, and economic development entities to gauge support for the projects that would be supported with allocations of Authority hydropower. Discussions routinely occur with National Grid, New York State Electric & Gas, Empire State Development, Invest Buffalo Niagara, the Niagara County Center for Economic Development, and the Erie County Industrial Development Agency (collectively, the 'Economic Development Entities') to coordinate other economic development incentives that may help bring economic development to New York State. Staff confers with the Economic Development Entities to help maximize the value of hydropower to improve the economy of Western New York and the State of New York. Each organization has expressed support for today's recommended EP allocations.



At this time, 41,675 kW of unallocated EP and 70,376 kW of unallocated RP is available to be awarded to businesses under the criteria set forth in PAL §1005(13)(a).

## DISCUSSION

### Life Technologies Corporation

Established in 1962 in Grand Island, Life Technologies produces cell culture products for the pharmaceutical industry. These products are used in life sciences research and a wide variety of medical, diagnostic, therapeutic, and biotechnology applications.

Life Technologies is proposing to construct a 43,500 square foot ('sf') addition to its Grand Island plant to accommodate the production of Animal Origin Free ('AOF') and Advanced Granulation Technology products. The project would also support an upgraded Water for Injection system associated with a 12,000-sf facility renovation.

Life Technologies' expansion project would involve a capital investment expenditure of at least \$175 million. This includes new building additions (a capital investment expenditure of nearly \$107 million), new equipment purchases (a capital investment expenditure of at least \$61 million), and facility renovations (a capital investment expenditure of more than \$7 million).

Life Technologies is planning to begin construction on several phases of the expansion project in 2021. The company would commit to the creation of 140 new, permanent, full-time jobs that would be located at the Grand Island facility. The average compensation/benefits are estimated to be \$48,210 per job.

The company applied for 5,316 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 3,600 kW for a term of ten years.

The job creation ratio for the proposed allocation of 3,600 kW is 39 new jobs per MW. This ratio is below the historic average of 65 new jobs per MW based on allocations previously awarded. The total investment of at least \$175 million would result in a capital investment ratio of \$48.6 million per MW. This ratio is above the historic average of \$17.3 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Life Technologies.

### Stavatti Aerospace Ltd

Founded in 2014, Stavatti is an aircraft manufacturer focused on the design and production of military, commercial, and general aviation aircraft.

Stavatti is proposing to establish an aircraft research, design, and prototyping facility at the Niagara Falls International Airport ('NFIA'). This would be housed at the site of the former U.S. Army Reserve Center. The NFIA meets the company's hangar, facilities, and runway requirements.

Stavatti's expansion project would involve a capital investment expenditure of nearly \$156 million. This includes the facility acquisition (a capital investment expenditure of \$1.3 million), manufacturing equipment (a capital investment expenditure of \$62.3 million), tooling jigs and fixtures (a capital investment expenditure of \$81.7 million), and workstations and software (a capital investment expenditure of \$10.7 million).

Stavatti is planning to have the project completed in 2022. The company would commit to the creation of 363 new, permanent, full-time jobs that would be located at the Niagara Falls facility. The average compensation/benefits are estimated to be \$204,820 per job.

The company applied for 3,625 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 2,700 kW for a term of ten years.

The job creation ratio for the proposed allocation of 2,700 kW is 134 new jobs per MW. This ratio is above the historic average of 65 new jobs per MW based on allocations previously awarded. The total investment of at least \$155.9 million would result in a capital investment ratio of \$57.8 million per MW. This ratio is above the historic average of \$17.3 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Stavatti.

### **Sucro Real Estate NY, LLC**

Founded in 2014, Sucro operates sugar refineries at several locations throughout the United States, Canada, European Union, Caribbean, and Andean region.

Sucro is proposing to establish a full-scale sugar refinery at the former Bethlehem Steel site in Lackawanna. The plant would produce organic and conventional refined sugar, as bulk and packaged products, in both granular and liquid forms. The project site encompasses 12 acres which includes three large buildings requiring extensive renovations.

Sucro's expansion project would involve a capital investment expenditure of at least \$19 million. This includes land investment (a capital investment expenditure of \$250,000), renovations (a capital investment expenditure of \$11.95 million), initial refinery construction (a capital investment expenditure of \$5 million), and refinery expansion (a capital investment expenditure of \$1.8 million).

Sucro is planning to begin construction on multiple phases of the project in 2021. The company would commit to the creation of 50 new, permanent, full-time jobs that would be located at the Lackawanna facility. The average compensation/benefits are estimated to be \$62,638 per job.

The company applied for 9,000 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 5,000 kW for a term of ten years.

The job creation ratio for the proposed allocation of 5,000 kW is 10 new jobs per MW. This ratio is below the historic average of 65 new jobs per MW based on allocations previously awarded. The total investment of at least \$19 million would result in a capital investment ratio of \$3.8 million per MW. This ratio is below the historic average of \$17.3 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Sucro.

### **Trek, Inc.**

Founded in 1968, Trek is a manufacturer of electrostatic measurement and high voltage solutions. These products include high voltage power supplies and amplifiers and electrostatic voltmeters and discharge devices.

Trek is proposing to establish a High Voltage Center of Excellence ('HVCOE') at its Lockport facility. The HVCOE would allow the company to centralize engineering resources, develop new manufacturing capabilities, and eliminate redundancies within its organization. Several sites are competing for this project and a hydropower allocation may help in the Lockport site being selected for the expansion.

Trek's expansion project would involve a capital investment expenditure of at least \$6 million. This includes building expenses (a capital investment expenditure of \$2.8 million), production equipment

(a capital investment expenditure of \$2 million), and facility expenses (a capital investment expenditure of nearly \$1.2 million).

Trek is planning to begin the expansion project in 2021. The company would commit to the creation of 30 new, permanent, full-time jobs that would be located at the Lockport facility. The average compensation/benefits are estimated to be \$76,710 per job.

The company applied for 395 kW of hydropower in connection with the expansion. Staff recommends an EP allocation in the amount of 350 kW for a term of ten years.

The job creation ratio for the proposed allocation of 350 kW is 86 new jobs per MW. This ratio is above the historic average of 65 new jobs per MW based on allocations previously awarded. The total investment of at least \$6 million would result in a capital investment ratio of \$17.1 million per MW. This ratio is below the historic average of \$17.3 million per MW.

The Economic Development Entities have expressed support for the recommended allocation to Trek.

### CONTRACT INFORMATION

If approved, the new allocation to Life Technologies would be added to the customer's existing hydropower contract. Authority Service Tariff No. WNY-2 ('ST WNY-2') would also apply to the sale of the allocation.

The following is a summary of some of the matters that would be addressed in ST WNY-2 and the Proposed Contracts with Stavatti, Sucro, and Trek:

- Base rates for demand and energy, an annual adjustment factor, and a minimum monthly charge which helps the Authority cover fixed costs of serving a customer even when the customer does not utilize the allocation in a billing period.
- Direct billing of all production charges (i.e., demand and energy) as well as all New York Independent System Operator, Inc. charges, taxes and any other required assessments.
- The provision of substitute energy in the event of hydropower curtailments caused by adverse water conditions that impact power project operations.
- Basic requirements for customer metering.
- Early outreach to the customer concerning allocation extension initiatives by the Authority.
- Requirements for energy audits at the facility receiving the allocation. The customer would have the option to satisfy the audit requirement through either a traditional physical audit, or a virtual audit using the Authority's New York Energy Manager which is expected to provide considerable savings for customers who select it.
- Periodic communications to customer about energy-related projects, programs and services offered by the Authority.
- Compliance provisions that allow the Authority to reduce a customer's allocation for a failure to meet supplemental commitments, with an opportunity for the customer to present a proposed plan with actionable milestones to cure deficiencies.

- The collection of a Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge to allow the Authority to recover costs it incurs relating to its purchase of Zero Emission Credits and Renewable Energy Credits attributable to the customer's load.

Staff intends to discuss the form of the Proposed Contracts with Stavatti, Sucro, and Trek and anticipates reaching agreement on a contract substantially similar to the form attached as Exhibits '5a i-B-1', '5a i-C-1' and '5a i-D-1'. Accordingly, the Trustees are requested to authorize a public hearing, pursuant to PAL §1009, on the form of the Proposed Contracts attached as Exhibits '5a i-B-1', '5a i-C-1' and '5a i-D-1'. The form of the Proposed Contracts is consistent with recently approved contracts for the sale of EP and RP.

As required by PAL §1009, when the Authority believes it has reached agreement with its prospective co-party on a contract for the sale of EP or RP, it will transmit the proposed form of the contract to the Governor and other elected officials and hold a public hearing on the contract. At least 30-days' notice of the hearing must be given by publication once in each week during such period in each of six selected newspapers. Following the public hearing, the form of the contract may be modified, if advisable. Staff will report to the Board of Trustees on the public hearing and the Proposed Contract at a later time and make any additional recommendations regarding the Proposed Contract as are appropriate.

Upon approval of the final proposed contract by the Authority, the Authority must 'report' the Proposed Contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority is authorized to execute the final contract.

#### FISCAL INFORMATION

The actions recommended herein will not have a negative impact on the Authority's finances.

#### RECOMMENDATION

The Senior Vice President – Clean Energy Solutions, recommends that the Trustees:

1. Approve an allocation of 3,600 kW of EP to Life Technologies as described herein and in Exhibit '5a i-A' for a term of ten years; approve an allocation of 2,700 kW of EP to Stavatti as described herein and in Exhibit '5a i-B' for a term of ten years; approve an allocation of 5,000 kW of EP to Sucro as described herein and in Exhibit '5a i-C' for a term of ten years; and approve an allocation of 350 kW of EP to Trek as described herein and in Exhibit '5a i-D' for a term of ten years.
2. Authorize a public hearing, in accordance with PAL § 1009, on the Proposed Contracts with Stavatti, Sucro, and Trek attached as Exhibits '5a i-B-1', '5a i-C-1', and '5a i-D-1'.

For the reasons stated, I recommend the approval of the above-requested actions by adoption of the resolution below."

the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That an allocation of 3,600 kilowatts of Expansion Power ('EP') be awarded to Life Technologies Corporation for a term of 10 years as detailed in the foregoing report of the President and Chief Executive Officer ("Report") and Exhibit "5a i-A", be and hereby is approved, subject to rates previously approved by the Trustees; and be it further**

**RESOLVED, That an allocation of 2,700 kilowatts of EP be awarded to Stavatti Aerospace Ltd for a term of 10 years as detailed in the foregoing Report and Exhibit “5a i-B”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further**

**RESOLVED, That an allocation of 5,000 kilowatts of EP be awarded to Sucro Real Estate NY, LLC for a term of 10 years as detailed in the foregoing Report and Exhibit “5a i-C”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further**

**RESOLVED, That an allocation of 350 kilowatts of EP be awarded to Trek, Inc. for a term of 10 years as detailed in the foregoing Report and Exhibit “5a i-D”, be and hereby is approved, subject to rates previously approved by the Trustees; and be it further**

**RESOLVED, That the Trustees hereby authorize a public hearing pursuant to Public Authorities Law (‘PAL’) §1009 on the terms of the proposed form of the direct sale contract with Stavatti Aerospace Ltd, Sucro Real Estate NY, LLC, and Trek, Inc. for the sale of the EP allocations (the ‘Contract’), the current forms of which is attached as Exhibits “5a i-B-1”, “5a i-C-1”, and “5a i-D-1”; and be it further**

**RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit a copy of the proposed Contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Ways and Means Committee, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee pursuant to PAL §1009; and be it further**

**RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**b. Procurement (Services) Contracts**

**i. Procurement (Services) and Other Contracts –  
Business Units and Facilities – Awards,  
Extensions, and/or Additional Funding**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit '5b i-A,' in support of projects and programs for the Authority's Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or 'best valued' bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

**BACKGROUND**

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require the Trustees' approval for procurement contracts involving services to be rendered for a period in excess of one year.

The Authority's Expenditure Authorization Procedures ('EAPs') require the Trustees' approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Authority's EAPs also require the Trustees' approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

**DISCUSSION**

**Awards**

The Trustees are requested to approve the award and funding of the multiyear procurement (services) contracts listed in Exhibit '5b i-A,' where the EAPs require approval based upon contract value or the terms of the contracts will be more than one year. Except as noted, all of these contracts contain provisions allowing the Authority to terminate the services for the Authority's convenience, without liability other than paying for acceptable services rendered to the effective date of termination. Approval is also requested for funding all contracts. Except as noted, these contract awards do not obligate the Authority to a specific level of personnel resources or expenditures.

The issuance of multiyear contracts is recommended from both cost and efficiency standpoints. In many cases, reduced prices are negotiated for these long-term contracts. Since these services are typically required on a continuous basis, it is more efficient to award long-term contracts than to rebid these services annually.

**Extensions**

Although the firms identified in Exhibit '5b i-B' have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. The Trustees' approval is required because the terms of these contracts will exceed one

year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Authority to terminate the services at the Authority's convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Authority to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit "5b i-B" is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Authority or external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Authority needs to continue until a permanent system is put in place.

The following is a detailed summary of each recommended contract award and extension.

### **Contract Awards in Support of Business Units/Departments and Facilities:**

#### ***Utility Operations – Environmental, Health & Safety***

Due to the need to meet and maintain the Authority's project schedule, the proposed personal services contract with **First Environment, Inc. ('FEI') (4500326590)**, for Verification Services of Reported Inventory to the Climate Registry became effective December 10, 2020, with an interim award amount of \$15,000, subject to the Trustee's ratification, in accordance with the Authority's Guidelines for Procurement Contracts and EAP's. Staff recommends the award of contract to FEI which is technically and commercially qualified and was awarded using discretionary spend. The contract is for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$109,225. It should be noted that FEI is a Service-Disabled Veteran-Owned Business and a Small Business Enterprise.

#### ***Utility Operations – Engineering***

The proposed personal services contracts with **AEIS LLC dba Atlas Evaluation & Inspection Services ('AEIS')**, **LPI, Inc. ('LPI')** and **Hatch Associates Consultants, Inc. ('Hatch'), (Q20-7056CC)** would provide Failure Analysis and Metallurgical Testing service. Failure Analysis and Metallurgical Testing is the process of investigating the root cause of a failure in the facilities and how to prevent a recurrence. The services consist of providing equipment materials and labor required to sample, examine, test, and analyze metallic and other materials used in the Authority's or Canals facilities. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Thirteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Five proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to AEIS, LPI and Hatch which are technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$2 million. It should be noted that AEIS is NYS certified Minority-owned Business Enterprise and a NYS certified Women-owned Business Enterprise. It should also be noted that AEIS is a Small Business Enterprise.

### ***Utility Operations – Enterprise Resilience***

The proposed personal services contracts with **Burns & McDonnell Consultants, Inc. ('BMC')**, **Ernst & Young U.S. LLP ('EY')**, **Guidehouse, Inc. (Guidehouse')**, **Deloitte & Touche LLP ('Deloitte')** and **TRC Engineers, Inc. ('TRC') (Q20-7003SS)** would provide Enterprise Resilience Program Consulting services. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Forty-two firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Fourteen proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to BMC, EY, Guidehouse, Deloitte and TRC which are technically and commercially qualified and meet the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. These contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$6 million. It should be noted that TRC is a Small Business Enterprise.

### ***Utility Operations – Facility & Infrastructure PM***

The proposed non-personal services contract with **Oak Ridge Hauling LLC ('ORH') (Q20-7088JM)** would provide Recycling and Trash Removal services for the Clarence D. Rappleyea (Centroplex) building. This contract will cover the pickup of paper and cardboard recycling in addition to supplying construction and metal dumpsters. The selected vendor will also provide maintenance and repair services to two compactors. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Four firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to ORH which is technically and commercially qualified and meets the bid requirements on the basis of 'lowest value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of three years, beginning on or about March 1, 2021, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$100,000.

### ***Utility Operations – Facility & Infrastructure PM***

The proposed sole-source maintenance services contract with **Technical Building Services, Inc. ('TBS') (4500326436)** would provide BAS Repair and Maintenance services for the Clarence D. Rappleyea (Centroplex) building. The building is equipped with an outdated, proprietary Honeywell Building Management System ('BMS') which was installed in 2002 and is beyond its useful life. The Authority will be undergoing a BMS study in 2021 with the goal of identifying a replacement system for installation and commissioning in 2022. The proprietary nature of the system greatly limits the number of available support vendors and the learning curve associated with bringing a new vendor in is estimated to be 18-24 months. TBS possesses the licenses required by Honeywell to service the system. The contract is for an intended term of two years, beginning on or about February 1, 2021, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$200,000. It should be noted that TBS is a Small Business Enterprise.

### ***Utility Operations – Power Supply***

The proposed non-personal services contracts with **Clear River Environmental Service Corporation ('Clear River')** and **Russell Reid Waste Hauling and Disposal Service Company, Inc. dba United Site Services ('USS') (A20-00237DW)** would provide Wastewater Removal Services for the Richard M. Flynn Power Plant. The Richard M. Flynn Power Plant will utilize the contractors to provide



supervision, labor, materials and equipment to load, transport and dispose of between 7,000-60,000 gallons of wastewater from a 100,000-gallon storage tank and up to 1,000 gallons of biomass sludge from a holding tank to a designated facility in the Suffolk County Sewerage treatment Plant at Bergen point in West Babylon. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Eight firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Four proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of contracts to Clear River and USS which are technically and commercially qualified and meet the bid requirements on the basis of 'lowest value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contracts are for an intended term of five years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the aggregate amount expected to be expended for the term of the contract, \$1 million. It should be noted that Clear River and USS are Small Business Enterprises.

### ***Utility Operations – Project Management***

The proposed construction services contract with **Crown Castle International Corporation dba Crown Castle Fiber LLC ('CCF') (Q20-7054MR)** would provide support the Communication Backbone Program ('CBP') Dark Fiber installation from the NYPA White Plains Office to NYSTA Route I-287 East Exit 6. The dark fiber connection project will support the Authority's CBP, part of the Smart Generation & Transmission ('SG&T') Initiative, which was established to deploy a robust, secure, and scalable communications network. Bid documents were developed by staff and were accessible through the NYPA.gov site. The Request for Quotations was advertised on the New York State *Contract Reporter* website and posted on the Procurement page of the Authority's website. Fifteen firms/entities were listed as having been invited to, or requested to participate in, the Ariba event. Two proposals were received electronically via Ariba and were evaluated, as further set forth in the Award Recommendation documents. Staff recommends the award of a contract to CCF which is technically and commercially qualified and meets the bid requirements on the basis of 'best value,' which optimizes quality, cost and efficiency among responsive and responsible offerors. The contract is for an intended term of twenty years, subject to the Trustees' approval, which is hereby requested. Approval is also requested for the amount expected to be expended for the term of the contract, \$338,000 for construction. In addition, the term includes the twenty-year lease and maintenance agreements.

### **Extensions and/or Additional Funding Requests:**

#### ***Business Services – Corporate Finance***

The Authority solicited proposals for Financial Advisory Services for Energy Projects under RFP inquiry **Q19-6713RM**. On March 31, 2020, the Trustees approved a five-year personal services contracts to **Advanced Automation Corporation ('AAC'), BNP Paribas Securities Corporation ('BNP'), CCA Capital LLC ('CCA'), Credit Agricole Corporate and Investment Bank ('CAC'), Ernst & Young LLP ('EY'), Guidehouse (fka Navigant Consulting, Inc. ('Guidehouse')) J.P. Morgan Securities LLC ('JPM'), and Rockfleet Financial Services, Inc. ('RFS')** in the amount of \$2 million to provide Financial Advisory services for Energy Projects consulting services. On July 28, 2020, the Trustees approved **CohnReznick Capital Market Securities LLC ('CohnReznick')** who was also selected for recommendation of award but was inadvertently left off the memo. On December 15, 2020, the aggregate value was increased by \$500,000 making the total \$2.5 million. Staff requests Trustee approval for additional funding, to date \$1.85 million has been released, and it is recommended to increase the aggregate funding in the amount of \$5 million which will increase the total aggregate amount to \$7.5 million. Staff envisions that the multitude of benefits that the Authority continues to see from these contracts warrants an additional increase in the aggregate funding amount to support new and ongoing initiatives needed to support the Authority's Financial Services.

### ***Commercial Operations – Customer Business Development***

On September 20, 2019, the Trustees authorized the execution of Power Purchase Agreements ('PPA') to **SunPower Corporation dba Solar Star Big Apple BTM LLC ('Solar Star') (Q19-6703HM)**, to commence the design development process of a solar photovoltaic ('PV') system with battery storage at the Port Authority of New York and New Jersey ('PANYNJ') John F. Kennedy ('JFK') International Airport. The Trustees approved the annual cost of the PPA with SunPower and GSRP for \$856,851 per year for a twenty-year term (total amount \$17,137,020) based on a preliminary budget analysis. These two agreements form the 'back-to-back' PPA construct where NYPA purchases power under the primary PPA and then sells the power to the customer under the Power Sales Contract ('PSC'). The maximum estimated annual cost of the PPA with Solar Star is projected to be \$856,851 per year for up to a 25-year term based on a preliminary budget analysis. These costs, plus an administrative fee of three percent, will be directly billed to PANYNJ under the PSC. During the design and development phase of the project, it was deemed to be economically more advantageous for the project to have a term of 25 years versus 20 years. Staff requests Trustee approval for an additional five-year term and additional funding of \$4,284,255 (total value \$21,421,275) with the execution of a PPA with Solar Star and in parallel a PSC with the PANYNJ. Upon execution of the PPA, Solar Star will commence construction of the Project, with the first estimated delivery of the Products under the PPA is expected to be October 30, 2022.

### ***Utility Operations – Engineering***

On July 14, 2015, the Authority issued a one-year construction contract to **Greenman- Pedersen, Inc. ('GPI') (4600003011)** in the amount of \$2.2 million to provide on-call engineering services. The extension is needed as GPI is the Engineer of Record ('EOR') for an active project and is needed to support the completion of the project. This contract extension will allow time to provide technical support during the construction, commissioning, and close-out of the project. Interim approval is requested for the extension of the contract from December 31, 2020 to January 26, 2021 for the continuation of services, subject to the Trustees' ratification. Staff requests Trustee approval for the extension of the GPI contract for a two-year term from January 1, 2021 through December 31, 2022. No additional funding is being requested at this time.

### ***Utility Operations – Facility & Infrastructure PM***

On March 11, 2020, the Authority issued a one-year construction contract to **Donjon Marine Company, Inc. ('Donjon') (4600003904)** in the amount of \$5 million to provide preparation, transportation, and placement of obsolete materials in accordance with New York State Department of Environmental Conservation ('NYSDEC') Material Preparation Guidelines and Protocol for transportation and artificial reef replenishment. The materials to be 'reefed' have been supplied by New York Power Authority ('Authority'), New York State Canal Corporation ('Canals'), and other agencies. As the State's Artificial Reef Program and Governor Cuomo's Artificial Reef Initiative continues, it is the Authority's intent to provide an active role and ongoing support of this program. Staff requests Trustee approval for the extension of the Donjon contract for one-year from March 10, 2021 through March 9, 2022. The original RFP was bid as a multi-year service contract, for which the Authority elected to only authorize a one-year term. No additional funding is being requested at this time.

### ***Utility Operations – Facility & Infrastructure PM***

On January 29, 2020, the Authority issued a one-year construction contract to **Eaton Corporation ('Eaton') (4500317982)** in the amount of \$2.9 million to provide the East Dam Hydro Plant rehabilitation for the Village. The Authority is managing and executing this project under a separate agreement between the Authority and the Village. The cost of the project is wholly reimbursable by the Village. Due to delays from the COVID-19 pandemic and extra repairs such as trash racks and trash rake, recently requested by the Village, this contract extension will allow time to complete the rehabilitation. Staff requests Trustee approval for the extension of the Eaton contract from January 28, 2021 through December 31, 2021 to complete the East Dam Hydro Plant Rehabilitation project for the Village of Potsdam. No additional funding is being requested at this time.

***Utility Operations – Transmission Project Management***

As part of its relicensing of the Niagara Power Project in 2006, the Authority agreed to develop and maintain certain recreational facilities in Erie County. In partial fulfillment of this commitment, in 2009 the Authority entered into a Report of Understanding ('MOU') with **Buffalo River Fest Park LLC ('BRP')** to operate and maintain the Park at 41 Hamburg Street, Buffalo NY 14204. Pursuant to this MOU and the Operation and Maintenance Agreements entered into pursuant thereto, BRP has continuously operated and maintained the Park since that time. The current Operation and Maintenance Agreement expires on December 31, 2020 and NYPA desires to extend the maintenance contract with Buffalo River Fest Park LLC. NYPA has been satisfied with the quality of the maintenance performed on the park in the past eight years and wishes to continue this relationship. Staff requests Trustee approval for the extension of the BRP contract for a three one-year terms running January 1<sup>st</sup> to December 31<sup>st</sup> each year 2021, 2022 and 2023. Approval is also requested for additional funding, \$213,600 based on an annual cost of \$71,200.

**FISCAL INFORMATION**

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2020 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project's Capital Expenditure Authorization Request, as applicable.

**RECOMMENDATION**

The Senior Vice President – Operations Support Services and Chief Engineer; the Senior Vice President – Power Supply; the Vice President – Strategic Supply Management; the Vice President – Project Management; the Vice President – Environmental, Health & Safety; the Vice President – Engineering; the Vice President – Business Development; the Vice President – New York Energy Manager; the Vice President – Enterprise Resilience; Assistant General Counsel; the Regional Manager of SENY; Treasurer; recommend that the Trustees approve the award of multiyear procurement (services) and other contracts to the companies listed in Exhibit '5b i-A,' and the extension and/or funding of the procurement (services) contracts listed in Exhibit '5b i-B,' for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

the following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of the multiyear procurement services contracts set forth in Exhibit "5b i-A," attached hereto, are hereby approved for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the contracts listed in Exhibit "5b i-B," attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for**

the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further

**RESOLVED**, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

**c. Rate Making**

**i. Decrease in Westchester County Governmental Customer Rates – Notice of Adoption**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Trustees are requested to approve a decrease in the production rates for the sale of firm power to the Westchester County Governmental Customers ('Customers') in 2021. This proposed action is consistent with the rate-setting process set forth in the 2006 Supplemental Electricity Agreements executed by the Customers and the Authority and in accordance with the State Administrative Procedure Act ('SAPA').

As part of this final proposed action, Authority staff is seeking approval to decrease the production rates of the Customers by \$0.78 million, or 3.14%, as compared to the 2020 rates. The proposed decrease is driven by a projected \$1.05 million decrease in variable costs, slightly offset by a \$228 thousand increase in the fixed costs component of currently effective production costs. The production rate decrease would be effective as of the January 2021 billing period.

**BACKGROUND**

At their meeting on September 23, 2020, the Trustees directed the publication in the New York State Register of a notice that the Authority proposed to increase production rates by \$1.86 million, or 7.49%, for rate year 2021. The proposed increase was driven by an estimated increase in purchase power capacity costs, which are reconciled to actual variable costs incurred by the Authority to serve the Customers, as well as an increase in non-recurring Operations and Maintenance ("O&M") expenses for the Small Hydro facilities.

The Authority's policies and procedures call for a public forum if the fixed costs component of the proposed rate change exceeds a 2.0% increase. Due to the Covid-19 pandemic and the Governor's Executive Order 202.10 as amended, the Authority did not hold a public forum for the Westchester County Governmental Customer rates in 2020. The State Register notice was published on October 14, 2020 in accordance with the SAPA. The sixty-day public comment period was then established and subsequently closed on December 14, 2020. The Customers and the general public were encouraged to send in any comments concerning these rates during the 60-day public comment period under SAPA. There were no public comments received during the comment period.

**DISCUSSION**

The proposed rate decrease is based on a pro forma Cost of Service ('COS') prepared by the Authority staff and is aligned with the Authority's 2021 Budget approved by the Trustees on December 9, 2020.

Staff is now proposing a decrease of \$278 thousand in fixed costs as compared to the proposal at the September 2020 meeting. As part of this final proposed rate action, the fixed costs component is expected to increase by \$228 thousand from \$1.26 million in 2020 to \$1.49 million in 2021. The proposed increase is primarily driven by a projected increase in O&M costs at the Small Hydro facilities due to increases in non-recurring project expenses. The largest of these projects is the Crescent dam B abutment concrete repairs, which is expected to incur \$4.0 million in project expenses.

The variable costs component of rates is estimated based on the market price snapshot at the time of the COS development. Due to the market's variability, the Authority passes through all variable costs to the Customers by way of an Energy Charge Adjustment ('ECA') cost-recovery mechanism. This

ECA mechanism reconciles through a monthly charge or credit the difference between the projected variable costs of electricity recovered by the tariff rates and the monthly actual variable costs incurred by the Authority to serve the Customers. The estimated variable costs component is projected to decrease \$1.05 million from \$23.69 million in the Final 2020 COS to \$22.64 million in the Final 2021 COS. The primary cost element, energy purchases, is projected to be \$16.60 million in 2021 and accounts for 69% of the total production costs. The projected 2021 energy prices are expected to be lower than those that were projected for 2020 and incorporated into the rates that are currently in effect. Somewhat offsetting the decrease in energy purchases are higher capacity costs due to a projected increase in Lower Hudson Valley and Rest of State capacity prices.

Based on further staff analysis, the Final 2021 Westchester County Governmental Customers' COS is \$24.13 million. Applying current rates to the 2021 Customer sales forecast results in projected revenues of \$24.91 million, representing a revenue surplus of \$0.78 million, triggering this final action to decrease production rates by 3.14%.

The current 2020 and final 2021 proposed rates with the 3.14% rate decrease are shown in Exhibit '5c i-A.'

#### FISCAL INFORMATION

The proposed production rates are pro forma cost-based, and with the application of the Energy Charge Adjustment mechanism, staff anticipates that the Authority will recover all costs incurred in serving the Customers. The adoption of the 2021 production rate decrease would have no effect on NYPA's financial position.

#### RECOMMENDATION

The Senior Vice President – Finance and the Senior Director – Revenue & Pricing Analysis recommend that the Trustees authorize the Corporate Secretary to file a Notice of Adoption with the New York State Department of State for publication in the New York *State Register* for the adoption of a production rate decrease applicable to the Authority's Westchester County Governmental Customers.

The Trustees are also requested to authorize the Senior Director of Key Account Management, or his designee, to issue written notice of adoption and the revised tariff leaves, as necessary, to the affected Customers.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the Trustees hereby authorize the Senior Director of Key Account Management, or his designee, to issue written notice to the affected Customers of this final action by the Trustees for a 3.14% decrease in the production rates applicable to the Westchester County Governmental Customers as set forth in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file such notices as may be required with the Secretary of State for publication in the New York *State Register* and to submit such other notice as may be required by statute or regulation concerning the rate decrease; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**d. Canal Corporation**

**i. Procurement (Services) and Other Contracts –  
Business Units and Facilities – Awards,  
Extensions and/or Additional Funding**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

The Board of Directors' are requested to approve the extension and/or funding of the procurement (services) contracts listed in Exhibit '5d i-A,' in support of projects and programs for the Canal Corporation's Business Units/Departments and Facilities. Detailed explanations of the recommended awards and extensions, including the nature of such services, the basis for the new awards if other than to the lowest-priced, lowest total cost of ownership or 'best value' bidders and the intended duration of such contracts, or the reasons for the extension and the projected expiration dates, are set forth in the discussion below.

**BACKGROUND**

Section 2879 of the Public Authorities Law and the Canal Corporation's Guidelines for Procurement Contracts require Board of Directors' ('Board') approval for procurement contracts involving services to be rendered for a period in excess of one year.

The Canal Corporation's Expenditure Authorization Procedures ('EAPs') require Board approval for the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of \$6 million, as well as personal services contracts in excess of \$2 million if low bidder or best value, or \$1 million if sole-source, single-source or other non-competitive awards.

The Canal Corporation's EAPs also require Board approval when the cumulative change order value of a personal services contract exceeds \$500,000, or when the cumulative change order value of a non-personal services, construction, equipment purchase, or non-procurement contract exceeds the greater of \$6 million or 25% of the originally approved contract amount not to exceed \$6 million.

**DISCUSSION**

**Extensions**

Although the firms identified in Exhibit '5d i-A' have provided effective services, the issues or projects requiring these services have not been resolved or completed and the need exists for continuing these contracts. Board approval is required because the terms of these contracts will exceed one year including the extension, the term of extension of these contracts will exceed one year and/or because the cumulative change-order limits will exceed the levels authorized by the EAPs in forthcoming change orders. The subject contracts contain provisions allowing the Canal Corporation to terminate the services at the Canal Corporation's convenience, without liability other than paying for acceptable services rendered to the effective date of termination. These contract extensions do not obligate the Canal Corporation to a specific level of personnel resources or expenditures.

Extension of the contracts identified in Exhibit '5d i-A' is requested for one or more of the following reasons: (1) additional time is required to complete the current contractual work scope or additional services related to the original work scope; (2) to accommodate an Canal Corporation external regulatory agency schedule change that has delayed, reprioritized or otherwise suspended required services; (3) the original consultant is uniquely qualified to perform services and/or continue its presence and rebidding would not be practical or (4) the contractor provides proprietary technology or specialized equipment, at reasonable negotiated rates, that the Canal Corporation needs to continue until a permanent system is put in place.



The following is a summary of each recommended contract award and extension.

**Extensions and/or Additional Funding Requests:**

***Utility Operations – Construction, Engineering and Maintenance***

On January 24, 2020, Canal Corporation issued a twelve-month construction non-personal services contract to **James H. Maloy, Inc. ('JHM') (4400004721)** in the amount of \$1.109 million for the Structural Slab over Existing Culvert, Lower Needle Sill Repairs, Roadway Pavement Rehabilitation, and Crane Pad Construction at Lock E-7 in the Town of Niskayuna, Schenectady County, New York. Due to COVID-19 pandemic this project was suspended in March 2020, and in June 2020 was directed to suspend all construction activities on the project. This suspension of work has necessitated a project completion date extension. In addition, budgeting changes have postponed some tasks until 2021 as directed by the budget committee. Staff requests Board approval for an extension from January 24, 2021 thru August 31, 2021 including interim approval for the period January 24, 2021 through January 26, 2021. Additional funds of \$170,731.33 (calculated from the estimated cost of \$137,501.12 for dewatering during shutdown and \$33,230.19 for sinkhole and crack sealing repairs) is being requested. It should be noted that JHM is a Small Business Enterprise.

**FISCAL INFORMATION**

Funds required to support contract services for various Business Units/Departments and Facilities have been included in the 2020 Approved Operating or Capital Budget. Funds for subsequent years, where applicable, will be included in the budget submittals for those years. Payment will be made from the Operating or Capital Fund, as applicable.

Funds required to support contract services for capital projects have been included as part of the approved capital expenditures for those projects and will be disbursed from the Capital Fund in accordance with the project's Capital Expenditure Authorization Request, as applicable.

**RECOMMENDATION**

The Vice President – Strategic Supply Management; the Regional Manager – Canal Corporation; and the Canal Eastern Division Construction Manager recommend that the Board of Directors approve the extension and/or funding of the procurement (services) contracts listed in Exhibit '5d i-A,' for the purposes and in the amounts discussed within the item and/or listed in the respective exhibits.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below."

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Canal Corporation, the contracts listed in Exhibit "5d i-A," attached hereto, are hereby approved and extended for the period of time indicated, in the amounts and for the purposes listed therein, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Canal Corporation are, and each of them hereby is, authorized on behalf of the Canal Corporation to do any**

January 26, 2021

**and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**e. Governance Matters**

**i. Approval of the Minutes**

On motion made and seconded the Minutes of the following meetings were unanimously approved:

1. Minutes of the Special Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on October 26, 2020.
2. Minutes of the Special Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on November 12, 2020.
3. Minutes of the Regular Joint Meeting of the New York Power Authority's Trustees and Canal Corporation's Board of Directors held on December 9, 2020.

**6. Next Meeting**

The joint Annual meeting of the New York Power Authority's Trustees and the Canal Corporation's Board of Directors will be held on March 30, 2021, unless otherwise designated by the Chairman with the concurrence of the Trustees.

**Closing**

On motion made by member Dennis Trainor and seconded by member Tracy McKibben, the meeting was adjourned at approximately 11:18 a.m.

*Karen Delince*

Karen Delince  
Corporate Secretary

POWER AUTHORITY OF THE STATE OF NEW YORK  
AND  
NEW YORK STATE CANAL CORPORATION

# **EXHIBITS**

**For**

**January 26, 2021**

**Joint Regular**

**Meeting Minutes**



**NY Power  
Authority**

**Canal  
Corporation**

Exhibit 4a i-A

# **President and Chief Executive Officer's Report**

**Gil Quiniones**

**President & Chief Executive Officer**

January 26, 2021

# What I will cover today.....

1. **COVID-19 Update**
2. **2020 Accomplishments**
  - ✓ Overall Performance
  - ✓ COVID-19 Response
  - ✓ Financial Management
  - ✓ Management of Capital Portfolio
  - ✓ VISION2030
  - ✓ DEI Plan
  - ✓ 2021 State of the State
  - ✓ Transmission Expansion





# COVID-19 Update



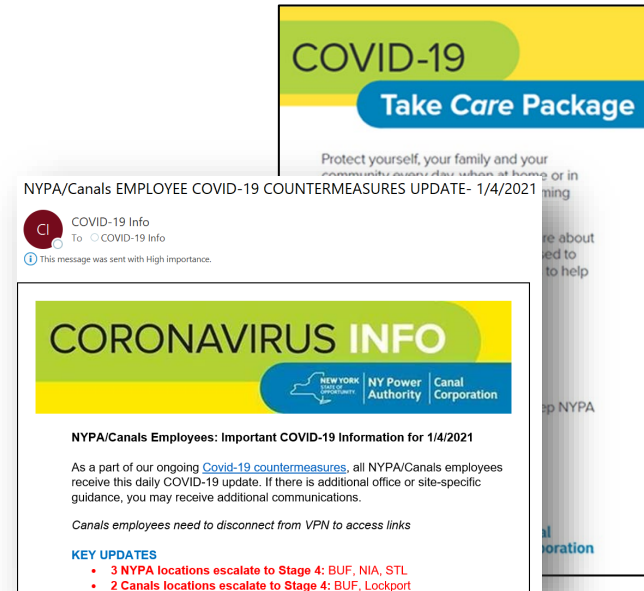
# Frequent and transparent communication

**Continued employee-first approach** with transparent status of positivity rates and countermeasures through regular updates:

- Daily **COVID-19 Countermeasures communications** with latest status and information
- Developing a **vaccine education campaign**, beginning in February

## Our COVID-19 response goals:

1. **Employee Safety** – The health, safety and well-being of NYPA and Canals personnel is our #1 priority and the first consideration in every decision we make
2. **Continuity of Operations** – We must continue to deliver the many vital services we provide to the people of New York State



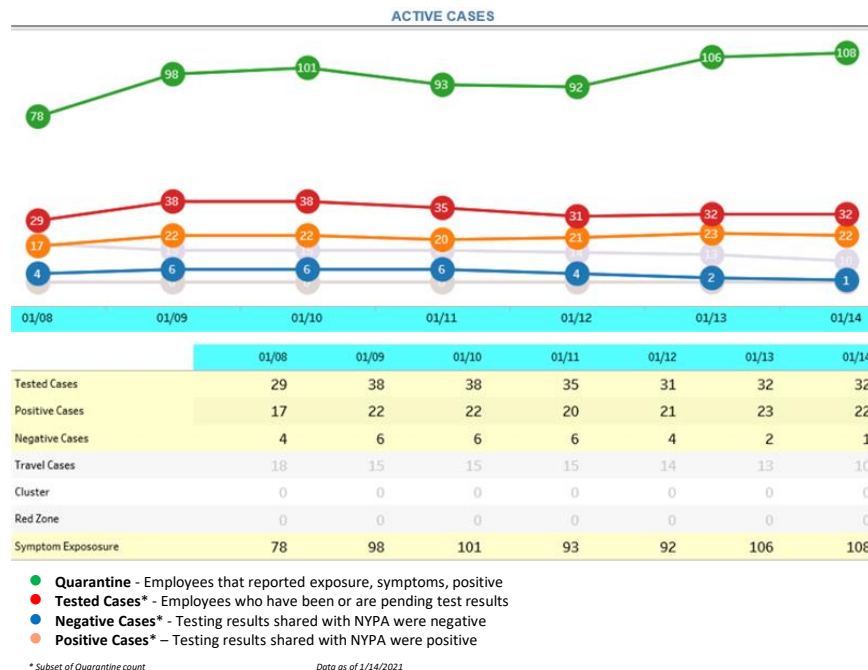
# Continuing to apply our countermeasures

As anticipated, following end of year holidays, positivity rates remain elevated.

**Thanks to our data-driven countermeasures and employee vigilance**, our employee positivity rates remain extremely low and well below state averages.

Stage	Triggers	Countermeasure Strategy
0	<2.5% positivity	<b>Maintain current readiness</b> – 100% masks
1	2.5-5% positivity in a county/region	<b>Increase vigilance and precautions</b> – Twice daily health surveys, increased monitoring, prepare for closing visitor centers and outdoor recreational facilities
2	5-7.5% positivity in a county/region	<b>Initiate ICS, start reducing office density</b> – 50% of facilities admin staff remote, WPO at 25% capacity, suspend inter-regional travel, suspend elective projects
3	7.5-10% positivity OR 10-20% employees out	<b>Start testing, admin staff 100% remote</b> – Labor moves to 2 shifts with COVID-19 test weekly, suspend all priority 1 PMs, mobilize for sequestration
4	10-15% positivity OR 20-25% employees out OR 25% live in a moderately infected country/region	<b>Move to essential work only, testing every rotation, mobilize for sequestration</b> – Essential operations and security staff on 1-week crew rotations with COVID-19 testing, regulatory priority 2 and 3 maintenance work only, suspend all non-essential construction maintenance
5	15%+ positivity OR >25% employees out OR 30% live in heavily infected county/region	<b>Sequestration</b> – Sequester essential operating and security staff, 2-week crew rotation with COVID-19 testing

High level summary of Countermeasure Guidelines document



# Minimizing risk to safety with a comprehensive testing program

We are using a comprehensive testing program to keep people safe and reduce the need to sequester.

## Testing strategy:

- Conducting mandatory testing in areas with greater than 7.5% positivity and pre-emptive voluntary testing in high-risk areas
- Employing multiple testing options to ensure testing is available when and where needed
- The SUNY Clarifi COVID-19 test is our primary testing approach – **one of least invasive and most accurate methodologies in the world**
- Piloting wastewater sampling for community surveillance of our sites

## Vaccination strategy:

- Preparing a comprehensive employee vaccine education program
- Performing all-scenario planning for effective vaccination distribution
- Supporting New York State efforts by staffing vaccination sites and phone lines



SUNY Upstate Medical University to Partner with New York Power Authority to Test Essential Utility Workers for COVID-19 Using #1 Ranked Saliva Test – SUNY Press Release



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# 2020 Accomplishments



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# 2020 Accomplishments – Overall Performance through December 2020

	YTD Target	YTD Actual
<b>Maintain Infrastructure</b>		
● Generation Market Readiness	99.40%	● 99.93%
● Transmission System Reliability	90.50%	● 92.84%
<b>Financial Management</b>		
● Debt Coverage Ratio (Q)	2.50	● 9.90
● O&M Budget Performance (\$M)	\$519.02	● \$508.76**
<b>Energy Services</b>		
● Greenhouse Gas (GHG) Saved (Tons)	13,235*	● 13,235
● MMBTUs Saved in State Facilities	99,334*	● 99,334
<b>Workforce Management</b>		
● Skilled Workforce: Retention (Q)	2,005	● 6,197
<b>Safety Leadership</b>		
● DART Rate	0.78	● 0.39
<b>Environmental Responsibility</b>		
● Environmental Incidents	50	● 29

\*COVID Adjusted

\*\*Preliminary EOY Results

YTD Performance Measure Status

●	Meeting or exceeding target
▲	Missing target
■	Significantly missing target
◆	No updated data
■	Informational, no target

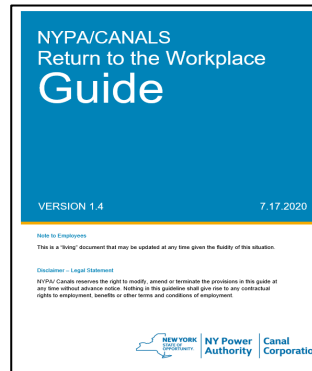


**NY Power  
Authority**

**Canal  
Corporation**

# 2020 Accomplishments – COVID-19 Response

- ✓ **Responsible “Return To Work” (RTW)** plans
- ✓ **Robust Contact Tracing Program** and case tracking tool used to monitor known and possible exposures so quarantining can be swift and targeted
- ✓ **Communications** – maintaining engagement and empowering employees with information
- ✓ **Launched Economic Development Customer Assistance Program**
- ✓ **Countermeasures** – established six stages of countermeasures in preparation for second wave of COVID19
- ✓ **Coordination** – coordinate the shared activities of NY state utilities and power plant owners
- ✓ **Supported State COVID19 Response**
- ✓ **SUNY Upstate Partnership to Test Essential Utility Workers for COVID-19**



STAGE	TRIGGER FACTORS	SUMMARY COUNTERMEASURE STRATEGY
0	2.5% positivity	Maintain current readiness
1	2.5-5% positivity in a county/region with an office, facility or customer site	Increase vigilance and safety measures – Twice daily health surveys, increased monitoring, prepare for closing visitor centers and outdoor recreational facilities
2	5-7.5% positivity in a county/region with an office, facility or customer site	Initiate ICS, start reducing office density – 50% of facilities admin staff remote, WFO at 25% capacity, suspend inter-regional travel, suspend elective projects
3	7.5-10% positivity OR 10-20% employees out	Start testing employees doing essential work, mobilize for sequestration, admin staff 100% remote – Labor moves to 2 shifts with COVID-19 test weekly, suspend all priority 1 PMs, mobilize for sequestration
4	10-15% positivity OR 20-25% employees out OR 25% live in a moderately infected country/region	Move to essential work only, testing every rotation – Essential operations and security staff on 1-week crew rotations with COVID-19 testing, regulatory priority 2 and 3 maintenance work only, suspend all non-essential construction maintenance
5	15%+ positivity OR >25% employees out OR 30% live in heavily infected country/region	Sequestration – Sequester essential operating and security staff, 2-week crew rotation with COVID-19 testing



**NY Power  
Authority**

**Canal  
Corporation**

## 2020 Accomplishments – Financial Management



**\$1.2B Bond Issuance**

*Bond Buyer's Deal of the Year 2020  
in the Northeast Region*



**Fixed Cost  
Coverage Ratio**

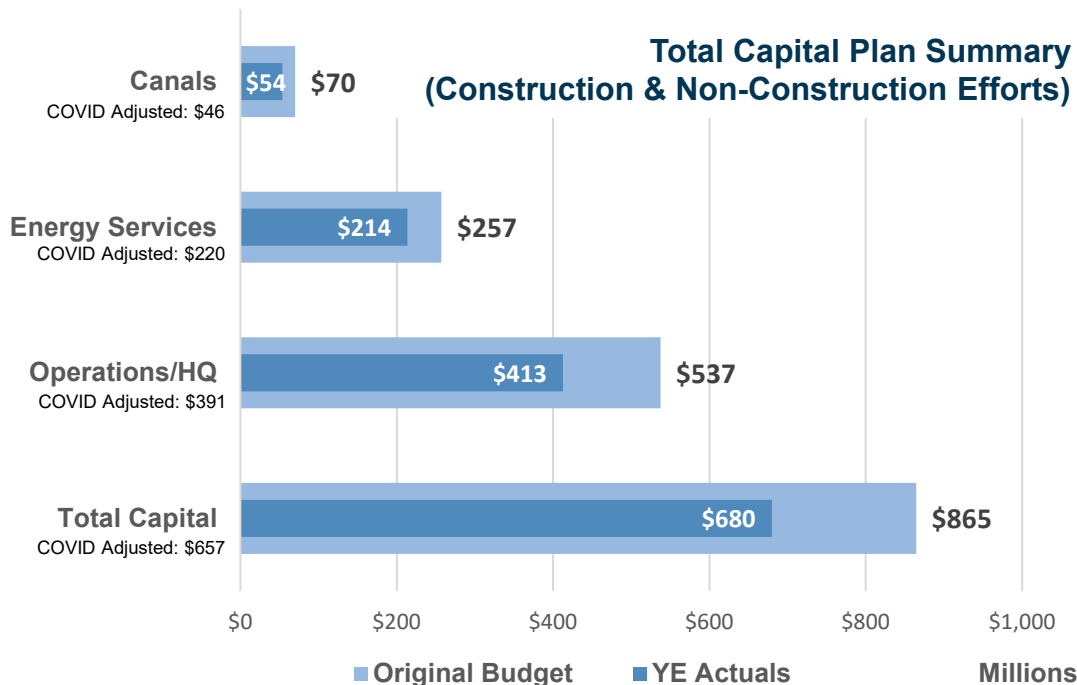


**Credit Rating**



# 2020 Accomplishments – Management of Capital Portfolio

## Capital Summary – Original Budget vs. YE Performance



## Current Construction Status (Entire Organization)

2020 *Preliminary* Total Capital Spend is **\$680M** on a modified forecast (COVID-adjusted) of **\$657M**

3.5%  
Over  
Goal

There are currently **182** Projects actively in construction across New York State valued at **\$502M**

\$502M  
Active

Of the active construction work, **28** projects across **41** locations are **paused** due to COVID impacts. This response is in alignment with the established Project Countermeasures plan.

# 2020 Accomplishments – VISION2030

- ✓ Refreshed Mission, Vision, and Values
- ✓ Established Strategic Priorities, and Foundational Pillars

## Our Values

- We work for the **greater good and a stronger, sustainable** New York
- We hold ourselves to the **highest standards of integrity, safety, and excellence**
- We are **resilient and use our ingenuity** to make big things happen
- We draw strength from **our diversity — everyone contributes, everyone belongs**
- We **work as one team**, putting our trust and confidence in each other

### STRATEGIC PRIORITIES



Preserve and  
Enhance Hydropower



Expand  
Transmission



Decarbonize  
Natural Gas



Serve and Decarbonize  
Customers and the State



Reimagine  
the Canals

### FOUNDATIONAL PILLARS

Digitization



Environment, Social,  
and Governance



Diversity, Equity,  
and Inclusion



Enterprise  
Resilience



Resource  
Alignment



#### NYPA'S VISION

A thriving, resilient New York State powered by clean energy.

#### NYPA'S MISSION

Lead the transition to a carbon-free, economically vibrant New York through customer partnerships, innovative energy solutions, and the responsible supply of affordable, clean, and reliable electricity.



**NY Power  
Authority**

**Canal  
Corporation**

# VISION2030 – Ten Point Racial Justice and Equity Plan



Overall, NYPA's investment of \$682M in industry-leading programs will exemplify its commitment to diversity, equity and inclusion and expand opportunities in underserved communities, increase minority and women owned businesses and create a culture where all employees are valued.

- **\$500M Customer Energy Solutions programs in underserved communities** to advance energy equity.
- **Increase the annual incremental MWBE spend to \$160M** by investing in the participation of minority and women owned businesses in the supply chain through mentoring, education and outreach.
- **Triple the incremental investment of DEI programs to \$22.3M** and expand NYPA's commitment to develop, retain and engage staff by investing in training, career and leadership programs and establish programs to build trust and demonstrate equity. Build a pipeline of diverse clean energy workers by providing scholarships and education programs for students of color.

# 2021 State of the State – Reimagine | Rebuild | Renew

## A Bold Agenda for Building the Green Economy



1. Build Large Scale Renewables
2. Start NY Manufacturing
3. Build Transmission Capacity
4. Create a Green Energy Workforce Training Program



### Green Energy Program

Will Create a Total of 12,400 Megawatts of Green Energy; to Power 6 Million Homes; Directly Create More Than 50,000 Jobs, and Spur \$29 Billion in Private Investment All Across the State



### Largest Off-Shore Wind Program in the Nation

Anchored by the Two Largest Offshore Wind Projects in the Nation



### Initiative to Make New York a Global Wind Energy Manufacturing Powerhouse

Include Upgrades to Create Five Dedicated Port Facilities in Albany, Coeymans, South Brooklyn, Port Jefferson and Port of Montauk Harbor



### Construction of a Green Energy Transmission Superhighway

Bring Clean Energy Generated Upstate to Needed Areas Downstate; Involves Several Project in Western New York, Mid-Hudson, and the Capital Region



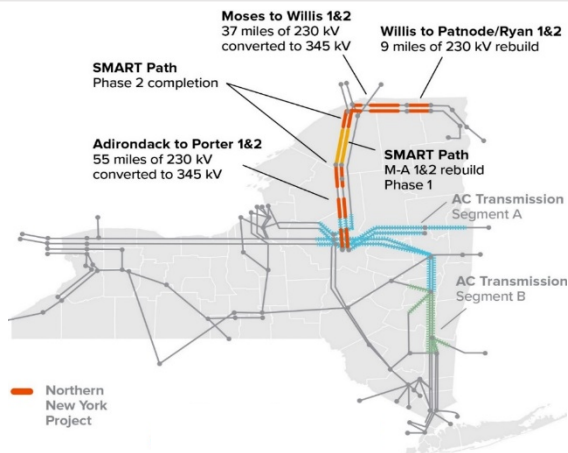
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# VISION2030 – Expand Transmission

## SMART Path

Project to provide a more resilient and reliable electric system upstate to **provide 900MW of renewable energy** to 900k homes statewide. **104 Structures installed; 21-mile section energized.**



## AC Transmission Segment A

'Marcy to New Scotland Project' Public Policy Transmission Need (PPTN) project to **increase UPNY/SENY transfer limit by 350 MW** and address system congestion while improving ageing infrastructure. **NYPA acquired 37.5% ownership stake in a project.**



## Northern New York

Establish a continuous 345 kV path in Northern NY **expanding the deliverability of approximately 1,000 MW of renewable generation** and address congestion. **First 'priority project'** under Accelerated Renewable Energy Growth and Community Benefit Act.





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Exhibit 4b-A

# **Chief Operations Officer's Report**

**Joseph F. Kessler, P.E.**

**Executive Vice President & Chief Operating Officer**

January 26, 2021

# Level 1 KPIs: Year End December 2020

KPI Name	Year End Target	Year End Actual	Status
----------	-----------------	-----------------	--------

## Optimize financial performance of generation & transmission assets

Generation Market Readiness	99.40%	99.93%	
Transmission System Reliability	90.50%	92.84%	

## Eliminate physical, cyber, environmental and safety risks to employees and the public

Environmental Incidents	50	29	
DART Rate	0.78	0.39	

### Legend:



Meeting or exceeding target



Missing target



Significantly missing target



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# Next Generation Niagara: Controls Upgrade in Progress

- Completed tasks
  - Demolished Exciter, Unit Control Board (UCB), & Governor Cabinets
  - New UCB & Independent Governor Control installed
  - Pulling cables in tunnels from Service & Relay Bldg. to Robert Moses
- Upcoming tasks for next month/quarter
  - Main Control Room Upgrades
    - Lighting
    - Operator Workstations
    - Video Display Wall
- Unit 12 Return to Service - May 2021
- Estimate At Completion:  
\$213M contained in the \$1.1B Program



# Lewiston Pump Generating Plant LEM

- PG-10 (the 11th unit overhaul) returned to service on Dec. 18th per the revised outage schedule (Covid-19 pause of 3 months)
- Project challenges:
  - Additional and unplanned work scope to replace the Motor Generator – Rotor Rim/Ledge and laminations
  - Covid-19 Pandemic/delay and the implementation of new work precautions.
- PG-1 is the 12th unit in the sequence, outage commenced on Jan. 4th
- Program costs remain on target within the approved \$460 Million Plan
- Program completion including re-work units, on schedule for December 2022





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Exhibit 4c-A

# **Chief Commercial Officer's Report**

**Sarah Orban Salati**

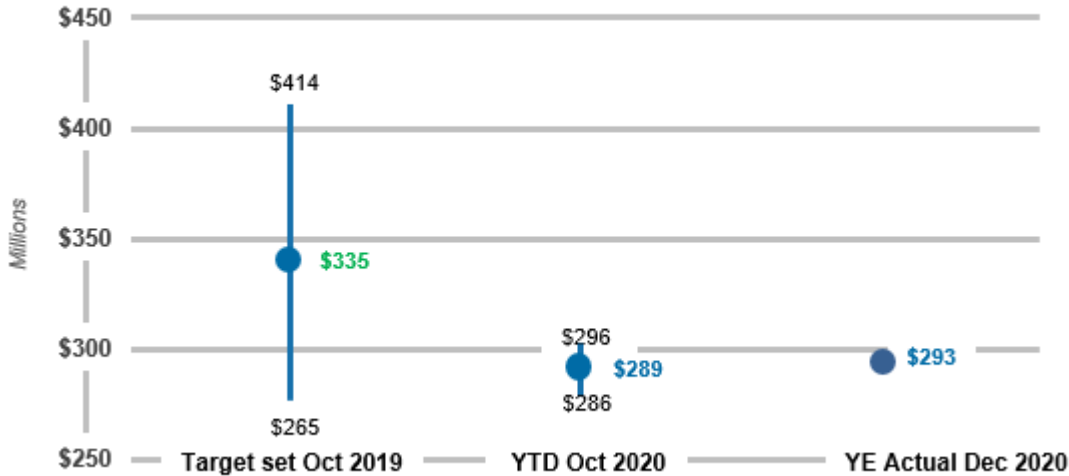
**EVP & Chief Commercial Officer**

January 26, 2021

# Electricity Supply – Year End Results



## Merchant Gross Margin



YE Target \$335M / COVID Adjusted \$311M

- 2020 Actual Merchant Gross Margin \$293M
- 2020 Energy and Capacity Hedge Settlements - \$19M & \$29M respectively



## Economic Development



**1,772 Megawatts**

Power Allocated



**406,106**

Jobs Retained



**\$21.3 Billion**

Capital Committed





- Within Target
- Outside of Target
- Significantly Outside of Target Range



**NY Power Authority**



# Customer Offerings – Year End Performance

Key Performance Indicator	Year End Results	Budgeted 2020 Target / COVID Adjusted YE Target
 <b>Clean Energy Solutions</b>	<ul style="list-style-type: none"> <li>● \$214M Capital Spend</li> <li>● \$16.8M Non-Utility Revenues</li> </ul>	<p>\$251M / \$220M</p> <p>\$26M / \$19M</p>
 <b>EVolve</b>	<ul style="list-style-type: none"> <li>● 25 Public DCFC Charging Ports at six sites</li> </ul>	<p>200 / 40 Ports</p>
 <b>New York Energy Manager</b>	<ul style="list-style-type: none"> <li>● 580M Data Records</li> </ul>	<p>600M / 600M</p>  <b>NY Power Authority</b>
<ul style="list-style-type: none"> <li>● Within Target</li> <li>● Outside of Target</li> <li>● Significantly Outside of Target Range</li> </ul>		

# 2020 Contributions to Customers and Clean Energy Priorities

## Economic Development



Economic Development  
Customer Assistance Programs  
1.0 & 2.0

Providing financial relief and  
price certainty

Nearly 50% subscribed

## Distributed Energy Resources / Flexibility



Robust 230 MW solar PV &  
35 MW battery storage  
pipeline

Environmental Justice focus

Product & organizational  
synergies from digital and  
distributed energy

## Transmission & Renewables

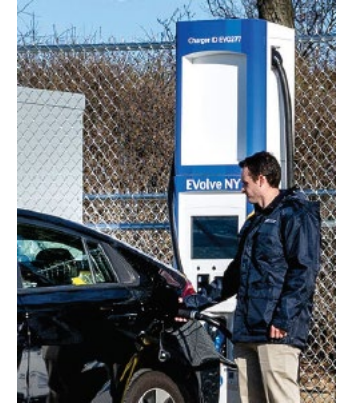


Over \$3B in development  
acceleration

Onshore and Offshore  
transmission focus

Over 200MW large scale  
renewable and storage projects  
secured for NY

## eMobility



Largest non-Tesla DCFC charging  
hub in Northeast at JFK

14 bus chargers installed at three  
transit agencies

Kickstarted Master Bus Transit  
Plan with NYISERDA



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Exhibit 4d-A

# **Chief Financial Officer's Report**

**Adam Barsky**

**EVP & Chief Financial Officer**

**January 26, 2021**

# PRELIMINARY 2020 YEAR-END RESULTS

In \$ Thousands	2020 Budget (\$)	2020 Current (\$)	Variance (\$)
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## Net Operating Income

Current vs Budget

Operating Revenue			
Customer Revenue	\$1,785,929	\$1,597,789	(\$188,139)
Market-Based Power Sales	524,543	403,910	(120,632)
Non Utility Revenue	30,128	18,711	(11,416)
Ancillary Service Revenue	45,417	32,546	(12,870)
NTAC and Other	194,244	215,137	20,894
<b>Operating Revenue Total</b>	<b>2,580,259</b>	<b>2,268,094</b>	<b>(312,164)</b>

Margins - Generation\*\* (\$54,644)

Margins - Transmission\*\*\* (14,018)

Margins - Non Utility (13,017)

\*\* Includes Merchant Gross Margin Variance of (\$42,840):  
Budget @ \$335,449 vs Current @ \$292,609

\*\*\* Includes RTEP payment of \$32,810

Operating Expense			
Purchase Power	(623,424)	(432,313)	191,112
Ancillary Service Expense	(58,270)	(51,298)	6,972
Fuel Consumed	(147,683)	(109,047)	38,636
Wheeling	(644,109)	(650,343)	(6,234)

Operating Expenses 19,474

Operations & Maintenance	(612,582)	(597,590)	14,992
Other Expense	(79,885)	(69,286)	10,599
Covid-19 Expense*	0	(6,117)	(6,117)

<b>Operating Expense Total</b>	<b>(2,165,954)</b>	<b>(1,915,994)</b>	<b>249,960</b>
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<b>EBIDA Total</b>	<b>414,305</b>	<b>352,101</b>	<b>(62,204)</b>
EBIDA NYPA	505,332	433,489	(71,843)
EBIDA Canals	(91,027)	(81,388)	9,639

## Non Operating

Interest and Other Expenses			
Interest & Other Expenses	(120,919)	(119,869)	1,050
Investment and Other Income	28,726	34,838	6,111
Mark to Market Adjustments	(359)	(8,029)	(7,670)
Depreciation & Amortization	(280,280)	(275,835)	4,446
<b>Interest and Other Expenses Total</b>	<b>(372,832)</b>	<b>(368,896)</b>	<b>3,936</b>

Non-Operating Net 3,936

<b>NET INCOME</b>	<b>\$41,473</b>	<b>(\$16,795)</b>	<b>(\$58,268)</b>
		Unaudited	

EBIDA: Earnings Before Interest Depreciation & Amortization

\*Covid-19: Expected incremental expenses into the forecast.

FCCR	2.1X	2.3X
DSCR	5.5X	9.9X



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# YEAR-END VARIANCE ANALYSIS

**BUDGETED YEAR-END NET INCOME** **\$41,473**

## Operating Variances

## Variance Drivers

Margins – Generation	<b>(54,644)</b>	Due primarily to lower market prices and the resulting decrease of projected market-based power sales, partially offset by increased hydro generation at the Niagara and St. Lawrence facilities, favorable hedge settlements, and favorable capacity sales.
Margins – Transmission	<b>(14,018)</b>	Due primarily to higher than budgeted HTP RTEP payments, partially offset by increased transmission revenue requirements that went into effect in July.
Margins – Non-Utility	<b>(13,017)</b>	Due primarily to lower than budgeted Energy Efficiency revenue.
Operating Expenses	<b>19,474</b>	Due primarily to underspends in site operations & maintenance expenses, as well as other expenses.

## Non-Operating Variances

Interest Expense, Net	<b>3,936</b>	Due primarily to a realized gain on sale of securities and lower than budgeted depreciation, partially offset by mark-to-market losses on the Authority's investment portfolio.
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**PRELIMINARY YEAR-END NET INCOME** **(\$16,795)**



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**APPLICATION SUMMARY**  
**Expansion Power (“EP”)**

<b>Company:</b>	Life Technologies Corporation (“Life Technologies”)
<b>Location:</b>	Grand Island, NY
<b>County:</b>	Erie County
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	The company produces cell culture products for use in the pharmaceutical industry. These products are used in life sciences research and a wide variety of medical, diagnostic, therapeutic, and biotechnology applications.
<b>Project Description:</b>	Life Technologies is proposing to construct a 43,500 square foot addition to its existing manufacturing plant in Grand Island. The expansion would accommodate the production of Animal Origin Free and Advanced Granulation Technology products. The project would also support an upgraded Water for Injection system to increase the production capacity of approximately 12,000 square feet of renovated space.
<b>Existing Allocation(s):</b>	775 kW of Replacement Power 506 kW of ReCharge New York Power
<b>Power Request:</b>	5,316 kW of EP
<b>Power Recommended:</b>	3,600 kW of EP
<b>Job Commitment:</b>	
<b>Base:</b>	1,063
<b>New:</b>	At least 140 jobs
<b>New Jobs/Power Ratio:</b>	39 jobs/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$48,210
<b>Capital Investment:</b>	At least \$175 million
<b>Capital Investment/MW:</b>	\$48.6 million/MW
<b>Other ED Incentives:</b>	Applicant submitted applications to Erie County Industrial Development Agency and Empire State Development
<b>Summary:</b>	An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Life Technologies to consider additional expansion opportunities at the Grand Island facility in the future.

**APPLICATION SUMMARY**  
**Expansion Power ("EP")**

<b>Company:</b>	Stavatti Aerospace Ltd ("Stavatti")
<b>Location:</b>	Niagara Falls, NY
<b>County:</b>	Niagara County
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	The company is a manufacturer of military, civilian, and general aviation aircraft.
<b>Project Description:</b>	Stavatti is proposing to establish an aircraft research, design, and prototyping facility at the Niagara Falls International Airport ("NFIA").
<b>Existing Allocation(s):</b>	None
<b>Power Request:</b>	3,625 kW of EP
<b>Power Recommended:</b>	2,700 kW of EP
<b>Job Commitment:</b>	
<b>Base:</b>	0
<b>New:</b>	At least 363 jobs
<b>New Jobs/Power Ratio:</b>	134 jobs/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$204,820
<b>Capital Investment:</b>	At least \$155.926 million
<b>Capital Investment/MW:</b>	\$57.8 million/MW
<b>Other ED Incentives:</b>	(1) Niagara County Industrial Development Agency and (2) Empire State Development
<b>Summary:</b>	<p>Stavatti has identified the NFIA as the potential location at which to establish an aircraft research, design, and prototyping facility. This would be housed at the site of the former U.S. Army Reserve Center. The NFIA meets the company's hangar, facilities, and runway requirements.</p> <p>The project would support the creation of at least 363 new jobs and nearly \$156 million in capital spending. In addition to the building acquisition, the project includes the purchase of manufacturing equipment, tooling jigs, fixtures, workstations, and software. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Stavatti to consider additional expansion opportunities at the NFIA in the future.</p>

January 26, 2021

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POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street  
10<sup>th</sup> Floor  
Albany, New York 12207-3425

AGREEMENT FOR THE SALE  
OF EXPANSION POWER AND/OR REPLACEMENT POWER

Stavatti Aerospace Ltd

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The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Stavatti Aerospace Ltd (“Customer”) with offices and principal place of business at 9400 Porter Road, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

## **RECITALS**

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:



## **ARTICLE I**

### **DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.

“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.

“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.

“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

## **ARTICLE II** **ELECTRIC SERVICE**

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.
2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.
3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.

5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer's local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).
6. The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
7. The Contract Demand may not exceed the Allocation.
8. The Customer's Facility must be metered by the Customer's local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, "Metering Arrangement"). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.
9. The Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.

10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.
11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, "Service Information") that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

### **ARTICLE III**

### **RATES, TERMS AND CONDITIONS**

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority's satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer's control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.
2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:
  - a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or
  - b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer's participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.
3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with

respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

#### **ARTICLE IV** **SUPPLEMENTAL COMMITMENTS**

1. Supplemental Commitments. Schedule B sets forth the Customer's "Supplemental Expansion Power and/or Replacement Power Commitments" ("Supplemental Commitments"). The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer's Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.
2. *[Intentionally Left Blank]*
3. Special Provisions Relating to a New or Expanded Facility.

- a. Proposed New or Expanded Facility; Failure to Complete.

If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, "Expansion Project"), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

- b. Proposed New or Expanded Facility; Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured

by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer's request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

- (i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.
- (ii) In the event of an Expansion Project being completed in multiple phases, at the Customer's request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority's rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

**ARTICLE V**  
**ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES**

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services ("Energy Services") offered by the Authority that in the Authority's view could provide value to the Customer and/or support the State's Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer's option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.



**ARTICLE VI**  
**SERVICE TARIFF; CONFLICTS**

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.
2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

**ARTICLE VII**  
**TRANSMISSION AND DELIVERY**

1. The Customer shall be responsible for:
  - a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
  - b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and
  - c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority's approval.
2. The Authority will use good faith efforts to provide the Customer with at least one year's advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.
3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service

Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer's local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority's discretion and further subject to applicable laws, regulations and existing legal obligations.

## **ARTICLE VIII**

### **BILLING AND BILLING METHODOLOGY**

1. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.
3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

## **ARTICLE IX**

### **HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY**

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.
2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.
3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month

prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.
9. Notwithstanding the Customer's election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.
10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless

otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.
12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

## **ARTICLE X**

### **EFFECTIVENESS, TERM AND TERMINATION**

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.
2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.
3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days' prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority's internal procedures and requirements of the Customer's local electric utility.
4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

## **ARTICLE XI**

### **EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS**

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:
  - a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;

- b. pursuant to any other process that the Authority establishes; or
  - c. with the Authority's written consent.
- 2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- 3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

## **ARTICLE XII**

### **NOTICES**

- 1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

New York Power Authority  
123 Main Street  
White Plains, New York 10601

Email:

Facsimile: \_\_\_\_\_

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Stavatti Aerospace Ltd  
9400 Porter Road  
Niagara Falls, NY 14304

Email:

Facsimile:

Attention:

- 2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.
- 3. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed

properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) on the date of transmission if sent by electronic communication to the appropriate address as set forth above, with confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

### **ARTICLE XIII**

#### **SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER**

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.
2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.
3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

### **ARTICLE XIV**

#### **MISCELLANEOUS**

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or

for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. Previous Agreements; Modifications; and Interpretation

- a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.
- b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.
- c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

**ARTICLE XV**  
**EXECUTION**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this

Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

**[SIGNATURES FOLLOW ON NEXT PAGE]**



AGREED:

**STAVATTI AEROSPACE LTD**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED:

**POWER AUTHORITY OF THE STATE OF NEW YORK**

By: \_\_\_\_\_  
John R. Koelmel, Chairman

Date: \_\_\_\_\_

**SCHEDULE A**  
**EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS**

Customer: Stavatti Aerospace Ltd				
<b>Type of Allocation</b>	<b>Allocation Amount (kW)</b>	<b>Facility and Address</b>	<b>Trustee Approval Date</b>	<b>Allocation Expiration Date</b>
EP	2,700 kW	9400 Porter Road Niagara Falls, New York 14304	January 26, 2021	Ten (10) years from the date of commencement of Electric Service

**SCHEDULE B**  
**SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER  
COMMITMENTS**

**ARTICLE I**  
**SPECIFIC SUPPLEMENTAL COMMITMENTS**

1. Employment Commitments

- a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.
- b. The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.
- c. The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s discretion.

2. Capital Investment Commitments

The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program

- a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.
- b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.
- c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.
- d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.

**ARTICLE II**  
**RECORDKEEPING, REPORTING AND FACILITY ACCESS**

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority's request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority's option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's Supplemental Commitments specified in this Schedule B.

### **ARTICLE III**

#### **COMPLIANCE ACTION BY THE AUTHORITY**

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority's other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.

5. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction.

Before implementing any reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority's receipt of such proposed plan. It shall be within the Authority's discretion whether or not to accept the Customer's proposed plan, require a different plan, or implement the reduction of the Contract Demand.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

The Customer shall employ at least 363 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

### **CAPITAL INVESTMENT COMMITMENTS**

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
  - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
  - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
  - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
  - a. The Customer shall make a minimum capital investment of \$155,926,200 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:



<b>DESCRIPTION</b>	<b>EXPENDITURE</b>
Building Purchase	\$ 1,300,000
Tooling jigs and fixtures	\$ 81,666,200
Manufacturing equipment	\$ 62,300,000
Workstations and software	\$ 10,660,000
<b>Total Minimum Expansion Project Capital Investment Commitment:</b>	<b><u>\$155,926,200</u></b>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than January 26, 2024 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

**SCHEDULE C**  
**TAKEDOWN SCHEDULE**

**SCHEDULE D**  
**ZERO EMISSION CREDIT CHARGE**

**I. DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.

“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

## **II. ZEC CHARGE**

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
  - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by

the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

- b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).
  - c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.
5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.
6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall

provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.
8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

**SCHEDULE E**  
**MONTHLY RENEWABLE ENERGY CREDIT CHARGE**

**I. DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

## **II. MONTHLY REC CHARGE**

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.
3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:



- a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.
  - b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.
  - c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:
    - i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and
    - ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.
4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.
5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills

for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

### **III. ALTERNATIVE REC COMPLIANCE PROGRAM**

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to  
Expansion Power and Replacement Power Customers  
Located in Western New York

**Service Tariff No. WNY-2**

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## **Schedule of Rates for Firm Power Service**

### **I. Applicability**

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

### **II. Abbreviations and Terms**

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

**Agreement**: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

**Annual Adjustment Factor** or **AAF**: This term shall have the meaning set forth in Section V herein.

**Authority**: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

**Customer**: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

**Electric Service**: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

**Expansion Power** or **EP** and/or **Replacement Power** or **RP**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

**Firm Power**: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

**Firm Energy**: Energy (kWh) associated with Firm Power.

**Load Serving Entity** or **LSE**: This term shall have the meaning set forth in the Agreement.

**Load Split Methodology** or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

**Project**: The Authority's Niagara Power Project, FERC Project No. 2216.

**Rate Year** or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

**Rules**: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

**Service Tariff**: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

### **III. Monthly Rates and Charges**

#### **A. Expansion Power (EP) and Replacement Power (RP) Base Rates**

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

#### **B. EP and RP Rates no Lower than Rural/Domestic Rate**

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

#### **C. Monthly Base Rates Exclude Delivery Service Charges**

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

#### **D. Minimum Monthly Charge**

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

## **E. Estimated Billing**

If the Authority, in its discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's takedown (kW) amount.
- For Customers whose Allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority's rights under the Agreement.



**F. Adjustments to Charges**

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

**H. Billing Demand**

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

**I. Billing Energy**

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

**J. Contract Demand**

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

#### **IV. General Provisions**

##### **A. Character of Service**

Alternating current; sixty cycles, three-phase.

##### **B. Availability of Energy**

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

##### **C. Delivery**

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

##### **D. Adjustment of Rates**

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

## **E. Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
  - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
  - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
  - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
    - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
    - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
  - d. All demand values will be adjusted for losses.

**F. Payment by Customer to Authority**

**1. Demand and Energy Charges, Taxes**

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's Billing Demand (as defined in Section IV.E, above) for the Billing Period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's Billing Energy (as defined in Section IV.E, above) for the Billing Period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

**2. Transmission Charge**

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

**3. NYISO Transmission and Related Charges**

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "NYISO Charges") assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

### **G. Rendition and Payment of Bills**

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10<sup>th</sup>) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

**H. Adjustment of Charges – Distribution Losses**

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

**I. Conflicts**

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.

## **V. Annual Adjustment Factor**

### **A. Adjustment of Rates**

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of  $\pm 5.0\%$  (" $\pm 5\%$  Collar"). Amounts outside the  $\pm 5\%$  Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

### **2. Annual Adjustment Factor Computation Guide**

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to  $\pm 5\%$  Collar, as described below.
- a) When the AAF falls outside the  $\pm 5\%$  Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the  $\pm 5\%$  Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the  $\pm 5\%$  Collar.



- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the  $\pm 5\%$  Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15<sup>th</sup> of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

**B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):**

**STEP 1**

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		<b>1.03</b>

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> ((\$000s))	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	<b>6.24</b>

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	<b>6.23</b>

Ratio of MY/MY-1 **1.00**

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		<b>1.02</b>

## **STEP 2**

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			<b>1.016</b>

## **STEP 3**

Apply Collar of  $\pm 5.0\%$  to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$ ; collar does not apply, assuming no cumulative excess.

**STEP 4**

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

January 26, 2021

**APPLICATION SUMMARY**  
**Expansion Power (“EP”)**

<b>Company:</b>	Sucro Real Estate NY, LLC (“Sucro”)
<b>Location:</b>	Lackawanna, NY
<b>County:</b>	Erie County
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	The company operates sugar refineries at several U.S. and international locations.
<b>Project Description:</b>	Sucro is proposing to establish a full-scale sugar refinery at the former Bethlehem Steel site in Lackawanna.
<b>Existing Allocation(s):</b>	None
<b>Power Request:</b>	9,000 kW of EP
<b>Power Recommended:</b>	5,000 kW of EP
<b>Job Commitment:</b>	
<b>Base:</b>	0
<b>New:</b>	At least 50 jobs
<b>New Jobs/Power Ratio:</b>	10 jobs/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$62,638
<b>Capital Investment:</b>	At least \$19 million
<b>Capital Investment/MW:</b>	\$3.8 million/MW
<b>Other ED Incentives:</b>	(1) Erie County Industrial Development Agency, (2) Empire State Development, (3) National Grid, and (4) National Fuel Gas Company
<b>Summary:</b>	<p>Sucro is proposing to develop a full-scale sugar refinery at the former Bethlehem Steel site in Lackawanna. The project site encompasses 12 acres which includes three large buildings requiring extensive renovations. The plant would produce organic and conventional refined sugar in both granular and liquid forms.</p> <p>The project would support the creation of at least 50 new jobs and \$19 million in capital spending. This includes land investment, renovation, and refinery construction costs. An allocation of low-cost hydropower, along with other support offered for this project, could incentivize Sucro to consider additional expansion opportunities at the Lackawanna site in the future.</p>

January 26, 2021

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POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street  
10<sup>th</sup> Floor  
Albany, New York 12207-3425

AGREEMENT FOR THE SALE  
OF EXPANSION POWER AND/OR REPLACEMENT POWER

Sucro Real Estate NY, LLC

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The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Sucro Real Estate NY, LLC (“Customer”) with offices and principal place of business at 2303 Hamburg Turnpike, Lackawanna, NY 14218. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

## **RECITALS**

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:



## **ARTICLE I**

### **DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.

“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.

“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.

“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

## **ARTICLE II**

### **ELECTRIC SERVICE**

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.
2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.
3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.

5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer's local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).
6. The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
7. The Contract Demand may not exceed the Allocation.
8. The Customer's Facility must be metered by the Customer's local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, "Metering Arrangement"). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.
9. The Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.

10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.
11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, "Service Information") that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

### **ARTICLE III**

### **RATES, TERMS AND CONDITIONS**

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority's satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer's control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.
2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:
  - a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or
  - b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer's participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.
3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with

respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

#### **ARTICLE IV** **SUPPLEMENTAL COMMITMENTS**

1. Supplemental Commitments. Schedule B sets forth the Customer's "Supplemental Expansion Power and/or Replacement Power Commitments" ("Supplemental Commitments"). The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer's Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.
2. *[Intentionally Left Blank]*
3. Special Provisions Relating to a New or Expanded Facility.

- a. Proposed New or Expanded Facility; Failure to Complete.

If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, "Expansion Project"), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

- b. Proposed New or Expanded Facility; Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured

by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer's request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

- (i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.
- (ii) In the event of an Expansion Project being completed in multiple phases, at the Customer's request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority's rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

**ARTICLE V**  
**ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES**

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services ("Energy Services") offered by the Authority that in the Authority's view could provide value to the Customer and/or support the State's Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer's option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.



**ARTICLE VI**  
**SERVICE TARIFF; CONFLICTS**

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.
2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

**ARTICLE VII**  
**TRANSMISSION AND DELIVERY**

1. The Customer shall be responsible for:
  - a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
  - b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and
  - c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority's approval.
2. The Authority will use good faith efforts to provide the Customer with at least one year's advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.
3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service

Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer's local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority's discretion and further subject to applicable laws, regulations and existing legal obligations.

## **ARTICLE VIII**

### **BILLING AND BILLING METHODOLOGY**

1. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.
3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

## **ARTICLE IX**

### **HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY**

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.
2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.
3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month

prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.
9. Notwithstanding the Customer's election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.
10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless

otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.
12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

## **ARTICLE X**

### **EFFECTIVENESS, TERM AND TERMINATION**

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.
2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.
3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days' prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority's internal procedures and requirements of the Customer's local electric utility.
4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

## **ARTICLE XI**

### **EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS**

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:
  - a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;

- b. pursuant to any other process that the Authority establishes; or
  - c. with the Authority's written consent.
2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

## **ARTICLE XII**

### **NOTICES**

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

New York Power Authority  
123 Main Street  
White Plains, New York 10601

Email:

Facsimile: \_\_\_\_\_

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Sucro Real Estate NY, LLC  
2303 Hamburg Turnpike  
Lackawanna, NY 14218

Email:

Facsimile:

Attention:

2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.
3. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed

properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) on the date of transmission if sent by electronic communication to the appropriate address as set forth above, with confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

### **ARTICLE XIII**

#### **SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER**

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.
2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.
3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

### **ARTICLE XIV**

#### **MISCELLANEOUS**

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or

for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. Previous Agreements; Modifications; and Interpretation

- a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.
- b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.
- c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

**ARTICLE XV**  
**EXECUTION**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this

Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

**[SIGNATURES FOLLOW ON NEXT PAGE]**



AGREED:

**SUCRO REAL ESTATE NY, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED:

**POWER AUTHORITY OF THE STATE OF NEW YORK**

By: \_\_\_\_\_  
John R. Koelmel, Chairman

Date: \_\_\_\_\_

**SCHEDULE A**  
**EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS**

Customer: Sucro Real Estate NY, LLC				
<b>Type of Allocation</b>	<b>Allocation Amount (kW)</b>	<b>Facility and Address</b>	<b>Trustee Approval Date</b>	<b>Allocation Expiration Date</b>
EP	5,000 kW	2303 Hamburg Turnpike Lackawanna, New York 14218	January 26, 2021	Ten (10) years from the date of commencement of Electric Service

**SCHEDULE B**  
**SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER  
COMMITMENTS**

**ARTICLE I**  
**SPECIFIC SUPPLEMENTAL COMMITMENTS**

1. Employment Commitments

- a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.
- b. The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.
- c. The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s discretion.

2. Capital Investment Commitments

The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program

- a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.
- b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.
- c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.
- d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.

**ARTICLE II**  
**RECORDKEEPING, REPORTING AND FACILITY ACCESS**

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority's request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority's option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's Supplemental Commitments specified in this Schedule B.

### **ARTICLE III**

#### **COMPLIANCE ACTION BY THE AUTHORITY**

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority's other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.

5. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction.

Before implementing any reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority's receipt of such proposed plan. It shall be within the Authority's discretion whether or not to accept the Customer's proposed plan, require a different plan, or implement the reduction of the Contract Demand.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

The Customer shall employ at least 50 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

### **CAPITAL INVESTMENT COMMITMENTS**

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
  - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
  - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
  - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
  - a. The Customer shall make a minimum capital investment of \$19,000,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:



<b>DESCRIPTION</b>	<b>EXPENDITURE</b>
Land investment	\$ 250,000
Renovations	\$ 11,750,000
Warehouse renovation	\$ 200,000
Initial refinery construction	\$ 5,000,000
Refinery expansion	\$ 1,800,000
<b>Total Minimum Expansion Project Capital Investment Commitment:</b>	<b><u>\$ 19,000,000</u></b>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than January 26, 2024 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

**SCHEDULE C**  
**TAKEDOWN SCHEDULE**

**SCHEDULE D**  
**ZERO EMISSION CREDIT CHARGE**

**I. DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.

“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

## **II. ZEC CHARGE**

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
  - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by

the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

- b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).
  - c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.
5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.
6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall

provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.
8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

**SCHEDULE E**  
**MONTHLY RENEWABLE ENERGY CREDIT CHARGE**

**I. DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

## **II. MONTHLY REC CHARGE**

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.
3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:



- a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.
  - b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.
  - c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:
    - i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and
    - ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.
4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.
5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills

for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

### **III. ALTERNATIVE REC COMPLIANCE PROGRAM**

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to  
Expansion Power and Replacement Power Customers  
Located in Western New York

**Service Tariff No. WNY-2**

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## **Schedule of Rates for Firm Power Service**

### **I. Applicability**

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

### **II. Abbreviations and Terms**

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

**Agreement**: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

**Annual Adjustment Factor** or **AAF**: This term shall have the meaning set forth in Section V herein.

**Authority**: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

**Customer**: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

**Electric Service**: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

**Expansion Power** or **EP** and/or **Replacement Power** or **RP**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

**Firm Power**: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

**Firm Energy**: Energy (kWh) associated with Firm Power.

**Load Serving Entity** or **LSE**: This term shall have the meaning set forth in the Agreement.

**Load Split Methodology** or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

**Project**: The Authority's Niagara Power Project, FERC Project No. 2216.

**Rate Year** or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

**Rules**: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

**Service Tariff**: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

### **III. Monthly Rates and Charges**

#### **A. Expansion Power (EP) and Replacement Power (RP) Base Rates**

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

#### **B. EP and RP Rates no Lower than Rural/Domestic Rate**

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

#### **C. Monthly Base Rates Exclude Delivery Service Charges**

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

#### **D. Minimum Monthly Charge**

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

## **E. Estimated Billing**

If the Authority, in its discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's takedown (kW) amount.
- For Customers whose Allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority's rights under the Agreement.



**F. Adjustments to Charges**

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

**H. Billing Demand**

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

**I. Billing Energy**

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

**J. Contract Demand**

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

#### **IV. General Provisions**

##### **A. Character of Service**

Alternating current; sixty cycles, three-phase.

##### **B. Availability of Energy**

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

##### **C. Delivery**

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

##### **D. Adjustment of Rates**

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

## **E. Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
  - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
  - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
  - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
    - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
    - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
  - d. All demand values will be adjusted for losses.

**F. Payment by Customer to Authority**

**1. Demand and Energy Charges, Taxes**

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's Billing Demand (as defined in Section IV.E, above) for the Billing Period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's Billing Energy (as defined in Section IV.E, above) for the Billing Period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

**2. Transmission Charge**

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

**3. NYISO Transmission and Related Charges**

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "NYISO Charges") assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

### **G. Rendition and Payment of Bills**

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10<sup>th</sup>) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

**H. Adjustment of Charges – Distribution Losses**

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

**I. Conflicts**

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.

## **V. Annual Adjustment Factor**

### **A. Adjustment of Rates**

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of  $\pm 5.0\%$  (" $\pm 5\%$  Collar"). Amounts outside the  $\pm 5\%$  Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

### **2. Annual Adjustment Factor Computation Guide**

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to  $\pm 5\%$  Collar, as described below.
- a) When the AAF falls outside the  $\pm 5\%$  Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the  $\pm 5\%$  Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the  $\pm 5\%$  Collar.



- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the  $\pm 5\%$  Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15<sup>th</sup> of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

**B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):**

**STEP 1**

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		<b>1.03</b>

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> ((\$000s))	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	<b>6.24</b>

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	<b>6.23</b>

Ratio of MY/MY-1 **1.00**

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		<b>1.02</b>

## **STEP 2**

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			<b>1.016</b>

## **STEP 3**

Apply Collar of  $\pm 5.0\%$  to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$ ; collar does not apply, assuming no cumulative excess.

**STEP 4**

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

January 26, 2021

**APPLICATION SUMMARY**  
**Expansion Power (“EP”)**

<b>Company:</b>	Trek, Inc. (“Trek”)
<b>Location:</b>	Lockport, NY
<b>County:</b>	Niagara County
<b>IOU:</b>	New York State Electric & Gas
<b>Business Activity:</b>	The company is a manufacturer of electrostatic measurement and high voltage solutions.
<b>Project Description:</b>	Trek is proposing to establish a High Voltage Center of Excellence (“HVCOE”) at their Lockport facility. Several sites are competing for this project and a hydropower allocation may help in the Lockport site being selected for the expansion.
<b>Existing Allocation(s):</b>	None
<b>Power Request:</b>	395 kW of EP
<b>Power Recommended:</b>	350 kW of EP
<b>Job Commitment:</b>	
<b>Base:</b>	122
<b>New:</b>	At least 30 jobs
<b>New Jobs/Power Ratio:</b>	86 jobs/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$76,710
<b>Capital Investment:</b>	At least \$6 million
<b>Capital Investment/MW:</b>	\$17.1 million/MW
<b>Other ED Incentives:</b>	Applicant submitted applications to Niagara County Industrial Development Agency and Empire State Development
<b>Summary:</b>	<p>Trek is considering its Lockport site for the creation of a HVCOE. Several other sites are competing for this project and an allocation of low-cost hydropower, along with other support offered, could incentivize Trek to select its Lockport facility for the expansion.</p> <p>The establishment of a HVCOE would allow the company to centralize engineering resources, develop new manufacturing capabilities, and eliminate redundancies within their organization. The project would support the creation of at least 30 new jobs and \$6 million in capital spending. This includes construction costs, production equipment, and capital facility expenses.</p>

January 26, 2021

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POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street  
10<sup>th</sup> Floor  
Albany, New York 12207-3425

AGREEMENT FOR THE SALE  
OF EXPANSION POWER AND/OR REPLACEMENT POWER

Trek, Inc.

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The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Trek, Inc. (“Customer”) with offices and principal place of business at 190 Walnut Street, Lockport, NY 14094. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

## **RECITALS**

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, the Customer has applied for an allocation of EP and/or RP, or for an extension of an existing allocation of EP or RP, for use at facilities defined in this Agreement as the “Facility”;

WHEREAS, the Customer has offered to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments, power usage and energy efficiency measures at the Facility;

WHEREAS, the Authority’s Board of Trustees approved an allocation of EP and/or RP to the Customer;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the EP and/or RP for a term provided in this Agreement;

WHEREAS, the Authority’s provision of Electric Service under this Agreement is an unbundled service separate from (i) the transmission of the allocation, and (ii) the delivery of the Allocation;

WHEREAS, electric service to be provided hereunder shall be subject to the rates and other terms and conditions contained in the Service Tariff No. WNY-2 as provided in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement; and

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:



## **ARTICLE I**

### **DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.

“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.

“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.

“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

## **ARTICLE II**

### **ELECTRIC SERVICE**

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.
2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.
3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
4. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.

5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer's local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).
6. The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
7. The Contract Demand may not exceed the Allocation.
8. The Customer's Facility must be metered by the Customer's local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, "Metering Arrangement"). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.
9. The Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.

10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.
11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, "Service Information") that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

### **ARTICLE III**

### **RATES, TERMS AND CONDITIONS**

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority's satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer's control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.
2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:
  - a. any agreement for the sale of EP and/or RP with an Authority customer whose purchase of EP and/or RP is associated with an Authority service tariff other than Service Tariff No. WNY-2, including Authority Service Tariff No. WNY-1; or
  - b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer's participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.
3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with

respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

#### **ARTICLE IV** **SUPPLEMENTAL COMMITMENTS**

1. Supplemental Commitments. Schedule B sets forth the Customer's "Supplemental Expansion Power and/or Replacement Power Commitments" ("Supplemental Commitments"). The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer's Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.
2. *[Intentionally Left Blank]*
3. Special Provisions Relating to a New or Expanded Facility.

- a. Proposed New or Expanded Facility; Failure to Complete.

If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, "Expansion Project"), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

- b. Proposed New or Expanded Facility; Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is material different than the Expansion Project agreed to in Schedule B (as measured

by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer's request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

- (i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer's local electric utility and NYISO.
- (ii) In the event of an Expansion Project being completed in multiple phases, at the Customer's request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority's rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

**ARTICLE V**  
**ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES**

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services ("Energy Services") offered by the Authority that in the Authority's view could provide value to the Customer and/or support the State's Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer's option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.



**ARTICLE VI**  
**SERVICE TARIFF; CONFLICTS**

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.
2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

**ARTICLE VII**  
**TRANSMISSION AND DELIVERY**

1. The Customer shall be responsible for:
  - a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
  - b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and
  - c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority's approval.
2. The Authority will use good faith efforts to provide the Customer with at least one year's advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.
3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service

Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.

4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer's local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority's discretion and further subject to applicable laws, regulations and existing legal obligations.

## **ARTICLE VIII**

### **BILLING AND BILLING METHODOLOGY**

1. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.
3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

## **ARTICLE IX**

### **HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY**

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.
2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of Section IX.1.
3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month

prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.

4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.
8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.
9. Notwithstanding the Customer's election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.
10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless

otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.

11. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.
12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

## **ARTICLE X**

### **EFFECTIVENESS, TERM AND TERMINATION**

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.
2. Once commenced, Electric Service under the Agreement shall continue until the earliest of: (a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.
3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days' prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority's internal procedures and requirements of the Customer's local electric utility.
4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

## **ARTICLE XI**

### **EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS**

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:
  - a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;

- b. pursuant to any other process that the Authority establishes; or
  - c. with the Authority's written consent.
- 2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
- 3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

## **ARTICLE XII**

### **NOTICES**

- 1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

New York Power Authority  
123 Main Street  
White Plains, New York 10601

Email:

Facsimile: \_\_\_\_\_

Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Trek, Inc.  
190 Walnut Street  
Lockport, NY 14094

Email:

Facsimile:

Attention:

- 2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.
- 3. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed

properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) on the date of transmission if sent by electronic communication to the appropriate address as set forth above, with confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

### **ARTICLE XIII**

#### **SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER**

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.
2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.
3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

### **ARTICLE XIV**

#### **MISCELLANEOUS**

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or

for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. Previous Agreements; Modifications; and Interpretation

- a. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.
- b. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.
- c. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

**ARTICLE XV**  
**EXECUTION**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this

Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

**[SIGNATURES FOLLOW ON NEXT PAGE]**



AGREED:

**TREK, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AGREED:

**POWER AUTHORITY OF THE STATE OF NEW YORK**

By: \_\_\_\_\_  
John R. Koelmel, Chairman

Date: \_\_\_\_\_

**SCHEDULE A**  
**EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS**

Customer: Trek, Inc.				
<b>Type of Allocation</b>	<b>Allocation Amount (kW)</b>	<b>Facility and Address</b>	<b>Trustee Approval Date</b>	<b>Allocation Expiration Date</b>
EP	350 kW	190 Walnut Street Lockport, New York 14094	January 26, 2021	Ten (10) years from the date of commencement of Electric Service

**SCHEDULE B**  
**SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER**  
**COMMITMENTS**

**ARTICLE I**  
**SPECIFIC SUPPLEMENTAL COMMITMENTS**

1. Employment Commitments

- a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.
- b. The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.
- c. The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s discretion.

2. Capital Investment Commitments

The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program

- a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.
- b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term (“NYEM Participation”) in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.
- c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority’s communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.
- d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.

**ARTICLE II**  
**RECORDKEEPING, REPORTING AND FACILITY ACCESS**

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority's request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority's option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as the Authority deems necessary to determine the Customer's compliance with the Customer's Supplemental Commitments specified in this Schedule B.

### **ARTICLE III**

#### **COMPLIANCE ACTION BY THE AUTHORITY**

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority's other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.

5. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction.

Before implementing any reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority's receipt of such proposed plan. It shall be within the Authority's discretion whether or not to accept the Customer's proposed plan, require a different plan, or implement the reduction of the Contract Demand.

## **APPENDIX TO SCHEDULE B**

### **BASE EMPLOYMENT LEVEL**

The Customer shall employ at least 152 full-time, permanent employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

### **CAPITAL INVESTMENT COMMITMENTS**

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
  - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than N/A (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
  - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
  - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
  - a. The Customer shall make a minimum capital investment of \$6,000,000 to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:



<b>DESCRIPTION</b>	<b>EXPENDITURE</b>
Building expenses	\$2,848,000
Production equipment	\$2,012,000
Capital facility expenses	<u>\$1,140,000</u>
<b>Total Minimum Expansion Project Capital Investment Commitment:</b>	<b><u>\$6,000,000</u></b>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than January 26, 2024 (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

**SCHEDULE C**  
**TAKEDOWN SCHEDULE**

**SCHEDULE D**  
**ZERO EMISSION CREDIT CHARGE**

**I. DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.

“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

## **II. ZEC CHARGE**

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
  - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by

the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

- b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).
  - c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.
5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.
6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall

provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.
8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

**SCHEDULE E**  
**MONTHLY RENEWABLE ENERGY CREDIT CHARGE**

**I. DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

## **II. MONTHLY REC CHARGE**

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.
3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:



- a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.
  - b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.
  - c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:
    - i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and
    - ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.
4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.
5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills

for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

### **III. ALTERNATIVE REC COMPLIANCE PROGRAM**

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to  
Expansion Power and Replacement Power Customers  
Located in Western New York

**Service Tariff No. WNY-2**

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## **Schedule of Rates for Firm Power Service**

### **I. Applicability**

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

### **II. Abbreviations and Terms**

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

**Agreement**: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

**Annual Adjustment Factor** or **AAF**: This term shall have the meaning set forth in Section V herein.

**Authority**: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

**Customer**: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

**Electric Service**: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

**Expansion Power** or **EP** and/or **Replacement Power** or **RP**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

**Firm Power**: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

**Firm Energy**: Energy (kWh) associated with Firm Power.

**Load Serving Entity** or **LSE**: This term shall have the meaning set forth in the Agreement.

**Load Split Methodology** or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

**Project**: The Authority's Niagara Power Project, FERC Project No. 2216.

**Rate Year** or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

**Rules**: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

**Service Tariff**: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

### **III. Monthly Rates and Charges**

#### **A. Expansion Power (EP) and Replacement Power (RP) Base Rates**

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

#### **B. EP and RP Rates no Lower than Rural/Domestic Rate**

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

#### **C. Monthly Base Rates Exclude Delivery Service Charges**

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

#### **D. Minimum Monthly Charge**

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

## **E. Estimated Billing**

If the Authority, in its discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's takedown (kW) amount.
- For Customers whose Allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority's rights under the Agreement.



**F. Adjustments to Charges**

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

**G. Billing Period**

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

**H. Billing Demand**

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

**I. Billing Energy**

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

**J. Contract Demand**

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

#### **IV. General Provisions**

##### **A. Character of Service**

Alternating current; sixty cycles, three-phase.

##### **B. Availability of Energy**

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

##### **C. Delivery**

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

##### **D. Adjustment of Rates**

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

## **E. Billing Methodology**

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing (“LFS”) in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer’s local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer’s local electric utility, during each Billing Period recorded on the Customer’s meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer’s meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer’s local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
  - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer’s Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
  - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer’s metered load will be supplied by Firm Energy.
  - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer’s metered load to be supplied by Firm Energy is as follows:
    - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
    - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
  - d. All demand values will be adjusted for losses.

**F. Payment by Customer to Authority**

**1. Demand and Energy Charges, Taxes**

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's Billing Demand (as defined in Section IV.E, above) for the Billing Period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's Billing Energy (as defined in Section IV.E, above) for the Billing Period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

**2. Transmission Charge**

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

**3. NYISO Transmission and Related Charges**

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "NYISO Charges") assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

### **G. Rendition and Payment of Bills**

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10<sup>th</sup>) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

**H. Adjustment of Charges – Distribution Losses**

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

**I. Conflicts**

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.

## **V. Annual Adjustment Factor**

### **A. Adjustment of Rates**

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of  $\pm 5.0\%$  (" $\pm 5\%$  Collar"). Amounts outside the  $\pm 5\%$  Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

### **2. Annual Adjustment Factor Computation Guide**

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to  $\pm 5\%$  Collar, as described below.
  - a) When the AAF falls outside the  $\pm 5\%$  Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the  $\pm 5\%$  Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the  $\pm 5\%$  Collar.



- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the  $\pm 5\%$  Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15<sup>th</sup> of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

**B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):**

**STEP 1**

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year <u>(2013)</u>	Measuring Year - 1 <u>(2012)</u>
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		<b>1.03</b>

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> ((\$000s))	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	<b>6.24</b>

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	<b>6.23</b>

Ratio of MY/MY-1 **1.00**

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		<b>1.02</b>

## **STEP 2**

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			<b>1.016</b>

## **STEP 3**

Apply Collar of  $\pm 5.0\%$  to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$ ; collar does not apply, assuming no cumulative excess.

**STEP 4**

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
UTILITY OPERATIONS – AIR & SUSTAINABILITY PROGRAM	<b>FIRST ENVIRONMENT, INC.</b> Butler, NJ <b>(4500326590)</b>	12/10/20	Provide Verification Services of Reported Inventory to the Climate Registry	12/09/25	B/P	\$15,000		<b>\$109,225*</b>
*Note: represents total for up to 5-year term; Interim requested for December 10, 2020 start and \$15,000 amount								
UTILITY OPERATIONS - ENGINEERING	<b>Q20-7056CC; 2 Awards</b>  <b>1. AEIS LLC dba ATLAS EVALUATION &amp; INSPECTION SERVICES ♦</b> South Plainfield, NJ  <b>2. HATCH ASSOCIATES CONSULTANTS, INC.</b> Amherst, NY	01/26/21 (on or about)	Provide Failure Analysis and Metallurgical Testing service	01/25/26	B/P			<b>\$2 million *</b>
*Note: represents total aggregate value for a 5-year term								
UTILITY OPERATIONS - ENTERPRISE RESILIENCE	<b>Q20-7003SS; 5 Awards</b>  <b>1. BURNS &amp; MCDONNELL CONSULTANTS, INC.</b> Kansas City, MO  <b>2. ERNST &amp; YOUNG U.S. LLP</b> Secaucus, NJ  <b>3. GUIDEHOUSE, INC.</b> Chicago, IL  <b>4. DELOITTE &amp; TOUCHE LLP</b> Hermitage, TN  <b>5. TRC ENGINEERS, INC.</b> Windsor, CT	01/26/21 (on or about)	Provide Enterprise Resilience Program Consulting Services	01/25/26	B/P			<b>\$6 million*</b>
*Note: represents total aggregate value for a 5-year term								

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)

1 **Award Basis:** B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search

2 **Contract Type:** P= Personal Service; S= (Non-Personal) Service; C= Construction; E= Equipment; N= Non-Procurement; A= Architectural & Engineering Service; L= Legal Service

**Procurement (Services) and Other Contracts – Awards**  
(For Description of Contracts See "Discussion")

**EXHIBIT "5b i-A"**  
**January 26, 2021**

<u>Plant Site</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Expected Expenditures For Life Of Contract</u>
UTILITY OPERATIONS – FACILITY & INFRASTRUCTURE PM	<b>OAK RIDGE HAULING LLC</b> Danbury, CT <b>(Q20-7088JM)</b>	03/01/21	Provide Recycling and Trash Removal services for the Clarence D. Rappleyea (Centroplex) building in WPO	02/29/24	B/S			<b>\$100,000*</b>
*Note: represents total for up to 3-year term								
UTILITY OPERATIONS – FACILITY & INFRASTRUCTURE PM	<b>TECHNICAL BUILDING SERVICES, INC.</b> Ballston Spa, NY <b>(4500326436)</b>	02/01/21	Provide BAS Repair and Maintenance services for the Clarence D. Rappleyea (Centroplex) building in WPO	01/31/23	S/S			<b>\$200,000*</b>
*Note: represents total for up to 2-year term								
UTILITY OPERATIONS – POWER SUPPLY	<b>A20-00237DW; 2 Awards</b>  <b>1. CLEAR RIVER ENVIRONMENTAL SERVICE CORPORATION</b> Ronkonkoma, NY  <b>2. RUSSELL REID WASTE HAULING AND DISPOSAL SERVICE COMPANY, INC. dba UNITED SITE SERVICES</b> Keasbey, NJ	01/26/21 (on or about)	Provide Wastewater Removal Services for the Richard M. Flynn Power Plant	01/25/26	B/S			<b>\$1 million*</b>
*Note: represents total aggregate for up to 5 year term; Clear River awarded \$250,000 and Russell Reid awarded \$750,000								
UTILITY OPERATIONS – PROJECT MANAGEMENT	<b>CROWN CASTLE INTERNATIONAL CORPORATION dba CROWN CASTLE FIBER LLC</b> Houston, TX <b>(Q20-7054MR)</b>	01/26/21 (on or about)	Provide support for the Communication Backbone Program Dark Fiber installation from the Authority White Plains Office to NYSTA Route I-287 East Exit 6	01/25/41	B/C			<b>\$338,000*</b>
*Note: represents total for up to 20-year lease and maintenance agreements and \$338,000 for construction								

♦ **M / WBE:** New York State-certified Minority / Women-owned Business Enterprise (indicated by the ♦ symbol after the Company Name)  
**1 Award Basis:** B= Competitive Bid; S= Sole Source; Si= Single Source; C= Competitive Search  
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<b><u>Plant Site/ Bus. Unit</u></b>	<b><u>Company Contract #</u></b>	<b><u>Start of Contract</u></b>	<b><u>Description of Contract</u></b>	<b><u>Closing Date</u></b>	<b><u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u></b>	<b><u>Compensation Limit</u></b>	<b><u>Amount Expended To Date</u></b>	<b><u>Authorized Expenditures For Life Of Contract</u></b>
BUSINESS SERVICES - CORPORATE FINANCE	<b>Q19-6713RM – 9 Vendors</b>  <b>1. ADVANCED AUTOMATION CORPORATION</b> Rome, NY  <b>2. BNP PARIBAS SECURITIES CORPORATION</b> New York, NY  <b>3. CCA CAPITAL LLC</b> Boston, MA  <b>4. CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK</b> New York, NY  <b>5. ERNST &amp; YOUNG LLP</b> New York, NY  <b>6. GUIDEHOUSE (fka NAVIGANT CONSULTING, INC.)</b> New York, NY  <b>7. J.P. MORGAN SECURITIES LLC</b> New York, NY  <b>8. ROCKFLEET FINANCIAL SERVICES, INC. ♦.</b> New York, NY  <b>9. COHNREZNICK CAPITAL MARKET SECURITIES LLC</b> New York, NY	03/31/20	Provide for financial advisory services for energy projects consulting services	03/10/25	B/P		\$1.85 million	<b>\$7.5 million *</b>

\*Note: 8 vendors, \$2M value and 5-year term approved at the March Trustee meeting; CohnReznick was selected but inadvertently left off the award memo and approved at the July Trustee meeting; On December 15, 2020 aggregate value was increased by \$500,000 making total \$2.5 million; Additional funding request \$5 million; Total aggregate value \$7.5 million

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**Procurement (Services) Contracts – Extensions and/or Additional Funding**  
**(For Description of Contracts See "Discussion")**

**EXHIBIT "5b i-B"**  
**January 26, 2021**

<u>Plant Site/ Bus. Unit</u>	<u>Company Contract #</u>	<u>Start of Contract</u>	<u>Description of Contract</u>	<u>Closing Date</u>	<u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u>	<u>Compensation Limit</u>	<u>Amount Expended To Date</u>	<u>Authorized Expenditures For Life Of Contract</u>
COMMERCIAL OPERATIONS - CUSTOMER BUSINESS DEVELOPMENT	<b>SUNPOWER CORPORATION dba SOLAR STAR BIG APPLE BTM LLC</b> San Jose, CA (Q19-6703HM)	09/20/2019	Provide the design development process of a Solar Photovoltaic ("PV") system with battery storage at the Port Authority of NY and NJ ("PANYNJ") John F. Kennedy ("JFK") International Airport	09/19/2044	B/N		\$0.00	<b>\$21,421,275*</b>
						*Note: represents total for 25-year term, including a five-year extension; including additional funding request of \$4,284,255		
UTILITY OPERATIONS – ENGINEERING	<b>GREENMAN -PEDERSEN, INC.</b> Babylon, NY (4600003011)	07/14/15	Provide support of the Engineer of Record ("EOR") for the completion of the project	12/31/22	Si/P		\$1,942,573.66	<b>\$2.2 million*</b>
						*Note: represents total for up to 7-year and 5-month term; including two-year extension; No additional funding requested		
UTILITY OPERATIONS – FACILITY & INFRASTRUC- TURE PM	<b>DONJON MARINE COMPANY, INC.</b> Hillside, NJ (4600003904)	03/11/20	Provide preparation, transportation and placement of obsolete materials in accordance with NYSDEC Material Preparation Guidelines and artificial reef replenishment	03/10/22	B/C		\$4,730,200.10	<b>\$5 million*</b>
						*Note: represents total for up to 2-year term; including a one-year extension; No additional funding requested		
UTILITY OPERATIONS – FACILITY & INFRASTRUC- TURE PM	<b>EATON CORPORATION</b> Waukesha, WI (4500317982)	01/29/20	Provide the East Dam Hydro Plant rehabilitation for the Village	12/31/21	B/C		\$1,257,432.64	<b>\$2.9 million*</b>
						*Note: represents total for up to 1-year; including 11-month term; No additional funding requested		
UTILITY OPERATIONS, - TRANSMISSION PROJECT MANAGEMENT	<b>BUFFALO RIVER FEST PARK LLC</b> Buffalo, NY	01/01/21	Provide continued maintenance at the Park	12/31/23	S/L		\$71,200	<b>\$213,600*</b>
						*Note: represents total for three 1-year terms running January 1 <sup>st</sup> to December 31 <sup>st</sup> each year 2021, 2022 and 2023		

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# WESTCHESTER GOVERNMENTAL CUSTOMERS

# EXHIBIT "5c i-A"

Service Tariff No. 200 Rate Comparison (Current vs. Proposed)

Service Classification	Demand (\$/kW)		ENERGY (¢/kWh)											
			SUMMER		SUMMER ON PEAK		SUMMER OFF PEAK		WINTER		WINTER ON PEAK		WINTER OFF PEAK	
	2020	2021	2020	2021	2020	2021	2020	2021	2020	2021	2020	2021	2020	2021
SC 62 Conventional	\$0.00	\$0.00	4.469	4.439					4.125	4.095				
SC 66 Conventional	\$0.00	\$0.00	3.971	3.809					3.971	3.809				
SC 68 Conventional	\$0.87	\$1.21	4.685	4.515					4.341	4.171				
SC 69 Conventional	\$0.80	\$0.91	4.864	4.660					4.521	4.317				
SC 69 TOD	\$1.00	\$1.23			5.485	5.323	3.718	3.556			4.683	4.521	3.734	3.573

Service Tariff No. 200 Demand Standby Rate Comparison (Current vs. Proposed)

Service Class	CONTRACT STANDBY DEMAND (\$/KW)				AS-USED DAILY DEMAND (\$/KW-day)			
	Low Tension		High Tension		Low Tension		High Tension	
	2020	2021	2020	2021	2020	2021	2020	2021
SC 68 Conventional	\$0.026	\$0.036	\$0.024	\$0.034	\$0.028	\$0.038	\$0.026	\$0.036
SC 69 Conventional	\$0.024	\$0.027	\$0.022	\$0.025	\$0.026	\$0.029	\$0.024	\$0.027
SC 69 TOD	\$0.030	\$0.037	\$0.028	\$0.035	\$0.032	\$0.039	\$0.030	\$0.037

**Procurement (Services) Contracts – Canal Extensions and/or Additional Funding**  
**(For Description of Contracts See "Discussion")**

**EXHIBIT "5d i-A"**  
**January 26, 2021**

<b><u>Plant Site/ Bus. Unit</u></b>	<b><u>Company Contract #</u></b>	<b><u>Start of Contract</u></b>	<b><u>Description of Contract</u></b>	<b><u>Closing Date</u></b>	<b><u>Award Basis<sup>1</sup> Contract Type<sup>2</sup></u></b>	<b><u>Compensation Limit</u></b>	<b><u>Amount Expended To Date</u></b>	<b><u>Authorized Expenditures For Life Of Contract</u></b>
UTILITY OPERATIONS – CONSTRUCTION ENGINEERING & MAINTENANCE	<b>JAMES H. MALOY, INC.</b> Loudonville, NY <b>(4400004721)</b>	01/24/20	Provide for the Rehabilitation of Lock E-7	08/31/21	B/C		\$854,219.87	<b>\$1,279,731.33*</b>
<p align="right">*Note: represents total for 19-month term, including a seven-month extension thru August 31, 2021; Additional funding amount of \$170,731.33</p>								

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